(2018) 06 CAL CK 0123

In the Calcutta High Court

Case No : W. P. 21948 (W) of 2017

Gouri Brahmachari (Bandopadhyay) APPELLANT

Vs

State Of West Bengal & Ors. RESPONDENT

Date of Decision : 11-06-2018

Acts Referred:

Citation : (2018) 06 CAL CK 0123

Hon'ble Judges : SHEKHAR B. SARAF, J

Bench : Single Bench

Advocate : Sandip Ghosh

Final Decision : Disposed Of

Judgement

The material facts of the case are admitted and hence I have not called for affidavits. The petitionerâ??s husband was appointed as an Assistant

Teacher of a Secondary School and he retired from service on January 31, 2006 and died on October 16, 2015. The first pension payment order was

issued on January 27, 2006 and the gratuity amount and arrear pension was disbursed on March 30, 2006. Under the ROPA Rules, 2009 there was

revision of the pensionary and gratuity amount payable to the petitioner.

The revised pension payment order was issued on January 20, 2011 and the gratuity amount and arrear pension was disbursed on March 14, 2011 in

terms of ROPA, 2009. The petitioner claims interest on delayed payment of the revised gratuity and arrear pension. I have heard learned counsel for

the petitioner and I have considered the orders passed by this court in similar facts. It is settled law that retired employee is entitled to some amount of

interest on delayed payment of gratuity and arrear pension.

Although the point of delay or limitation has not been urged on behalf of the

State, I deem it appropriate to address that issue briefly. The Limitation

Act in terms does not apply to writ petitions. The Honâ??ble Supreme Court in the case of Union of India Versus Tarmen Singh reported in (2008) 8

SCC 648 has observed that if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect

the rights of third parties. It is settled law that the right of a retired employee to get his retiral dues on the date of attaining superannuation is a valuable

right which accrues in his favour on the date of his attaining superannuation. Further, gratuity is no more considered to be a bounty to be handed out

by the State as its whim. An employee has a statutory right to receive gratuity upon retirement. If payment of such gratuity is delayed, the retired

employee is surely entitled to get some interest for such delayed payment.

The Rule that the High Court may not enquire into belated and stale claim is not a Rule of Law, but one of practice based on sound and proper

exercise of discretion. The principle on which the relief to a party is denied on the ground of laches or delay is that the right which have accrued to

others by reason of delay in approaching the Court should not be allowed to be disturbed. In the present case, it was the bounden duty of the State to

disburse the gratuity amount on the due date. It has failed to do so and has released such amount after unexplained delay, it is obliged to pay interest to

the retired employee. This is compensatory in nature.

Pension and gratuity are aimed at maintaining the life of a retired employee and his/her dependents, these are welfare provisions and even if there is

delay on the part of a retired employee to approach the Court claiming interest on delayed payment of gratuity, the delay per se should not be the

ground for rejection of the writ petition. No third party interest will be affected by a direction on the State to compensate the retired employee for

delayed payment of gratuity by paying interest at a reasonable rate.

In view of the aforesaid, I direct the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal as also the concerned

Treasury Officer to pay interest to the writ petitioner at the rate of nine percent per annum on the revised gratuity amount as well as revised arrear

pension calculated on and from June 1, 2009 till actual date of payment, that is, March 14, 2011.

Such payment is to be made within eight weeks from the date of communication of the certified copy of this order to the concerned authorities. Since

no affidavits have been invited, the allegations contained in the writ petition are deemed not to be admitted. The writ petition being W. P. No. 21948

(W) of 2017 is, accordingly, disposed of. There will be no order as to costs. Urgent certified copy of this order, if applied for, be made available to the

parties upon compliance of the requisite formalities.