

(2012) 12 CAL CK 0058

In the Calcutta High Court

Case No : C.W.J. Appellate Side W.P. No. 26285 of 2012

MD. Sayeedul Islam Mir

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Citation : (2013) 137 FLR 88 : (2013) 2 LLJ 209

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Sabita Khutia, for the Appellant;

Judgement

Harish Tandon, J.—An affidavit-of-service is filed; let the same be kept on record. In spite of service, no one appears on behalf of the respondents.

The petitioner, who was appointed as an assistant teacher, attained the age of superannuation on and from June 30, 2011. In spite of having submitted all the relevant papers, the concerned authority did not disburse the pensionary/retiral benefits on the date of attaining superannuation. After a lapse of about nine months, the respondent No. 2 herein, namely, the Director of Pension, Provident Fund & Group Insurance, West Bengal, issued pension payment order on April 3, 2012. The gratuity amount of the petitioner was disbursed in favour of the petitioner only on June 28, 2012. The petitioner has taken out the instant writ petition claiming interest on delayed payment of gratuity amount.

The learned Advocate for the petitioner relying upon a judgment of a Co-ordinate Bench of this Court in the case of Niranjana Kumar Mondal Vs. The State of West Bengal and Others, submits that non-payment of interest on delayed payment of pensionary benefit is a continuing wrong.

2. Upon noticing the said judgment, it appears that one of the points, which was taken, was whether the interest could be awarded for delayed payment of the retiral benefit after a lapse of considerable period of time. In such perspective, it was held that:--

Claim for interest cannot be held to be a stale claim as right to claim interest on delayed payment of retiral dues accrues due to continuing wrong committed by the State respondents for withholding the payment of the petitioner's retiral dues causing continuous injury to the petitioner until such payment is made.

3. Let me explain as to how non-payment of interest amounts to a continuing wrong. It has now been settled universally that payment of retiral dues is not a bounty. The scheme for payment of such retiral dues was introduced by the State Government by the Office Memorandum dated 26th May, 1998. Under the said scheme the State Government is required to pay the retiral dues such as death-cum-retiring gratuity, commuted value of pension etc., on the day following the date of his retirement. If such payment is not made on the said date, then the State Government acquires a liability to pay interest on delayed payment of such retiral dues, simultaneously corresponding right to claim interest on delayed payment of retiral dues is accrued in favour of the retired person as such right is recognised in the Part III of the Constitution. Thus, whenever such retiral dues is paid to a retired person beyond the due date, the State Government is required to pay interest till the date of payment of such retiral dues, so that the interest which he could have earned by way of depositing his retiral dues in any Nationalized Bank or any financial institutions from the date since when it became due and payable to him upto the date of payment thereof, can be recovered by him from the employer. This liability to pay interest by the State, in my view, continues till the date of actual payment of the retiral dues but in case interest is not paid along with the retiral dues, liability to pay interest continues till the date of payment of interest as the interest which was accumulated on the retiral dues upto the date of payment of such retiral dues, also carries interest day to day until such interest is paid. Thus, this Court is of the view that non-payment of interest on delayed payment of retiral dues is a continuing wrong causing continuous injury to the petitioner.

4. It has been held by the Hon'ble Supreme Court in case of Union of India (UOI) and Others Vs. Tarsem Singh, that where a service related claim is based on a continuing wrong, relief can be granted even if there is long delay in seeking remedy, as continuing wrong creates a continuous source of injury and the claim never gets frigid until payment is made.

5. The law enunciated in the said report squarely applies in the facts of the present case. The claim of the writ petitioner, therefore, cannot be refused as non-payment of interest on delayed payment of pensionary benefit is a continuing wrong. Furthermore, in the said report, the Co-ordinate Bench recorded the stand of the State Government in implementing the Court's order for payment of interest on delayed payment of gratuity in the following words:

22. Thus, when the State Government, on its own, took a decision to implement the Court's order for payment of interest on delayed payment of Gratuity and further when the State Government granted interest on delayed payment of Gratuity in numerous cases following the orders of this Court which were passed

by taking note of such concession given by the State Government, this Court does not find any justification to reject the petitioner's claim for interest merely on the ground of delay when this Court finds that the State itself committed default in discharging its duty to pay such legitimate dues of the petitioner at the right time and because of non-payment of interest, the petitioner has made to suffer a continuous injury till date. (Emphasis supplied)

6. Thus, in view of the above, the petitioner is entitled to an interest on the delayed payment of gratuity and the respondent No. 4 herein, the Treasury Officer, Uluberia, Howrah, is directed to pay the interest @ 6% per annum on delayed payment of such gratuity from the date of attainment of superannuation till the date of actual payment and such amount shall be paid within eight weeks from the date of communication of this order. In default of payment of an amount indicated above within the stipulated period, the concerned authority shall pay an additional interest @ 2% per annum over and above the interest already awarded till the actual payment is made. The writ petition is, thus, disposed of without any order as to costs.

Xerox certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.