

**(2012) 02 CAL CK 0044**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 20845 (W) of 2011**

Niranjan Kumar Mondal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

**Date of Decision :** 09-02-2012

**Acts Referred:**

Constitution of India, 1950 — Article 136, 14, 19, 21, 226

**Citation :** (2012) 4 CHN 192 : (2012) 133 FLR 665

**Hon'ble Judges :** Jyotirmay Bhattacharya, J

**Bench :** Single Bench

**Advocate :** Tapabrata Chakraborty, Mr. Sourav Mitra, Mr. Saktipada Jana, Mr. Tarapada Halder and Mr. Subhrangsu Panda, for the Appellant; Kamallesh Bhattacharya, Mintu Kr. Goswami, Bidhan Biswas, Joydip Basu and Mr. Balaram Datta, for the Respondent

**Final Decision :** Allowed

## Judgement

Hon'ble Justice Jyotirmay Bhattacharya

1. The petitioner, who was an approved Assistant Teacher of Dostapur High School in the district of South 24 Parganas, retired from service on superannuation with effect from 31st October, 1999. There was enormous delay on the part of the State respondents in settlement of retiral dues of the petitioner. Pension Payment Order was issued by the concerned Authority on 22nd April, 2002. Even then the retiral dues of the petitioner as per the said Pension Payment Order was not paid to the petitioner immediately after the issuance of the Pension Payment Order. Such payment was made to the petitioner on 28th February, 2004 i.e. almost two years after issuance of the Pension Payment Order. As per the Government Memo dated 26th May, 1998, by which the pension scheme was introduced for the employees of the Government Aided Institutions, the State was required to pay the retiral dues such as death-cum-retiring gratuity etc. on the very next day following the date of his retirement. But in the instant case, the State respondents paid the retiral dues of

the petitioner almost four years after his retirement. Thus, the State respondents enjoyed the petitioner's money for about four years for its own benefit.

2. The process for settlement of the retiral dues of a retired person becomes complete when the Pension Payment Order is issued. As such, this Court does not find any justification for such delay in payment of the retiral dues of the petitioner after issuance of the Pension Payment Order. Thus, this Court has no hesitation to hold that the State respondent committed default in enforcing its own scheme which was framed by the State respondents as a social security measure for its retired employees in recognition of their past service in the Government Aided Institutions.

3. When such a retired employee has come to this Court with this writ petition claiming interest on delayed payment of his death-cum-retiring gratuity, the State respondents who themselves committed default in implementation of its own scheme, have raised a question regarding entertainability of this writ petition on the ground of delay.

4. Here is the case where a defaulter is complaining against the delay and laches of the petitioner as he has not approached the Court promptly after the cause of action for this writ petition had matured. The cause of action for this writ petition, according to the respondents matured in 2004, when retiral dues without interest was paid to the petitioner but the present writ petition was filed in 2011, i.e. almost after expiry of seven years after the cause of action had matured.

5. At the very outset, I would like to mention that the State, being a model employer and the protector the civil rights of its citizens, should not raise the point of limitation to deprive its own citizens of their legitimate claim. Reference, in this regard, may be made to the decision of the Hon'ble Supreme Court in the case of S.R. Bhanrale vs. Union of India; reported in AIR 1997 Supreme Court 27. However, since such a dispute is raised by the State respondents, this Court wants to resolve the said dispute before entering into the merit of this writ petition. Despite Limitation Act has no application in the writ proceeding, but still then delay may be a factor in some occasion in entertaining a writ petition. Writ may be issued either for enforcement of ordinary legal right of the person whose legal right has been violated or for enforcement of the fundamental rights guaranteed under Part III of the Constitution.

6. One cannot be unmindful about the fine distinction between violation of one's ordinary legal right and infringement of one's fundamental right guaranteed under Part III of the Constitution. When a person comes to a Court under Article 226 of the Constitution of India alleging violation of his ordinary legal right, the Court may refuse to grant relief to a party if he does not approach the Court with all promptitiveness. However, if fundamental right of a citizen is infringed, can the High Court refuse to enforce fundamental right guaranteed to a citizen only on the ground of delay? The Division Bench of this Hon'ble Court, in the case of

Padma Rani Thakur vs. Secretary, Department of Home; reported in 2007 (1) CLJ (Cal) 21, held that when in a writ application, a citizen alleges infringement of his fundamental right guaranteed by our Constitution at the instance of a State, and if such infringement is actually proved, a writ Court should not dismiss such an application on the ground of delay. The said conclusion was arrived at by following a settled principle of law which declares that there can be no loss of fundamental right on the ground of non-exercise of such right.

7. Let me now consider the law which has been laid down by the Hon"ble Supreme Court on the aspect of delay in approaching the High Court for enforcement of the fundamental right of a citizen. The Hon"ble Supreme Court in the case of Tridip Kumar Dingal and Others Vs. State of West Bengal and Others, held as follows:

Paragraph 56- We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ Court. It is well-settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

Paragraph 57-The Petitioner wants to invoke jurisdiction of a writ Court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of the principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of third party have accrued in the meantime (vide State of M.P. vs. Bhailal Bhai, Moon Mills Ltd. v. Industrial Court and Bhoop Singh v. Union of India). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand vs. H.B. Munshi, Durga Prasad vs. Chief Controller of Export and Imports and Rabindranath Bose vs. Union of India).

Paragraph 58- There is no upper limit and there is no lower limit as to when a person can approach a Court. The question is one of discretion and has to be decided on the basis of facts before the Court depending on and varying from case to case. It will depend upon what breach of fundamental right and the remedy claimed are and when and how the delay arose.

Paragraph 59- We are in respectful agreement with the following observations of this Court in P.S. Sadasivaswamy vs. State of T.N.

2. ... it is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a certain length of time. But it would be sound and wise exercise of discretion for the Courts to refuse exercise their extraordinary powers under Article 226 in the case of

persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

8. In another earlier decision of the Hon''ble Supreme Court in the case of Shiv Dass Vs. Union of India (UOI) and Others, it was held therein that normally in case of belated approach writ petition has to be dismissed. It was further held therein that delay or laches is one of the factors to be born in mind by the High Court when the High Court exercises its discretionary power under Article 226 of the Constitution. It was further held therein that in an appropriate case the High Court may refuse to invoke its extraordinary power if there is some negligence or omission on the part of the applicant to exert his right as taken in conjunction with the lapse of time and other circumstances, causing prejudice to the opposite party. It was further held therein that even where fundamental right is involved, the matter is still within the discretion of the Court and such discretion has to be exercised judicially and reasonably.

9. The aforesaid decisions of the Hon''ble Supreme Court, thus, make it clear that inordinate delay in approaching the Court by a citizen even for enforcement of fundamental right, may cause fatal to the entertainment of the writ petition by the High Court, particularly when the citizen wants to agitate a stale claim and exhumate matters which had already been disposed of or settled or where the right of third party had intervened in the meantime.

10. In the facts of the instant case, it cannot be said that because of the delay in approaching this Court, a third party interest has been created and such third party interest may be affected, if relief as prayed for herein is granted by this Court in favour of the petitioner, in exercise of its extraordinary jurisdiction. As such, this writ petition cannot be rejected on that score. Let me now consider as to whether the petitioner has approached this Court to agitate a stale claim or he wants to exhumate matters which have already been disposed of or settled, so as to attract dismissal order on the ground of delay.

11. In the instant case, the petitioner has claimed interest on delayed payment of his retiral dues. Here, there is no statutory rule occupying the filed for payment of any interest relying on which the petitioner can claim the benefit of interest on delayed payment of his retiral dues. The Hon''ble Supreme Court in the case of S.K. Dua vs. State of Haryana and Anr. Reported in (2008) 8 SCC 44 held that in the absence of statutory rule, administrative instruction or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. Following the said decision of the Hon''ble Supreme Court, this Court has no hesitation to hold that claim of interest on delayed payment of retiral dues is the fundamental right of the petitioner which he can enforce in the writ jurisdiction of this Court.

12. When interest is awarded by the Court, our normal feeling is that it is so awarded by way of penalty or punishment. But interest in all cases is not granted

by way of penalty or punishment. In this regard, reference may be made to the decision of the Hon''ble Supreme Court in the case of Aloke Shanker Pandey vs. Union of India reported in AIR 2007 SC 1958 wherein the concept of grant of interest has been explained in the following manner;-

it may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say ten years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B ten years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal but also interest thereon to B.

13. The said decision of the Hon''ble Supreme Court makes it clear that the claim of interest on delayed payment of retiral dues flows from the fundamental rights guaranteed under the Constitution. 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.

14. 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.

15. 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 nonpayment of interest on delayed payment of retiral dues is

a continuing wrong causing continuous injury to the petitioner.

16. It has been held by the Hon'ble Supreme Court in case of Union of India & Ors. vs. Tarsem Singh; reported in (2008) 8 SCC 648, 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 fridged until payment is made.

17. Thus, by following the aforesaid decisions of the Hon'ble Supreme Court, this Court holds that entertainment of the writ petition cannot be refused on the ground of delay as the petitioner has come before this Court seeking relief by agitating a continuing wrong on the part of the State respondents causing continuous injury to him.

18. That apart, this particular question regarding entertainability of this writ petition at a belated stage came up for consideration before this Court repeatedly and this Court uniformly held in all the earlier decisions that delay itself cannot be a ground for not entertaining the writ petition by this Court. Reference of some of such decisions of this Hon'ble Court may be made hereunder:

i) in the case of Satya Ranjan Das vs. State of W. B. reported in (2007) 3 CLT 531;

ii) in the case of Mohon Chandra Halder vs. State of W.B. & Ors. W.P. No. 30264(W) of 2008 (unreported decision delivered by Aniruddha Bose, J. on 14.05.2009;

19. The facts of those two cases were exactly identical to the case in hand. As such this Court does not find any reason to come to a different conclusion when the decision so taken in those decisions were not only implemented by the State respondents but the learned Advocate General representing the State submitted before this Court in a latter identical case being W.P. No. 1092(W) of 2010 (Dulal Pramanik vs. State of West Bengal) that the Government has accepted a large number of orders previously made by this Court directing the State to pay interest at the rate of 10% per annum from the date of retirement of the person claiming interest for belated payment of gratuity till the date of actual payment of the amount and the State will accept a similar order if made on the admission stage, disposing of the petition. By taking note of such submission of the learned Advocate General, the said writ was ultimately disposed of by a learned Single Judge of this Court on 12th February, 2010 by directing the respondents specially the State to pay the petitioner therein interest on gratuity at the rate of 10% per annum from the date of retirement or death, as the case may be of the employee concerned till the date of actual payment of the amount. Not only the said direction of the Court was implemented by the State respondents but thousands of case of similar nature were disposed of by this Court by directing the State respondents to pay interest on delayed payment of gratuity and the State Government implemented all those orders spontaneously even without any threat of contempt.

20. This issue regarding entertainability of the belated writ petition was also considered by a Division Bench of this Hon''ble Court in an unreported decision in the case of Mangala Sau vs. State of West Bengal & Ors. being M.A.T. No. 68 of 2011, wherein it was held that as the provision of Pension and Gratuity aims at maintaining the life of a retired employee and his dependants consequent upon his death, there is welfare provision imbedded in the entire scheme and as such a practical view should be taken. The Division Bench thus held that till such time actually the disbursal was made by the Authorities, the amount of gratuity would be visited with interest at the market rate.

21. Since there is no direct authority of the Hon''ble Supreme Court on this point, contrary to the aforesaid Division Bench division of this Hon''ble Court, this Court holds that the said Division Bench decision of the Hon''ble Court is binding upon this Court.

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 nonpayment of interest, the petitioner has made to suffer a continuous injury till date.

23. Thus, by recognizing the petitioner's right towards his claim for interest on delayed payment of gratuity, this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, directs the State respondents to pay interest at the rate of 8% per annum on delayed payment of such gratuity from the date of retirement of the petitioner upto the date of actual payment thereof. Such payment should be made within eight weeks from the date of communication of this order.

24. The writ petition is, thus, allowed.

25. Urgent xerox certified copy of this judgment, if applied for, be given to the parties as expeditiously as possible.

Later:

26. After delivery of the judgment, Mr. Mintu Goswami, learned Advocate, appearing on behalf of the State respondents, prays for stay of the operation of this order for a limited period. Having regard to the fact that the State Government accepted the order of the Division Bench which has been relied upon by this Court in support of its conclusion and also paid interest on delayed payment of gratuity to the appellant therein in terms of the Hon''ble Appeal Court's order, this Court does not find any justification to stay the operation of

the order.

27. That apart eight weeks? time has been given to the State respondents for compliance of this order. Thus, this Court does not feel any necessity to pass any order of stay in this matter. Thus, Mr. Goswami?s prayer for stay stands rejected.