(2019) 08 CAL CK 0072

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5825, 6169, 6168, 6649, 6650, 6656, 6678, 6799, 6998, 9152, 9219 Of 2019

Padma Nath And Others — APPELLANT

Vs

State Of West Bengal & Ors — RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21, 226

Citation : (2019) 08 CAL CK 0072

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Imdadul Biswas, Sourav Mitra, Jaydip Basu, Anjusri Mukherjee

Final Decision : Disposed Off

Judgement

Moushumi Bhattacharya, J

1. The issue in these writ petitions is whether the widow of a retired teacher who has enjoyed his pension benefits after retirement, is entitled to interest on delayed payment of the pension benefits. Since the facts of the writ petitions are substantially similar, the factual position in W.P. 6649(W) of 2019 is being referred to as a prototype of the case made out in all the other writ petitions.

2. The petitioner's husband was appointed as an Assistant Teacher in the concerned school on 1st June, 1974 and retired from service on 31st March, 2007. The petitioner's husband completed all formalities in relation to disbursement of his pension and submitted the same to the appropriate authority prior to his retirement. The Pension Payment Order (PPO) was issued by the Director of Pension, Provident Fund and Group Insurance and the amount of pension and arrear pension was sanctioned on 22nd March, 2007 and on 13th March, 2013. Pursuant to issue of the P.P.O by the Director of Pension, Provident Fund and Group Insurance (under ROPA 2009) on 13th March, 2013, the petitioner appeared before the Treasury Officer to discharge his statutory

obligation in terms of the Death-cum-Retirement Benefit Scheme, 1981. It is the case of the writ petitioner that after meeting the concerned authorities several times, the arrear pension was finalised in favour of the petitioner's husband on 30th September, 2007 and 3rd July, 2013. The petitioner has stated that the concerned authorities were also requested to pay interest on the arrear pension calculated from the day following the date of retirement of the petitioner's husband until the date of actual disbursement of the arrear pension. The petitioner's husband died on 17th January, 2019 after which the petitioner requested the concerned authorities to sanction and disburse interest on delayed payment of pension benefits in favour of the petitioner.

3. Learned counsel appearing for the petitioner prays for interest on the delayed payment of arrear pension by reason of the delay on the part of the concerned authorities in disbursing the pension benefits to the petitioner's husband after his retirement. Counsel relies on S.K. Dua Vs. State of Haryana reported in (2008) 3 SCC 44; Niranjan Kumar Mondal Vs. The State of West Bengal reported in (2012) 1 WBLR (Cal) 903 on the point of entitlement of a petitioner to interest on delay in disbursement of retirement benefits. Counsel also relies on J. Kasthuri Vs. The Commissioner, Chennai Municipal Corporation in W.P. No. 19611 of 2013 in The High Court of Judicature at Madras and a decision of a learned Single Judge of this court in W.P. No. 9250(W) of 2018 (Dipali Sikder Vs. The State of West Bengal) for the proposition that family pension is not merely a statutory right of the wife or the dependant or the family member of the deceased employee but is a constitutional promise, denial of which amounts to violation of Article 21 of the Constitution of India. The co-ordinate Bench of this court in Dipali Sikder Vs. The State of West Bengal held in favour of entitlement of interest on the delayed payment and gratuity to the petitioner's husband.

4. The state is represented in all the writ petitions.

5. I have heard learned counsel representing the petitioners in the writ petitions where the issue to be decided is whether the widow of a retired teacher, who was given his family pension and enjoyed the same until his death, can approach a writ court seeking interest on the delayed payment of pension to her husband. In other words, both the petitioner (the widow) and her husband (the retired teacher in whose favour the Pension Payment Order was issued and the pension released) enjoyed the retirement benefits which were paid by the concerned authorities to the petitioner's husband after considerable delay. The interest which is now being claimed is on account of the delay on the part of the respondents to disburse the pension amount which fell due from the day following the date of retirement of the husbands of the petitioners and from 19th May, 2009 in the case of W.P. 6649 (W) of 2019, since the PPO in that case was issued under ROPA 2009.

6. The decisions relied upon support the settled law on the right of a retired teacher or employee to his/her retirement benefits without any delay. The principle that the disbursement of pension and other retirement benefits should

not be treated as a matter of bounty but are valuable rights and property and any delay in settlement or disbursement thereof must be compensated with the penalty of payment of interest at the current market rate till actual payment to the employee, as has been held in several cases, including in State of Kerala Vs. M. Padmanabhan Nair ((1985) 1 SCC 429) [see also D.D. Tewari Vs. Uttar Haryana Bijli (AIR 2014 SC 2861)]. In D.D. Tewari, the court awarded interest to the legal representatives of the deceased employee upon holding that there has been a miscarriage of justice on denial of payment of interest.

7. In Niranjan Kumar Mondal Vs. The State of West Bengal reported in (2012) 1 WBLR (Cal) 903, this court relying on Aloke Shanker Pandey Vs. Union of India reported in AIR 2007 SC 1198 explained the concept of grant of interest in that interest is not a penalty or punishment but is an accretion on capital. Interest is therefore to make good the loss of opportunity to the person who could have earned interest on a certain sum of money if that sum of money had been paid to that person on time. The element of compensation also arises from the possible gain made by the person who withheld the amount of money for a certain period of time on the premise that the person thus deprived may have earned interest on the amount invested. The equitable consideration is therefore not only to pay the principal amount to the person who has been deprived but also the amount which that person could have earned by way of interest on the principal amount for the period when the principal amount had been with the concerned authority. In S.K. Dua Vs. State of Haryana reported in (2008) 3 SCC 44, the issue before the Supreme Court was whether the appellant was entitled to interest on his retirement benefits which were kept pending due to certain charges pending against the appellant. The retirement benefits in that case were paid to the appellant four years after his superannuation. The emphatic words used by the Supreme Court are set out below;

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

8. In J. Kasthuri Vs. The Commissioner, Chennai Municipal Corporation, the petitioner was a widow of a Group-D employee and had challenged the recovery of the family pension granted to her. The Madras High Court found the recovery

of excess pension released in favour of the petitioner to be unsustainable in view of the law laid down by the Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer). Dipali Sikder was the petitioner before the court whose husband had completed all formalities for his retirement benefits. In that case, the pension and gratuity were released two years after the petitioner's husband retired and the petitioner approached the court after her husband's death for interest on the delayed payment when the petitioner's prayer was allowed. From the aforesaid decision, it is evident that the courts have held in favour of a claim of interest on delayed payment of pension and other retirement benefits. There is also no ambiguity in the decisions of the courts that a widow or a dependant of a teacher, who has retired from service and has subsequently died, is entitled to the family pension and other retirement benefits.

9. The question which arises in these writ petitions is, therefore, whether acceptance of the delayed payment by the widows of teachers without claiming interest for such delay at the relevant point of time can be granted after a lapse of time. Simply put, which delay would weigh with the court for the grant or refusal of the interest claimed by the petitioners? Would it be the delay on the part of the concerned authorities in releasing the retirement benefits to the petitioner/his wife or would the court give greater weightage to the delay on the part of the petitioner (widow) in approaching the court with a prayer for interest? In answering this question, the pronouncement of the law as laid down by the Supreme Court in Union of India Vs. Tarsem Singh reported in (2008) 8 SCC 648 may be referred to. In this decision, it was held that in cases of a continuing wrong being perpetuated by the authorities on a litigant, the court can grant relief despite a long delay in seeking a remedy on the ground that the continuing wrong results in a continuing injury which prevents the claim from becoming one where a court may refuse to exercise discretion in its extraordinary jurisdiction under Article 226 of the Constitution. Union of India Vs. Tarsem Singh reported in (2008) 8 SCC 648 also referred to instances where the court may refuse to exercise discretion in favour of the writ petitioner where third-party interests have been created in the intervening period of time.

10. On the aspect of delay, the decision of a Division Bench of this Court in Padma Rani Thakur Vs. The Secretary, Department of Home reported in (2007) 1 CLJ (Cal) 21 may be referred to where the court held that the rule that belated and stale claims may not be entertained is not a rule of law but a rule of practice and the principle on which the relief to a party is denied on the ground of delay is that the rights which had accrued to others by reason of such delay should not be disturbed unless there is reasonable explanation for the delay. The principle is that parallel rights should not be created or accrued in the interregnum when the party who ought to have come to a court stayed away. The said decision is also important for the proposition that a writ court should not dismiss a claim on the ground of delay when a citizen alleges infringement of a fundamental right; the principle being that there can be no loss of fundamental right for the non-exercise of such right.

11. That the right of writ petitioner to get his retiral dues on the date of attaining superannuation is a valuable right and a legal duty is hence cast upon the concerned authorities to ensure that such a right is not defeated; Satya Ranjan Das Vs. The State of West Bengal reported in (2007) 3 CLT 531.

12. In the facts of these writ petitions, if the right to payment of interest on delayed payment and the right of a widow to approach the court as well as the question of delay on the part of the writ petitioner is answered in favour of the petitioners, there does not seem to be any justification for refusing the claim of interest solely on the ground that there is no document to substantiate the pleading in the writ petition that the writ petitioner as well as her husband had made such a prayer during the lifetime of the husband (the retired teacher). Taking recourse to such a technicality would amount to depriving the petitioner of a right guaranteed under the Constitution of India as well as creating an unnatural distinction between the deceased pensioner and his dependants. If a similar prayer made by the pensioner (the retired school teacher) could have been entertained by a writ court, as is being done in a large number of cases, there is no reason why a widow should be shut out from such entitlement. The Supreme Court in S.K. Dua Vs. State of Haryana reported in (2008) 3 SCC 44 elevated the claim of interest in the absence of statutory rules, administrative instructions or guidelines to a constitutional right under Part III of the Constitution. Even though there has been a delay in the present case and as well as in the other writ petitions in the actual disbursement of the pension by the authorities, this court is of the view that the right of the petitioners to claim interest on the delay in disbursing the retirement benefits to their respective husbands cannot be refused.

13. In view of the above, the concerned respondent being the Director of Pension, Provident Fund and Group Insurance as well as the Treasury Officer are directed to pay interest at 9 per cent per annum from the date following the day of retirement of the respective husbands of the petitioners' respective husbands until the date of actual payment of the retirement benefits to the petitioners' husbands within a period of six weeks from the date of communication of this order. In W.P. 6649 (W) of 2019, the starting date will be 19th May, 2009 in the case of the Revised Pension Payment Order until the date of disbursement of the pension in view of the Government Order of the School Education Department dated 19th May, 2009.

14. All the other writ petitions are disposed of in terms of the above order. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.