

**(2013) 04 CAL CK 0045**

**In the Calcutta High Court**

**Case No :** Writ Petition No's. 16442 (W) , 16548 (W) , 16953 (W) , 17250 (W) , 19675 (W) , 19691 (W) , 19701 (W) , 23591 (W) , 23950 (W) , 25460 (W) , 25463 (W) , 25467 (W) , 25784 (W) , 25938 (W) , 25954 (W) , 25999 (W) , 26173 (W) , 26279 (W) , 26281 (W) , 26306

Parbati Maiti

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

**Date of Decision :** 29-04-2013

**Acts Referred:**

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

**Citation :** (2013) 2 CALLT 434 : (2013) 4 CHN 123 : (2013) 138 FLR 665 : (2013) 4 LLN 166 : (2013) 3 WBLR 569

**Hon'ble Judges :** Debasish Kar Gupta, J

**Bench :** Single Bench

**Advocate :** Sourav Mitra in WP 19675W/2012, WP 19691W/2012, WP 1497W/2013, WP 25463W/2012, WP 25460W/2012, WP 1249W/2013, WP 599W/2013, WP 600W/2013, WP 25467W/2012 and WP 19701W/2012, Mr. Dwarikanath Mukherjee in WP 3215W/2013, Mr. Subhrangsu Panda in WP 23591W/2012, Mr. Bibekananda Tripathy in WP 23950W/2012, Mrs. Sabita Khutia Bhunya in WP 16442W/2012, WP 16548W/2012, WP 17250W/2012, WP 26173W/2012, WP 26279W/2012, WP 26320W/2012, WP 26281W/2012, WP 26313W/2012, WP 26311W/2012, WP 26310W/2012, WP 25938W/2012, WP 26325W/2012, WP 26322W/2012, WP 26306W/2012, WP 25954W/2012, WP 25999W/2012 and WP 25784W/2012, Mr. Labanyamoy Sarkar in WP 5043W/2013 and Mr. Tamal Taru Panda in WP 16953W/2012, for the Appellant; Kamalesh Bhattacharya for the State in WP 1497(W)/2013, WP 599(W)/2013 and WP 600(W)/2013, Mrs. Sujata Ghosh for the State in WP 1497(W)/2013, Mr. Supratim Dhar for the State in WP 19675(W)/2012 and WP 19691(W)/2012, Mr. K.M. Hossain for the State in WP 1249(W)/2013, Mr. Dilip Roychowdhury for the State in WP 599(W)/2013, Mr. Pinaki Dhol for the State in WP 600(W)/2013, Mr. S.K. Pal for the State in WP 19701(W)/2012, Mrs. Debarati Sen Bose for the State in WP 3215(W)/2013, Mr. Gazi Farook Hossain for the State in WP 5043(W)/2013, Ms. Paromita Pal for the State in WP 16548(W)/2012, Mr. Mirza Firoz Ahmed Begg for the State in WP 25784(W)/2012, Mr. Srikanta Pal for the State in WP 25954(W)/2012, Mr. Jayanta Dey for the State in WP 26306(W)/2012, Mrs. Anjusree Mukherjee for the State in WP 25938(W)/2012, Mr. Nilotpal Chatterjee for the State in WP 26313(W)/2012, Mr. Tapas Ballav

## Judgement

Debasish Kar Gupta, J.—All these writ applications have been filed by the petitioners praying for payment of interest for delayed payment of gratuity. Since the issue involved in these writ applications are same and identical, all these writ applications are taken up for analogous hearing.

2. All the aforesaid writ petitioners, except the writ petitioner in W.P. No. 16953(W) of 2012, were Assistant Teachers of different West Bengal Recognised Non-Government Educational Institutions. In W.P. No. 16953(W) of 2012, the deceased husband of the petitioner was an Assistant Teacher of a West Bengal Recognised Non-Government Educational Institution. The dates of retirement on attaining age of retirement on superannuation, the dates of payment of gratuity for the first time as also the respective dates of filing writ petitions are stated below:-

3. By a Government Order issued under Memo No. 88/SE(B)/EES/OIB/IM-9/98 dated May 26, 1998 (hereinafter referred to as "the said Government Order"), the scheme for payment of pension and gratuity on the date of superannuation of the employees of West Bengal Recognised Non-Government Educational Institutions and Comprehensive Form in connection with sanction of pension cases was framed. In Paragraph 8 of the said Government Order, procedure for payment of interest for delayed payment of retiring benefits to the aforesaid employees have been dealt with and the aforesaid Paragraph is quoted below:-

(8) Failure to comply with the provisions as stated above by the concerned authorities shall be seriously viewed and may make such Authorities liable for disciplinary action.

In particular the Head of the Institution, Sub-Inspector (Circle), Pension Sanctioning Authority, Asstt. Director of Accounts/Finance Officer, DPSC, the DPPG, WB, and the P.D.O/T.O. shall be held personally responsible for non-compliance with the procedure required to be followed by them for payment of pension. For any lapses on their part in this regard, the concerned authorities apart from being liable for disciplinary action, may also be required to pay to the Government such amount which Government may have to pay additionally by way of interest for delayed payment of retiring benefits to the employees.

4. According to the petitioners, all the concerned Assistant Teachers filled up their respective pension booklets and submitted the same to the appropriate authorities in time. The gratuity amounts were released by the respondent-authorities after delay of considerable periods of time. These writ applications have been filed for payment of interest for delay in payment of gratuity amounts for the period between due date of payment and actual date of payment.

5. It is submitted on behalf of the petitioners that a scheme prescribing procedure for payment of pension and gratuity on the date of superannuation of the employees of West Bengal Recognised Non-Government Educational Institutions has been introduced by the Government. The above scheme also laid down the procedure for payment of interest in case of delayed payment of pension and gratuity to the aforesaid employees. According to the petitioners, all of them are entitled to get interest for delayed payment of gratuity to the concerned Assistant Teachers of the Recognised Non-Government Educational Institutions.

6. According to the petitioners, delay in filing writ application cannot be a ground for rejecting their claims. According to them, the real test to be applied in dealing with the issue of delay is that no parallel right or third party interest has been created. It is further submitted on behalf of the petitioners that the decision of the respondent-authority to oppose the claims of the petitioners runs counter to the Government policy for payment of interest on the ground of delay in releasing pension and/or gratuity to the employees of West Bengal Recognised Non-Government Educational Institutions as also recovery of such interest from the erring Officer.

7. The decisions of *Satya Ranjan Das Vs. State of West Bengal and Others*, *Padma Rani Thakur Vs. Secretary, Department of Home and Others*, *S.K. Dua Vs. State of Haryana and Another*, *Union of India (UOI) and Others Vs. Tarsem Singh*, *Niranjan Kumar Mondal Vs. The State of West Bengal and Others*, *S.R. Bhanra Vs. Union of India and others*, unreported decision dated February 20, 2008 of *Satya Ranjan Das Vs. State of West Bengal & Ors.* (In re: F.M.A. 222 of 2008), unreported decision dated July 1, 2008 of *Abha Acharya Vs. State of West Bengal & Ors.* (In re: W.P. 10750(W) of 2007), unreported decision dated May 14, 2009 of *Mohan Ch. Halder Vs. State of West Bengal & Ors.* (In re: W.P. No. 30264(W) of 2008), unreported decision dated February 12, 2010 of *Dulal Chandra Pramanik Vs. The State of West Bengal & Ors.* (In re: W.P. No. 1092(W) of 2010), unreported decision dated September 6, 2010 of *Ramendra Nath Mukherjee Vs. The State of West Bengal & Ors.* (In re: M.A.T. No. 933 of 2010), unreported decision dated March 1, 2011 of *Mangal Sau Vs. State* (In re: M.A.T. No. 68 of 2011) and unreported decision dated June 6, 2012 of *Bisweswar Rakshit Vs. The State of West Bengal & Ors.* (In re: W.P. No. 3657(W) of 2012) are relied upon.

8. It is submitted on behalf of the State-respondents that all the Assistant Teachers under reference accepted payments of gratuity money without interest raising no protest. These writ applications are filed after a considerable period of delay praying for a direction upon the respondents for payment of interest due to delayed payment of gratuity. Delay in filing these writ applications is more than ten years in some of the cases.

9. It is also submitted on behalf of the respondents that no explanation is attributed in support of delay in filing these writ applications for realisation of

interest on the ground of delayed payment of gratuity. According to the respondents, State Government issued the said Government Order providing for payment of interest for delay in disbursement of retiral benefits and for recovering such payment from erring Officer and/or for initiating disciplinary proceeding against erring officer in appropriate cases. But due to delay in filing the writ applications, there are cases where concerned erring Officers retired from the services on attaining the age of retirement on superannuation. The concerned Secretaries, Headmasters or Presidents of some of the concerned Non-Government Educational Institutions have been changed due passage of considerable period of time. Therefore, recovery of the aforesaid interests from the above persons are practically not feasible.

10. Reliance is placed by the State-respondents on the decisions of State of Madhya Pradesh Vs. Bhailal Bhai and Others, , M.R. Gupta Vs. Union of India and others, , Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, New Delhi Municipal Council Vs. Pan Singh and Others, Shiv Dass Vs. Union of India (UOI) and Others, State of Orissa and Another Vs. Mamata Mohanty, and A.P. Steel Re-Rolling Mill Ltd. Vs. State of Kerala and Others,

11. I have heard the learned Counsel appearing for the respective parties at length and have considered the facts and circumstances of these cases carefully.

12. In Writ Petitions bearing Nos. 1497(W) of 2013, 25463(W) of 2012, 3215(W) of 2013, 5043(W) of 2013, 26279(W) of 2012, 26310(W) of 2012 & 25999(W) of 2012, though the Pension Payment Orders were issued in time, the gratuity money was paid to the petitioners after delay of considerable period.

13. So far as other cases are concerned, the period of delay in paying the gratuity money varied from 2 weeks to 2 years and 8 months. It is not in dispute that in all those cases, the gratuity money was received without raising any protest for delay in paying the same. The period of delay in filing the aforesaid writ applications varied from 4 years 4 months to 12 years 7 months. Gratuity is also termed as "bounty". In Black's Law Dictionary, Eighth Edition (at Page 198) the term "bounty" is defined as follows:

bounty. 1. A premium or benefit offered or given, esp. by a government, to induce someone to take action or perform a service for animals dangerous killing bounty

2. A gift, esp. in a will; generosity in giving the equally distribute testator's court will bounty>. 3. The portion of a salvage award exceeding what the salvor would be entitled to on the basis of quantum meruit. -Also termed gratuity; bonus.

14. Although, the dictionary meaning suggested that gratuity is a premium or gratuitous payment or a reward for a long and meritorious service, it has been recognized as a retiral benefit in consideration of the past services rendered. Reference may be made to the decision of Bakshish Singh Vs. M/s. Darshan

Engineering Works and others, and the relevant portions of the above judgment are quoted below:

16... The dictionary meaning may suggest that gratuity is gratuitous payment, a gift or a boon made by the employer to the employee as per his sweet will. It necessarily means that it is in the discretion of the employer whether to make the payment or not and also to choose the payee as well as the quantum of payment. However, in the industrial adjudication it was considered as a reward for a long and meritorious service and its payment, therefore, depended upon the duration and the quality of the service rendered by the employee. At a later stage, it came to be recognised as a retiral benefit in consideration of the service rendered and the employees could raise an industrial dispute for introducing it as a condition of service. The industrial adjudicators recognised it as such and granted it either in lieu of or in addition to other retiral benefit(s) such as pension or provident fund depending mainly upon the financial stability and capacity of the employer. The other factors which were taken into consideration while introducing gratuity scheme were the service conditions prevalent in the other units in the industry and the region, the availability or otherwise of the other retiral benefits, the standard of other service conditions etc. The quantum of gratuity was also determined by the said factors. The recognition of gratuity as a retiral benefit brought in its wake further modifications of the concept. It could be paid even if the employee resigned or voluntarily retired from service. The minimum qualifying service for entitlement to it, rate at which it was to be paid and the maximum amount payable was determined likewise on the basis of the said factors. It had also to be acknowledged that it could not be denied to the employee on account of his misconduct. He could be denied gratuity only to the extent of the financial loss caused by his misconduct, and no more. Thus even before the present Act was placed on the statute book, the courts had recognised gratuity as a legitimate retiral benefit earned by the employee on account of the service rendered by him. It became a service condition wherever it was introduced whether in lieu of or in addition to the other retiral benefit(s).

15. Delayed payment of gratuity has been looked upon with strong disapproval by the Hon"ble Supreme Court and the authority is directed to pay interest for the period between due date of payment and actual date of payment relying upon administrative instructions or guidelines in absence of statutory rules. Reference may be made to the decision of S.K. Dua (Supra) and the relevant portions are quoted below:

13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties, that the appellant retired from service on 30-6-1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in government service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge-sheets/show-cause notices were issued against him and the appellant was called upon to show

cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of malpractices and misconduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years.

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.

16. While examining the claim of the petitioners for payment of interest on the ground of delayed payment of gratuity, I find that the first ground of opposing the claim of the petitioners is inordinate delay in filing the writ petitioners. The rule which says that the High Court may not enquire into belated and stale claim is not a rule of law but the rule of practice based on sound and proper exercise of discretion.

17. It is revealed from the peculiar facts and circumstances of these cases that a right is created by the said Government Order in favour of the West Bengal Recognised Non-Government Educational Institutions to get the benefit of gratuity on the date of retirement as also to get interest on it for delayed payment. The said Government Order further provides for initiating disciplinary proceeding against the erring Officer in appropriate cases for delayed payment of gratuity. Therefore, it is an executive policy of the State Government to ensure payment of gratuity to the employees of West Bengal Recognised Non-Government Educational Institutions on the date of retirement of the employee concerned. Therefore, any error or omission in carrying out the above Government policy results in payment of interest to an employee of the West Bengal Non-Government Educational Institution without any reminder or protest for non-payment of such interest.

18. Secondly, belated approach to the Court by the retired employees of Non-

Government Educational Institutions for enforcing their legal right cannot be rejected in view of the settled principle of law that payment of interest in these cases will not make any settled position unsettled. Nor parallel rights have accrued to others by reason of delay in filing these writ petitions which may be disturbed. Reference may be made to the decision of Tarsem Singh (Supra) and the relevant portions are quoted below:

7... Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, 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.

19. This Court disapproves the submissions made on behalf of the State respondents that due to delay in filing these writ applications there may not be any scope for recovery of the money to be paid to the petitioners towards interest either due to retirement of erring officials or to change of President, Secretary of Managing Committee and/or Headmasters of the concerned Non-Government Educational Institutions. Because, recovery of the money payable towards interest is not condition precedent in accordance with the provisions of the said Government Order. Moreso, the money payable towards interest can be recovered from the retired erring Officer or an erstwhile President, an erstwhile Secretary of Managing Committee or a retired Headmaster by way of raising public demand. That apart, a party to a proceeding cannot pray for a premium for lapse or fault on its part in implementing a Government policy.

20. The issue of payment of interest on the ground of delayed payment of gratuity to the employees of West Bengal Recognised Non-Government Educational Institutions has been answered in favour of the employees concerned by a Single Bench of this High Court in the matter of Satya Ranjan Das (supra) and the relevant portions of the above decision are quoted below:

41. The State of West Bengal through its Principal Secretary, Department of School Education, shall conduct an enquiry and come to a finding whether the procedure that was required to be followed in terms of the Memorandum dated 26th May, 1998, was strictly adhered to or not, by the concerned authority/authorities, who were responsible to follow such procedure, while processing and disbursing the retiral dues of the writ petitioner. While, conducting such enquiry, if it is found that there was even an iota of lapse/negligence on the part of any such person or persons, the State Government shall fix responsibility upon such delinquent official/officials. The State Government shall immediately thereafter initiate disciplinary action against such delinquent official/officials. If it is found upon completion of enquiry that the procedure which was required to be followed

by the concerned official/officials in terms of the Memorandum dated 26th May 1998 was not strictly adhered to, the State Government shall be entitled to hold them personally responsible for such lapse and for non-compliance of the laid down procedure.

21. The above decision has also been upheld with a slight modification by a Division Bench of this Court by a judgment dated February 20, 2008 in the matter of Satya Ranjan Das v. State of West Bengal & Ors. (In re: F.M.A. 222 of 2008 with C.A.N. 7837 of 2007) and the operative portions of the above decision are quoted below:

We find merit in the aforesaid submissions made by Mr. Chakraborty and in the facts and circumstances of the present case, we are not inclined to vary the rate of interest as decided by the learned Single Judge. However, we do not think that payment of interest to the petitioner can be dependant on realisation of the amount from the erring official/officials of the State Government. Once the interest amount is determined finally by the competent authority of the State Government then the same has to be paid immediately to the concerned employee, namely, the appellant herein and under no circumstances the appellant should be asked to wait till the realisation of the said amount from the erring official/officials.

In the aforesaid circumstances, we modify the aforesaid direction issued by the learned Single Judge directing the respondent authorities herein to make necessary payment of interest after determination of the same in terms of the judgment and order under appeal at an early date but positively within a period of six weeks from the date of determination of the said amount by the competent authority of the State Government.

However, the State Government will be at liberty to realize the said amount from the erring official/officials in terms of the judgment and order under appeal and appropriate the same accordingly.

Only with the aforesaid modification, this appeal stands disposed of.

In view of disposal of the appeal, no further order is required to be passed in the connected application for stay and the same is also disposed of accordingly.

There will, however, be no order as to costs.

22. The general rule of rejecting a belated claim in an application under Article 226 of the Constitution of India as laid down in the matter of Bhailal Bhai(Supra) does not help the respondents in these cases in view of the peculiar facts and circumstances involved in it.

23. In the matter of M.R. Gupta (Supra), the Hon''ble Supreme Court decided the issue of delay in the matter of fixation of pay. The above decision has no manner of application in these cases involving delay in payment of retiral benefits to the concerned employees ignoring the executive policy of the State Government. For

the same reason, the decisions of Pan Singh (Supra) and Mamata Mohanty (Supra) with regard to parity in pay-scales has no manner of application in these cases.

24. In the matter of Sri. Ashok alias Somanna Gowda (Supra), the issue of raising a claim in the matter of appointment was decided. It has no manner of application in the matter of retiral benefits to the employees on the basis of the executive policy of the State Government.

25. In the decision of Shiv Dass (Supra), the Hon''ble Supreme Court was not inclined to reject the claim for payment of pension altogether and the relief was restricted to the period of 3 years. In view of the distinguishable facts and circumstances of this case, the above decision is also not applicable in these cases.

26. In view of the distinguishable facts and circumstances of these cases, the decision of A.P. Steel Re-rolling Mill Ltd. (Supra) relating to belated claim of concessional tariff has no manner of application in these cases.

27. In view of the discussions and observations made hereinabove, the Secretary to the Government of West Bengal, Education Department, is directed to conduct an enquiry with regard to delayed payment of gratuity to the petitioners taking into consideration the provisions of the said Government Order and to arrive at a decision within six months from the date of communication of this order. In the event, it is found that there was lapse or negligence on the part of any Government Officer, President/Secretary of Managing Committee or the Headmaster of the Non-Government Educational Institution concerned, payment of interest at the rate of 9 per cent per annum for the period between due date of payment and actual date of payment shall be released in favour of the concerned petitioner concerned within four weeks from the date of the above decision.

28. Liberty is given to the State Government to realise the above interest from the erring Officer or the person concerned from his salary or by way of raising public demand by initiating appropriate proceeding within two months from the date of the decision of the Secretary to the Government of West Bengal, Education Department for protection of public interest by recovery of money to be spend from public exchequer. The State Government will also be at liberty to initiate disciplinary proceeding against the erring Officer within two months from the date of above decision of the Secretary to the Government of West Bengal, Education Department in appropriate cases.

29. These writ applications are disposed of accordingly.

30. There will be, however, no order as costs. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.