

(2007) 08 CAL CK 0001
In the Calcutta High Court
Case No : Writ Petition No. 9537 (W) of 2007

Satya Ranjan Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 3 CALLT 531 : (2007) 4 CHN 717

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Partha Sarathi Deb Barman and Sourav Mitra, for the Appellant;
Tapabrata Chnkraborty, Aruuava Banerjee and Amitabrata Roy, for the
Respondent

Judgement

Biswanath Somadder, J.—Heard the learned Advocate appearing on behalf of the parties.

2. The instant writ application, as well as several hundred other writ applications have been filed before this Court, primarily seeking order for giving mandatory directions upon the concerned State-respondents to release payment of interest on account of delayed release of payment of retiral dues. The common thread in the several hundred writ petitions filed before this Court, which links them with the instant writ petition, is in respect of non-payment of interest, on delayed release of payment of their retiral dues in the form of gratuity. The admitted position being, retiral dues having been already released and payments already made by the State-respondents to the writ petitioners.

3. In the instant writ petition, a writ inter alia in the nature of mandamus has been sought for, directing the respondents to disburse the interest amount towards gratuity amount, from the date of retirement of the petitioner till the date of actual payment along with interest at the rate of 18% per annum.

4. According to the writ petitioner, this High Court has passed several orders of

similar nature, directing the State authorities, in identical fact situation, to pay interest for delayed payment of gratuity, etc. The learned Advocate for the petitioner submits that this Court may also pass an order similar to the orders passed earlier by this Court

5. In this regard, the learned Advocate for the petitioner has relied on a judgment and order of this Court in the case of Atul Chandra Mahata v. State of West Bengal and Ors. delivered on 27th November, 2003 reported in 2004(1) CLJ (Cal) 191. Apart from this judgment and order, the learned Advocate for the petitioner has also relied upon several other judgments and orders passed by this Court, which have mainly followed the case of Atul Chandra Mahata, cited supra and issued direction upon the State authorities for payment of interest on delayed payment of gratuity.

6. Since there have been several hundred such orders, I do not wish to give...reference of each and every such order passed by this Court, save and except a few, for the purpose of record. They are as follows:

1. W.P. No. 21145 (W) of 2004

Achyutananda Mondal v. State of West Bengal and Ors. Order dated 11th January, 2005.

2. W.P. No. 19704 (W) of 2004

Hart Kinkar Gosioami v. State of West Bengal and Ors. Order dated 21st December, 2004.

3. W.P. No. 19433 (W) of 2005

Santosh Kr. Dey v. State of West Bengal and Ors. Order dated 5th December, 2005.

4. W.P. No. 2834 (W) of 2005

Sunil Kr. Dey v. State of West Bengal and Ors. Order dated 17th August, 2005.

5. W.P. No. 6258 (W) of 2006

Sanatan Das v. State of West Bengal and Ors. Order dated 23rd March, 2006.

6. W.P. No. 20931 (W) of 2005

Swapan Kr. Maiti v. State of West Bengal and Ors. Order dated 25th November, 2005.

7. W.P. No. 17792 (W) of 2005

Gunadhar Bag v. State of West Bengal and Ors. Order dated 28th September, 2005.

8. W.P. No. 18314 (W) of 2005

Indrajit Biswas v. State of West Bengal and Ors. Order dated 28th September, 2005.

7. The learned Advocate for the petitioner submits that in identical fact situation, this Court had entertained the aforementioned writ applications and passed such orders. Hence, he submits that a similar order may also be passed in the facts of the instant case.

8. The instant writ application as well as the several hundred other writ applications appearing in my list have been opposed by the learned Advocates representing the State, primarily on three grounds. They are:

(i) Inordinate delay and laches in filing the writ applications;

(ii) Article 14 cannot be made applicable in a negative context;

(iii) The earlier orders passed by this Court, being per incurium and passed sub silentio, not having taken the applicable Pension Scheme into consideration.

9. Before I take into consideration the respective submissions made by the learned Advocates representing the writ petitioner and the State, it is necessary to have a look into the Memorandum, dated 26th May, 1998, which covers the procedure to be followed by various authorities for settlement of pensionary claims for the employees of West Bengal Recognised Non-Government Educational Institutions. The subject of the memorandum dated 26th May, 1998 is a scheme for payment of pension and gratuity on the date of superannuation (emphasis supplied by Court) to the employees of West Bengal Recognised Non-Government Educational Institutions.

10. By the said memorandum dated 26th May, 1998 the Governor was pleased to lay down the procedure to be followed by various authorities for settlement of pensionary claims, with a view to handing over the copy of the Pension Payment Order including gratuity and commuted value of pension where applicable, on the date of superannuation (emphasis supplied by Court) of an employee as defined in paragraph 5(k) of the West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981.

11. What is of relevance in the context of the instant writ petition, as well as the several hundred other writ petitions filed before this Court, is paragraphs/Clauses 6, 6. 1, 6. 2, 7 and 8 of the said memorandum dated 26th May 1998. For convenience, the said paragraphs/clauses are set out below:

Procedure to be followed by the Pension Disbursing Officer/ Treasury Officer:

6.1 On receipt of the PPO from the DPPG, in advance the P.D.O./T.O shall wait till the pensioner personally appear along with pensioner's copy of PPO and "No Liability/Liability Certificate" issued by the Appointment Authority/Head of the Institution.

6.2 On personal appearance of the pensioner, the P.D.O./T.O. shall complete

formalities prescribed in relevant rules and start payment from the date mentioned in the PPO after deducting/adjusting the recoveries as mentioned in the PPO/Liability Certificate/Provisional Pension/Provisional Gratuity/ Commuted portion of pension or overdrawal etc, if any.

7. The procedures outlined in foregoing paragraphs shall also be followed *mutatis mutandis*, in case of (a) settlement of pensionary claim arising on grounds other than grounds of superannuation and (b) settlement of family pension and death gratuity in the event of death-in-harness of an employee.

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.

12. From the above, it is noticed that a clear procedure has been laid down in the memorandum dated 26th May, 1998, in order to facilitate quick and efficacious disbursement of the pensionary claims of the employees, on their attaining superannuation. In particular, what is of consequence is the fact that failure to comply with the procedure by the concerned authorities would be seriously viewed and additionally may make such authority/authorities liable for disciplinary action. In paragraph/clause 8, as indicated above, the authorities specifically mentioned therein were to be held personally responsible (emphasis supplied by Court) for non-compliance of the procedure required to be followed by them, for payment of pension. For any lapse 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 the Government may have to pay additionally, by way of interest for delayed payment of retiral benefits to the employees

(emphasis supplied by Court).

13. From a plain reading of the said clause it is thus clear that the State Government had come out with the said memorandum dated 26th May, 1998 with a clear view that in the event of any lapse or neglect on the part of the concerned authority/authorities to disburse the pensionary claims of the retired employees, on the date of their attaining superannuation (emphasis supplied by Court), exemplary punishment was to be meted out.

Now, it is to be decided, whether in the facts of the instant writ petition, as well

as the several hundred similar writ petitions that are pending in my Court, the same can be entertained, having regard to the submissions made by the learned Advocates appearing for the parties.

14 As stated hereinbefore, the learned Advocates appearing on behalf of the writ petitioner in the instant case has drawn my attention to the judgment and order of this Court in the case of Atul Chandra Mahata, cited supra. The learned Advocate for the petitioner, while relying on the said judgment, submitted before me that the various orders passed by this Court in these matters have primarily followed the case of Atul Chandra Mahata. It is, therefore, necessary for me to consider the case of Atul Mahata, which has been extensively relied on, by the learned Advocates for the writ petitioner.

15. In the facts of that case, the grievance of the petitioner was that although gratuity and commuted value of pension had already been sanctioned by the Pension Payment Order, the same had not been released by the Treasury Officer. The Treasury Officer was directed to file an affidavit to state before the Court as to why the amount, as sanctioned in the Pension Payment Order, was not released. The Treasury Officer in his affidavit had relied on two circulars dated 25th June, 2002 and 11th August, 2002 of the Finance Department, Govt. of West Bengal. The Court, after taking into consideration the affidavit of the Treasury Officer and the West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981, which controls the release of gratuity and commuted value of pension in such cases, inter alia directed the respondents to release to the petitioner, Gratuity and Commuted Value of pension along with interest at the rate of 18% per annum with effect from the date of retirement till the date of such payment, which was to be made within four weeks from the date of communication of the order, failing which further interest at the rate of 20% per annum was to be paid on the said gratuity amount in addition to other coercive consequences in accordance with law. There was also a further direction upon the respondents to release the commuted value of pension of the petitioner within a month, failing which, interest at the rate of 12% per annum was to be paid on that account. A cost of Rs. 5,000/- was also imposed against the State Government. There was a further direction that payment of interest as directed in the said order, however, would be reimbursed from the salary of the concerned officer, for whose fault there was a delay for such payments, upon hearing the concerned officers.

16. While deciding Atul Chandra Mahata's case, the Hon''ble Judge took into consideration various decisions of the Hon''ble Supreme Court which inter alia included the case of Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, . The learned Advocates for the writ petitioner, in the present case, has also relied on, specifically, this particular judgement of the Hon''ble Supreme Court.

17. The learned Advocates for the writ petitioner has also relied on the orders passed by this Court, subsequent to Atul Chandra Mahata's case, some of which,

have been referred to hereinbefore.

The learned Advocates representing the State, on the other hand, submitted that the fact situation of the instant writ petition, as well as the several hundred other writ petitions which are pending before this Court are not at all identical to Atul Chandra Mahata's case. According to the learned Advocates for the State, in the instant case as well as in the other pending cases, all the writ petitioners have actually received payment of their retiral dues long ago. No explanation whatsoever appears from the averments made in the writ petition as to why the writ petitioner chose to sit tight over the matter for years and thereafter suddenly approached this Court for an immediate order of payment of interest on delayed payment of gratuity. In this regard the learned Advocates representing the State have relied on several judgments, basically on the moot point of unexplained and undue delay or laches in filing writ application being fatal. The learned Advocates representing the State have also submitted that since no legal right existed in favour of the writ petitioner for payment of interest for delayed payment of gratuity, in order to invoke the equitable and discretionary writ jurisdiction of this Court, he ought to have approached this Court much earlier, instead of sitting tight over the matter for years, after actually accepting such delayed payment of Gratuity, without any demur or protest.

18. According to the learned Advocates for the State, since delay defeats equities, no discretionary relief can be given to the writ petitioner. The learned Advocates for the State have relied on the following judgments of the Hon''ble Supreme Court on the point of unexplained and undue delay or laches in filing writ application:

- 1 Rup Diamonds and Others Vs. Union of India and Others, ,
2. State of Maharashtra Vs. Digambar, ,
3. Haryana State Handloom and Handicrafts Corporation Ltd. and Another Vs. Jain School Society, ,
4. The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others, ,
5. R and M Trust Vs. Koramangala Residents Vigilance Group and Others, ,
6. 2007 Vol. 2 Supreme 492,
7. 2007 Vol. 3 Supreme 967,
8. Union of India and Others Vs. Kishorilal Bablani, ,
9. Netai Bag and Others Vs. The State of West Bengal and Others, ,
10. L. Muthukumar and Another Vs. The State of Tamil Nadu and Others, ,
11. State of Orissa v. Prajnaparamita Samanta, (1996) 7 SCC 106 President, Board of Secondary Education v. D.Suvankar 2006 JT 10 ,

12. Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, ,

19. The learned Advocates representing the writ petitioners have distinguished the judgements cited on the above point, mainly on three grounds. Firstly, some of these judgments were rendered by the Hon''ble Supreme Court where third party right had already accrued, which right had been affected, because of the orders passed by the Courts below. Secondly, where orders had been passed by the Courts below, not taking into account a specific time bar under a particular statute. Thirdly, the cited Supreme Court judgements have been distinguished by the learned Advocates of the writ petitioner on the ground that the ratio of these judgments were not applicable to the facts of the present case.

20. The next contention of the learned Advocates for the State was with regard to applicability of Article 14 of the Constitution of India in a negative context.

Before going into this aspect, Article 14 of the Constitution of India is set out hereinbelow:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

21. The learned Advocates appearing on behalf of the State have submitted that in the facts of the instant case, as well as in the similar writ applications which are pending before me, the writ petitioners have invoked the said Article 14, not in the positive, but in the negative context. To defend this submission, reliance has been placed in the following decisions of the Hon''ble Supreme Court:

1. Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others,
2. State of U.P. Vs. Neeraj Awasthi and Others,
3. Ekta Shakti Foundation Vs. Govt. of NCT of Delhi,
4. Sanjay Kumar Manjul Vs. The Chairman, UPSC and Others,
5. National Council for Teacher Education and Another Vs. Committee of Management and Others,
6. Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore Vs. President, Indore Development Authority,
7. Union of India (UOI) and Another Vs. International Trading Co. and Another, .

22. The learned Advocates appearing on behalf of the writ petitioners do not dispute this proposition of law. According to the learned Advocate representing the writ petitioners, there is no question of invoking Article 14 of the Constitution of India in the negative context, having regard to the facts of the instant case. The learned Advocates for the writ petitioners have submitted that their clients had an existing legal right under the West Bengal Recognised Non-Government

Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981 and the procedure laid down thereunder in terms of the memorandum dated 26th May, 1998

23. The invocation of Article 14 of the Constitution of India, in the facts of the present case, according to the learned Advocates for the writ petitioner, was for the purpose of enforcement of such existing legal right. As such, the learned Advocates for the writ petitioners have submitted that although there is no dispute to the proposition of law as sought to be advanced by the learned Advocates appearing on behalf of the State, the same has no manner for application whatsoever, in the facts of the present case.

24. The next contention of the learned Advocates appearing on behalf of the State was with regard to the earlier orders passed by this Court in similar matters, subsequent to Atul Chandra Mahata's case. According to the learned Advocates for the State, these earlier orders cannot be treated as judicial precedent in view of the fact that none of these orders took into consideration the applicable Pension Scheme and the procedure to be followed by the various authorities under the said Scheme, which manifests itself in the Memorandum dated 26th May, 1998. The learned Advocates appearing on behalf of the State have relied on the following judgments of the Hon''ble Supreme Court in order to substantiate their submission on the point that these orders passed by this Court were per incuriam and having been passed sub silentio. In this regard, reliance have been placed in the following decisions:

- (1) State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another,
- (2) Arnit Das Vs. State of Bihar,
- (3) 2007(4) Supreme page 359.

25. The learned Advocates representing the writ petitioners submit that neither the judgments of this Court rendered in Atul Chandra Mahata's case, nor the subsequent judgments or orders passed by this Court can be regarded to have been passed without considering the relevant applicable laws or the Pension Scheme. It is, therefore, contended by the learned Advocates appearing on behalf of the writ petitioner, that the judgments cited by the State, on the point of per incuriam and sub silentio, are not at all applicable in the facts of the instant case.

26. I have considered the respective submissions made by the learned Advocates appearing on behalf of the parties.

With regard to the contention of the learned Advocates for the State on the point of unexplained and undue delay or laches in filing the writ application being fatal in the facts of the instant case and also on the aspect of delay defeats equities, it is necessary that the Court to take into consideration the entire set of facts; i.e., the Pension Scheme, the procedure laid down by the State Government under the said scheme as contained in the memorandum dated 26th May, 1998 and the

applicability of laws laid down by the Courts in the facts of the present case. So far as the facts of the present case is concerned, the writ petitioner had retired from service on 30th June, 2000 and the Pension Payment Order was issued in his favour on 15th October, 2001. He received his gratuity amount on 11th December, 2001, as stated in paragraph 10 of the writ petition. Thus, on the date of his attaining superannuation, he was not paid his retiral dues, which he was otherwise entitled to, in law. However, between 1st July, 2000 (the date on and from which he was entitled to get his pension) till 14th May, 2007 (the date on which the present writ application has been filed), he chose to remain silent. Even after he obtained his Pension Payment Order on 15.10.2001, which he received without any demur or protest, he chose to sit tight over the matter for the next six years.

27. The question that immediately comes to the mind of the Court is whether in such a fact situation a writ petition can be maintained, and if yes, whether an order can be passed, without going into the merits and/or demerits of the factual aspect of the matter in details, directing the State-respondents to immediately pay interest for delayed payment of gratuity. Although it is true that pension and gratuity are no longer matters of bounty to be distributed by the Government but are valuable rights acquired and property in their hands, and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of interest, this Court cannot shut its eyes from the facts of the instant case, as presented in the writ petition. The only aspect of the matter would, therefore, be to examine whether the delay is so fatal, in facts of the instant case, so as to dismiss the writ application in limine, without at all taking into consideration whether there existed any legal right in favour of the writ petitioner or whether there was a substantive legal duty and obligation on the part of the State authority to ensure timely disbursement of the retiral dues of the writ petitioner. The answer, to my mind, will be evident from the paragraphs/clauses 6 to 8 of the Memorandum dated 26th May, 1998, which has been set out hereinbefore. It will appear from the said paragraphs/clauses that there was a procedure which was required to be followed by Pension Disbursing Officer/Treasury Officer. Under the memorandum dated 26th May, 1998 it was a mandate upon the concerned authorities to follow such laid down procedure. From the said Memorandum dated 26th May, 1998, it will appear from the subject of the Memorandum itself that the scheme for payment of pension and gratuity was to be effected on the date of superannuation (emphasis supplied by the Court). Therefore, a legal obligation was cast upon the concerned authorities to ensure that the retired employees, covered under the said Pension Scheme of 1981, get their retiral dues on the date of their attaining superannuation (emphasis supplied by Court). This right of the writ petitioner to get his retiral dues, on the date of attaining superannuation, was a valuable right which accrued in his favour on the date of his attaining superannuation and correspondingly, there was also a legal duty cast upon the concerned respondent authorities, to enquire and find out whether

the laid-down procedure was strictly adhered to, keeping in mind the strong expression of language used in paragraph/clause of the Memorandum dated 26th May, 1998

28. In that view of the matter, the submission of the learned Advocates appearing on behalf of the State, to the effect that delay defeats equities and that there has been a fatal delay in filing the present writ application, cannot be accepted by this Court, considering the observations made hereinbefore. Moreover, persons similarly situate, have already obtained orders from this Court wherein mandatory directions were given to the State for payment of interest on delayed payment of gratuity, which have been complied by the State, in hundreds of similar matters. In the facts and circumstances, therefore, I am not inclined to dismiss the instant application on the ground of delay.

29. So far as the applicability of Article 14 of the Constitution of India is concerned, the submission of the learned Advocates for the State that the same cannot be invoked in the negative context, I am unable to understand as to why this proposition of law has been advanced in the present factual context. As discussed before, the State Government, by issuing the Memorandum dated 26th May, 1998, had laid down the procedure to be followed by various authorities for settlement of pensionary claim of the employees such as the writ petitioner, with a view to handing over the copy of the Pension Payment Order including gratuity and commuted value of pension where applicable, on the date of superannuation (emphasis supplied by Court) of an employee as defined in paragraph 5(k) of the West Bengal Non-Government Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981. Thus, by virtue of the said Memorandum dated 26th May, 1998, the concerned State authorities were under a mandate to follow the procedure as laid down in the memorandum dated 26th May, 1998, so as to ensure timely disbursement of the retiral dues of the employees covered under the 1981 Scheme.

30. It is well-settled that the Writ Courts can intervene for the purpose of enforcement of a legal right and also for the purpose of ensuring that an authority who has a legal duty cast upon him, discharges his duty strictly in accordance with the legal mandate. In such matters it cannot be said that Article 14 of the Constitution of India is being sought to be invoked in the negative context, particularly when there existed a clear laid-down legal procedure which was required to be strictly adhered to, by the State authorities.

31. So far as the contention of the learned Advocates for the State with regard to the earlier orders passed by this Court being per incuriam, not having taken the Pension Scheme into consideration and the orders having been passed sub silentio, I am of the opinion that the definition of the two words needs to be looked into:

Per incuriam as defined in Black's Law Dictionary, 8th Edition, means (of a judicial decision) wrongly decided usually because the Judge or Judges were ill-

informed about the applicable of law.

32. Sub silentio is a Latin expression. Black's Law Dictionary, 8th Edition, defines "sub silentio" as, under silence; without notice being taken; without being expressly mentioned (such as precedent sub silentio).

Having regard to the above definitions, the judgement rendered by this Court in the case of Atul Chandra Mahata cannot be said to be per incuriam or passed sub silentio since it did take the Pension Scheme of 1981 into consideration, although in a different factual context. The other orders, subsequently passed by this Court, following Atul Chandra Mahata's case, again cannot be said to be per incuriam or passed sub silentio for the reason that these orders merely following the case of Atul Chandra Mahata, which took into consideration the Pension Scheme of 1981.

33. However, whether the ratio of Atul Chandra Mahata's case can be considered to be applicable in the facts of the instant case needs to be considered now.

Atul Chandra Mahata's case has been discussed in detail, in the earlier part of my judgment.

It will appear from the facts of that case that the writ petitioner approached the Court for the purpose of getting his gratuity and commuted value of pension released under the Death-cum-Retirement Scheme of 1981. The judgement, therefore, was rendered by the Court in a different fact situation, not at all similar to the facts of the instant case. The judgement, therefore, cannot be relied upon by the writ petitioner in the facts of the instant case, where the writ petitioner has already received his retiral dues in the form of gratuity in the year 2001 and has approached this Court in the year 2007, for payment of interest on account of delayed payment of gratuity. Consequently, the subsequent decisions of this Court following Atul Chandra Mahata's case, therefore, cannot also be relied upon by the learned Advocates appearing on behalf of the writ petitioner.

34. For effective adjudication of the facts of the instant case, I wish to rely upon the judgement of the Hon'ble Supreme Court rendered in the case of Gorakhpur University and Ors. v. Shitla Prasad Nagendra and Ors. (supra). In that case the Hon'ble Supreme Court, in paragraph 5, has observed as follows:

This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.

35. It appears that even prior to the aforementioned judgment of the Hon'ble Supreme Court, the State of West Bengal issued the Memorandum dated 26th May, 1998 wherein the procedure to be followed by various State authorities for settlement of pensionary claims of the employees, such as the writ petitioner, was laid down. As discussed before, from paragraph/clauses 6, 6.1, 6. 2, 7 and 8

of the Memorandum dated 26th May, 1998, it will appear that there was a legal duty case upon the concerned authorities to ensure that the retired employees got their retiral dues, on the date of superannuation, in terms of the laid down procedure.

36. In the circumstances, by following the ratio of the decision of the Hon^{ble} Supreme Court in the Gorakhpur University's case and upon taking into consideration the procedure that was required to be strictly followed in terms of the memorandum dated 26th May, 1998, the writ application stands disposed of with the following directions:

37. The State of West Bengal through its Principal Secretary, Department 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.

38. The State Government shall thereafter attach their salaries/retiral benefits and realize an amount, being equivalent to the amount of payment of interest at the rate of 8% per annum, to be calculated from the date of superannuation of the writ petitioner, till the date of which he actually received payment in the form of gratuity. Upon realization of such amount from the delinquent official/officials, the State Government shall immediately hand over the same to the writ petitioner.

39. The entire exercise must be completed within a period of one year from the date of communication of this order.

However, I make it clear that if the writ petitioner has not complied with the procedure required to be followed by him, in terms of the Memorandum dated 26th May, 1998, other than for reasons beyond his control, he will not get any benefit of this order.

40. The writ application is thus disposed of without any order as to costs.

41. Urgent xerox certified copy of this order, if applied for, be given to the parties as early as possible.