

(2013) 07 CAL CK 0060
In the Calcutta High Court
Case No : Writ Petition 17215 (W) of 2008

Smt. Krishna Sarkar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2013) 07 CAL CK 0060

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Asok Kumar Janah, Mr. Krishna Deo Das, Ms. Pampa Dey and Mr. Goutam Dinda, for the Appellant;

Judgement

Patherya, J.—In this writ petition the only issue that arises for consideration is whether the claim of interest made after 10 years on the delayed payment of retiral benefits ought to be allowed. Counsel for the petitioner contends that it is an admitted position that the petitioner retired on 31st January, 2000 and the pension payment order was issued on 16th January, 2002 and within two months of the issuance of the pension payment order that is on 26th March, 2002 the retiral benefit was paid to the petitioner. As the petitioner was entitled to payment of retiral benefits forthwith or maximum within a period of 30 days and admittedly, the said was not done the petitioner is entitled to payment of interest on and from the date of retirement till payment was made to the petitioner in March, 2002.

2. The contention of the respondent authorities is that in view of Section 3 of the Limitation Act which entitles a person to seek remedy within three years from the date, the cause of action arose, in the instant case the cause of action arose in 2002 and the application has been filed after 10 years therefore on the ground of delay alone this application be dismissed.

3. The judgment delivered by J. Bhattacharya, J. on 9th February, 2012 and reported in 2012 (1) WBLR (Cal) 903 is distinguishable as the issue of delay was

not considered in the said judgment. To claim interest after 10 years, the petitioner must show and establish his right which is a continuing right as has been held in (2007) 15 SCC 627. In the instant case, the petitioner has not established his right to interest within the period of limitation. Therefore, he will not be entitled to claim payment of interest at this belated stage.

4. S.K. Dua Vs. State of Haryana and Another, relied on by J. Bhattacharya, J. in his judgment was not a case wherein the issue of delay was considered. It was a case with regard to entitlement of interest and there is no dispute that the petitioner is entitled to payment of interest, but the question is will he be entitled to such interest beyond the period of limitation. (2008) 8 SCC 648 so also City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others, were relied on by the petitioner before J. Bhattacharya, J. In fact, in view of decisions reported Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, State of Orissa and Another Vs. Mamata Mohanty, , Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), , State of Madhya Pradesh and Others Vs. Yogendra Shrivastava, , State of A.P. and Another Vs. A.P. Pensioners Association and Others, , U.P. Raghavendra Acharya and Others Vs. State of Karnataka and Others, and Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, this application merits no order. In Union of India (UOI) Vs. All India Services Pensioners" Association and Another, the test for a continuing wrong has been laid down and the said test be applied to the facts of this case.

5. In opposing the issue of delay counsel for the writ petitioner has submitted that Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, is distinguishable on facts as the case related to a Land Acquisition proceeding wherein third party rights were created and status quo ante could not be restored, such is not the case here. Similarly State of Orissa and Another Vs. Mamata Mohanty, is distinguishable as the State was represented which agreed to make payment of interest and it is not a case of a wrong order. In fact although the issue of delay was raised and considered there is no finding in respect thereof and the case was decided on merits. S.K. Dua Vs. State of Haryana and Another, was a case of interest and not delay and the only reason for placing reliance on the said judgment by J. Bhattacharya, J. was for the purpose of highlighting that interest was a fundamental right. Interest on interest has never been granted and (2008) 8 SCC 648 aids the petitioner. There is no dispute with the proposition laid down in City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others, , Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), and State of Madhya Pradesh and Others Vs. Yogendra Shrivastava, In the case of State of A.P. and Another Vs. A.P. Pensioners Association and Others, there was no cut off date for interest while in Union of India (UOI) Vs. All India Services Pensioners" Association and Another, there was a cut off date. U.P. Raghavendra Acharya and Others Vs. State of Karnataka and Others, is inapplicable to the facts of this case and Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, is accepted on principle.

6. (2011) 1 WBLR Cal. 486 is relied on as it aids the petitioner and although the issue of interest was dealt with the question of delay did not arise for consideration. (2007) 1 CLJ 21, (2008) 8 SCC 44 and (2007) 15 SCC 627 were all allowed on merits therefore it is distinguishable on facts. AIR (1992) SCW 3181 be considered. In fact, in (2007) 3 Cal LT 531 delay was considered and therefore no reason exists to reject the claim for interest. The State in case overburdened though no such plea has been taken is entitled to recover sums from the delinquent officers therefore interest be paid.

7. In reply counsel for the State respondents submits that the entitlement to interest may be a fundamental right and can be invoked at any time as generally fundamental right is not bound by any restriction and is uncontrolled. Delay and limitation are synonymous terms and although Section 3 of the Limitation Act is not to apply to writ proceedings, the principle of delay can be considered. (2011) 1 WBLR Cal. 486 is distinguishable on facts as delay was not in issue S.K. Dua Vs. State of Haryana and Another, for the same reason is also distinguishable. (2007) 1 CLJ 21 was a case of custodial death and delay was being considered in that context therefore the said decision is distinguishable. AIR (1992) SCW 3181 is also distinguishable and the delay issue in the light of the decisions cited by the State respondents be considered.

8. Having considered the submissions of the parties there is no reason to doubt the entitlement of the petitioner to payment of interest but whether such interest can be claimed after 10 years is the issue which has arisen for consideration. One of the grounds on which the petitioner would be entitled to interest on delayed payment of retiral benefits would be if the same constituted a continuing wrong. To constitute a continuing wrong a fresh wrong must be committed everyday to give rise to a cause of action de die in diem. The injury caused must be continuing. If the wrongful act causes an injury which is complete there is no continuing wrong even though the damage resulting from the act may continue as held in Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others, and followed in (2008) 8 SCC 648. In the instant case in refusing to make payment to the petitioner on retirement a wrong was committed and an injury caused. On payment the right of the petitioner to receive payment forthwith was completely injured and damage caused by such injury continued. But it cannot be said that the wrongful act was continuing to give rise to a cause of action de die in diem. The petitioner after 10 years is seeking to avail of such damage caused by the injury, therefore (2008) 8 SCC 648 will not apply to the facts of this case, as it was a case of a recurring wrong.

9. It is true that where third party rights are affected or settled rights of parties adversely affected Courts will not interfere, Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, was a case under the Land Acquisition Act where third party rights had been created and the Court was not inclined to interfere. Therefore, the said case is distinguishable on facts State of Orissa and Another Vs. Mamata Mohanty, ays emphasis on considering the issue of delay

and the explanation for such delay by courts of law although in the said case as claim to the revised pay-scale gave rise to a recurring cause of action the case was considered on merit. There is no dispute with the proposition laid down in S.K. Dua Vs. State of Haryana and Another, and the entitlement to interest under Articles 14, 19 and 21 is undisputed. It is only whether such interest can be paid in case of delay in making the claim.

10. The difference between pension and gratuity was highlighted in AIR (1988) SC 580 and State of A.P. and Another Vs. A.P. Pensioners Association and Others, . Pension is payable periodically while gratuity is a one time payment, therefore (2007) 15 SCC 627 being a case of pension and the cause of action recurring is distinguishable on facts. For the same reason State of Madhya Pradesh and Others Vs. Yogendra Shrivastava, will not apply as though a case of continuing wrong, the relief was restricted to the preceding 3 years. U.P. Raghavendra Acharya and Others Vs. State of Karnataka and Others, is not applicable to the facts of the case in hand as it was a case of pensionary benefit.

11. In S.K. Dua Vs. State of Haryana and Another, entitlement to interest has been accepted. (2008) 3 SCC 44 has gone a step ahead and held that a claim for interest can be made under Part III of the Constitution of India by relying on Articles 14, 19 & 21 of the Constitution. It is also an accepted proposition of law that retiral benefits is no longer in the nature of "bounty".

12. If this be so then as held in In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, and Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, there can be no loss of fundamental right on the ground of non-exercise and the question of delay in the facts of the instant case would not be germane.

13. Infringement of fundamental rights is relevant and although on a reading of the writ petition no infringement of fundamental rights has been pleaded but to dismiss the writ petition on this ground would cause grave injustice to the petitioners who have reposed confidence in their advocate and it is the advocates who draft the petition therefore for laches and default on the part of his advocate as held in Rafiq and Another Vs. Munshilal and Another, a litigant ought not to suffer. It is true that each case has to be considered on its facts alone and orders passed in earlier matters should not be the order of the day this writ petition therefore is not dismissed but the issue involved is considered on a broader perspective. In appropriate cases as in this one too necessary pleadings are lacking for which the advocate ought to be penalised by either imposition of cost or any other form of penalty. Accordingly cost of Rs. 500/- is imposed on the advocate. Such costs be paid to the petitioner within a week from the date of receipt of the order.

14. As the petitioner is entitled to interest and the real test to be applied in dealing with the issue of delay is that no parallel right has been created or 3rd party right accrued as held in AIR (1992) SCW 3181 and (2007) 1 CLJ 21 and

not physical running of time. In fact by virtue of the delayed payment, the State has earned interest thereon and this payment therefore cannot be deprived to the petitioner

15. It may not be out of place to mention that the interest directed to be paid is not till date but is restricted to the date of payment of retiral benefits. Therefore all that the State is to do is to make payment of interest out of the sum which accrued to itself on account of the delayed payment.

16. For all the said reasons the issue of delay is decided against the State respondents and the respondent No. 4 is directed to make payment of interest to the petitioner on the delayed payment of retiral benefits at 8% per annum on and from the date of retirement till the date of payment as the petitioner was entitled to payment of retiral benefits on retirement or maximum within a month of retirement within a fortnight from the date of receipt of this order. In view of the aforesaid this application is disposed off. As no affidavit in opposition has been filed the allegations contained in the petition is not admitted.