

**(2019) 11 CAL CK 0085**  
**In the Calcutta High Court**  
**Case No : Writ Petitions (WP) No. 294 Of 2019**

Snehansu Majumdar

APPELLANT

Vs

West Bengal Essential Commodities Supply Corp. LTD And  
Ors

RESPONDENT

**Date of Decision : 27-11-2019**

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 19, 23

**Citation : (2019) 11 CAL CK 0085**

**Hon'ble Judges : Amrita Sinha, J**

**Bench : Single Bench**

**Advocate : Bhaskar Prosad Banerjee, Parashar Baidya, Sanjay Saha, Aparna Banerjee**

**Final Decision : Disposed Of**

## **Judgement**

Amrita Sinha, J

The petitioner was an employee of the West Bengal Essential Commodities Supply Corporation Limited. He was appointed on 20th January, 1981. A disciplinary proceeding was initiated against him and he was suspended from service on 12th December, 1987. The disciplinary proceeding culminated in a minor order of penalty passed by the Managing Director of the respondent on 10th May 1991. The petitioner rejoined service on 7th June, 1991.

Being aggrieved by the order of penalty imposed upon him the petitioner filed a writ petition before this court. The said writ petition being C.O. no. 10170(W) of 1991 was disposed of on 14th June, 2015 setting aside the order of penalty. The court directed that it will be open to the respondent to give a copy of the enquiry report to the petitioner and to give reasonable opportunity to him to make his representation with regard thereto and to dispose of the matter after considering the representation which the petitioner may make.

In terms of the order passed by the court the enquiry report was made over to

the petitioner and the petitioner submitted his representation in response thereto. The respondent authorities however, remained silent and did not proceed with the matter any further.

The petitioner alleges that after the order passed by the disciplinary authority was set aside by the court the officers of the respondent corporation misbehaved with the petitioner and caused severe humiliation to him. They passed nasty, derogatory, unethical comments against him and did not release his salary. The yearly increment of the petitioner was stopped. No sitting accommodation was provided to him according to his official rank of Deputy Manager (F & A). The petitioner drew the attention of his senior authority with regard to the difficulties and embarrassment faced by him in office but there was no response. The working condition of the office became so vitiated that the petitioner became traumatized and suffered mental tension on account of continuous harassment and humiliation. He had to undergo medical treatment for a prolonged period of time. The petitioner was compelled to tender his resignation on 29th March, 2006.

The petitioner however made several representations for consideration of his case in accordance with the direction passed by the High Court. As the respondent did not act in accordance with the direction passed by the court on 14th June, 2005 the petitioner again approached this court by filing another writ petition being WP no. 180 of 2006.

After repeated persuasion hearing was conducted by the Managing Director on 22nd August 2017 and by an order dated 20th December, 2017 the Managing Director accepted the resignation of the petitioner with retrospective effect and directed for releasing the retirement dues which were due and outstanding. The petitioner was assured by the Corporation that his retirement dues will be released soon after the petitioner withdraws his pending case being WP No. 180 of 2006. On the basis of such assurance the petitioner withdrew his pending writ petition on 8th May, 2018. The court while recording the order on 8th May, 2018 in WP No. 180 of 2006 mentions that the learned advocate for the Corporation contends that there has been an arrangement between the parties outside the court and an order to that effect has already been passed. The court directed the respondents to release all admissible retiral benefits in favour of the petitioner as early as possible, but not later than six weeks from the date of the order. The retiral dues were ultimately released on 14th November, 2018.

The grievance of the petitioner is that the statutory and admissible dues of the petitioner was withheld by the Corporation for more than twelve and half years and accordingly the respondents are liable to pay interest on account of such delayed payment of his retiral dues.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of State of Kerala & Ors. - vs- M. Padmanavan Nair reported in (1985)1 SCC 429 (paragraph 4) wherein the court in clear terms held that

pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become valuable rights and property in their hand and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

The petitioner also relies upon the decision of the Hon'ble Supreme Court in the matter of S.K. Dua -vs- State of Haryana & Ors. reported in (2018)3 SCC 44 (paragraph 14) wherein the court reiterated the well settled principle that the retiral benefits are not in the nature of 'bounty'. The court held that the employee is entitled to interest on account of delayed payment of his retiral dues. The employee can claim interest under part III of the Constitution relying on Articles 14, 19 and 23 of the Constitution.

The learned advocate appearing for the respondent Corporation submits that the retiral dues could not be paid to the petitioner as the writ petition filed by him being WP No. 180 of 2006 remained pending for a considerable period of time. The terminal dues of the petitioner were paid immediately after the writ petition was disposed of by the court in the year 2018. It has been submitted that the order dated 8th May, 2018 does not mention about payment of interest to the petitioner accordingly, the petitioner is not entitled to interest on account of such alleged delayed payment.

Moreover, the petitioner accepted his terminal dues without any protest and he encashed the cheque without raising any dispute with regard to the computation of the calculation made towards his terminal benefits. After nearly five months of accepting such terminal benefits the petitioner rose from his slumber and sent a notice claiming interest on account of such delayed payment.

It has been strongly contended that the petitioner was well aware of the fact that he was not entitled to get interest and accordingly he did not raise any issue at the time of passing of the order by this court. Had the petitioner been aggrieved by the payment made to him in compliance of the order passed by the court on 8th May, 2018 the petitioner ought to have preferred appeal against the said order.

The stand of the respondent is that as there has been no laches on their part in releasing payment, they are not entitled to pay any interest to the petitioner. The matter got delayed as the petitioner himself filed the writ petition in the year 2006 and sat tight over the same for more than twelve years. The payment could be made in favour of the petitioner only after the aforesaid writ petition was withdrawn by him.

The respondents pray for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties and have given my anxious consideration to the facts of the case.

It appears that at the time of disposal of the writ petition being C.O No.

10170(W) of 1991 the court set aside the impugned order of penalty and directed the respondent Corporation to forward a copy of the enquiry report to the petitioner to permit him to submit his representation. The enquiry report was furnished to the petitioner and the petitioner submitted his representation on 5th September, 2005.

Since thereafter the Corporation did not take any step to conclude the pending departmental proceeding. The petitioner submitted several representations to the authority with request to conclude the said proceeding. During the pendency of the said departmental proceeding the petitioner tendered his resignation on 29th March, 2006. Even after the petitioner tendered his resignation the Corporation did not respond to the said resignation nor concluded the disciplinary proceeding.

The petitioner approached the court by filing another writ petition being WP No. 180 of 2006. The said writ petition remained pending for consideration by the court for a considerable period of time. It is quite obvious that the petitioner must have suffered financially and mentally during the period the writ petition remained pending in court. The petitioner did not receive any financial benefit as his resignation was not accepted and neither the disciplinary proceeding concluded.

It appears that when the petitioner pressed the authority for releasing his dues he was assured that his dues will be cleared only after the petitioner withdraws his writ petition which was pending consideration. The petitioner accordingly made a prayer before the court permitting him to withdraw his writ petition. At the time of withdrawal of the said petition the learned advocate appearing for the respondents contended before the court that the retiral dues of the petitioner would be duly cleared. On such submissions made by the respondents the court directed the authority to clear the dues of the petitioner within a maximum period of six weeks. The dues of the petitioner were not cleared within the time as granted by the court but were cleared at a later date. The petitioner accepted the money and thereafter made a prayer for payment of interest on account of delayed payment of his retiral dues.

It was not unreasonable for the petitioner to harbour an impression that if he raised his demand for interest on account of the delayed payment prior to his dues being cleared, then the authority would get another opportunity to drag the matter further. Presumably for this reason the petitioner thought it fit to accept his dues first and thereafter raise the claim for interest on account of the delayed payment.

The Supreme Court in the matter of M. Padmanavan Nair (*supra*) clearly laid down the law relating to the entitlement of the employee to claim interest on account of delayed payment of the retiral dues. The principle laid down by the court has been consistently followed in the subsequent judgments passed by the Supreme Court. The same principle has been reiterated in the matter of S.K. Dua (*supra*). The court categorically held that the retiral dues are not bounty to be

distributed to the employees on their retirement but are valuable rights and property in their hands and any culpable delay in its settlement and disbursement must be visited with the penalty of payment of interest at the current market rate.

In the case at hand there appears to be gross unexplained delay on the part of the employer for not accepting or taking any decision with regard to the resignation submitted by the petitioner in the year 2006. The employer, without any plausible reason, kept the prayer for resignation pending for more than twelve years and thereafter accepted the same from a retrospective date. Had the respondents taken a prompt decision with regard to the resignation tendered by the petitioner the matter would not have prolonged for such a long period of time.

Not proceeding with the departmental proceeding since 2005 till 2017 leads to the unmistakable conclusion that the departmental proceeding initiated against the petitioner stood dropped, though no order to that effect was formally made. Under such circumstances it was the bounden duty of the employee to settle the issue and relieve the petitioner.

The contention of the employer that the dues could not be paid on account of the pendency of the writ petition cannot be accepted. The writ petition was filed for an absolute different purpose, on a separate cause of action, no way connected with the resignation tendered by him. There was no order restraining the employer from taking a decision in response to the resignation tendered by him. The act of the employer appears to be harassing and motivated.

According to the ratio laid down by the Hon'ble Supreme Court in the aforementioned matters the employee is entitled to interest on account of the delayed payment of his retiral dues more so because the delay was not attributable to the employee. Accepting the payment without any objection will not stand in the way of the petitioner from raising his demand in respect of the claim which accrued in his favour under part III of the Constitution relying on Articles 14, 19 and 23 of the Constitution. The right which accrued in his favour under the Constitution cannot be compromised in any manner.

In view of the above, the instant writ petition is disposed of by directing the respondent no. 2 being the Managing Director of the West Bengal Essential Commodities Supply Corporation Limited to grant interest to the petitioner on account of the delayed payment of his retiral dues at the rate of 7 per cent per annum to be calculated on and from the date of its accrual till the date of actual payment. The said respondent shall make the necessary calculation and clear the dues in favour of the petitioner within a period of four months from the date of communication of a copy of this order. In default to clear the dues within the time as specified hereinabove the employee shall be entitled to an additional interest at the rate of 2 per cent per annum calculated from the date the dues became payable till the date of actual payment.

W.P No. 294 of 2019 disposed of.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.