12.12.19
Sl.No.03
Ct. No.01
Krishnendu

CALCUTTA HIGH COURT

In the Circuit Bench at Jalpaiguri

C.A.N.1 of 2019
In
M.A.T. 21 of 2019

Regional Provident Fund Commissioner, West Bengal & Anr.
-Vs-
Tesati Tea Limited & Anr.

Mr. Bhaskar Roy Mahhshay
For the Petitioners/Appellants
Mr. Bikramaditya Ghosh
Mr. Debarshi Dhar
For the Respondents

The present appeal has been preferred challenging an order dated 8th July, 2019 passed in the writ petition, being W.P. 7664 (W) of 2018.

Records reveal that the respondents herein preferred a writ petition, being W.P. 21569 (W) of 2017, challenging an order demanding an amount of Rs.53,83,012/-. The said writ petition was disposed of by an order dated 21st September, 2017 directing the authorities to consider lifting the attachment of the relevant accounts of the respondents and to consider the grievances ventilated by the respondents subject to payment of 20% of the total dues. On the basis of the said order dated 21st September, 2017, the Assistant Provident Fund Commissioner, Regional Office, Jalpaiguri passed an order on 20th December, 2017. The same was again challenged by the respondents by a writ petition, being WP 7664 (W) of 2018. The said writ petition was disposed of by an order dated 8th July, 2019. By the said order dated 8th July, 2019, the learned Single Judge directed the appellants herein to refund an amount of Rs.36,81,782/- which was remitted by IndusInd Bank from the accounts of the respondents to the office of the Recovery Officer prior to issuance of the order dated 20th December, 2017.

Mr. Mahhshay, learned advocate appearing for the appellants submits that the total dues payable by the respondents is Rs.53,83,012/-. The amount remitted by the bank is Rs.36,81,782/-. The said amount is a part of the total dues of the respondents and by recovering the said amount, no mistake has been committed by the authorities. As such, the learned Judge erred in law in directing the provident fund authorities to refund the said amount to the respondents.

He submits that by the initial order passed in the first writ petition on 21st September, 2017 the respondents were directed to pay the 20% of the total dues, being Rs.10,76,600/- immediately and the rest by twelve instalments.

Mr. Ghosh, learned advocate appearing for the respondents submits that the amount claimed being Rs.53,83,012/- is a disputed amount and to bring appropriate materials on record, he prays for leave to use an opposition to the stay application.

He contends that it has been rightly observed by the learned Single Judge that the amount of Rs.36,81,782/- had been illegally extracted from the respondents prior to issuance of the order dated 20th December, 2017. The appellants should refund the amount of Rs.36,81,782/- immediately and thereafter appropriate direction for payment by instalments can be issued.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

In the order assailed in the present appeal it has *inter alia* been observed that *"I see no reason in sending the matter back to the authorities and create further multiplicity of litigations and accordingly, I direct the petitioner to pay the balance amount [after deducting Rs.10,76,600/- (Ten Lacs Seventy Six Thousand Six Hundred Only)] in 12 (twelve) equal monthly installments starting from the month of September, 2019. In default of payment of any of the installments, the respondent no.2 shall be at liberty to proceed in accordance with law"*.

The respondents had not preferred any appeal against such finding and as such the balance amount payable, as indicated in the said paragraph, is of Rs.17,01,230/- (Rs.53,83,012 – Rs.36,81,782). The said amount of Rs.17,01,230/- includes an amount of

Rs.10,76,600/- (which is the 20% of the total dues). Since there exists no factual dispute as regards the total amount due and payable there is no necessity to invite any affidavit-in-opposition from the respondents.

In our opinion, as the respondents have not challenged the said order, they are bound to disburse the said balance amount, being Rs.17,01,230/- to the appellants by twelve equal monthly instalments, as directed.

Mr. Mahhshay has drawn the attention of this Court to a document annexed to the stay application, being a letter dated 20th December, 2017 issued by the General Manager of Tasati Tea Estate to the Regional Provident Fund Commissioner requesting him to adjust 20% of the total dues from the amount of Rs.36,81,782/- which was due and payable and to lift the attachment of the bank. According to Mr. Mahhshay, the contents of the said letter clearly reveal that there is no dispute as regards the amount quantified to be payable by the respondents herein.

Indisputably, the total amount calculated to be due and payable by the respondents is Rs.53,83,012/- out of which Rs.36,81,782/- has already been collected by the authorities and the remaining amount is of Rs.17,01,230/-. The first direction towards completion of payment of all dues by twelve instalments was passed on 21st September, 2017. The said period stands stretched till date due to the pending litigations.

In view thereof, the direction contained in the impugned order upon the appellants to refund an amount of Rs.36,81,782/- is set aside.

The learned Single Judge passed the order on 8th July, 2019 and today we are in the month of December, 2019. By the said order the balance amount was directed to be deposited by twelve equal monthly instalments on and from the month of September, 2019. The said portion of the order is only modified to the effect that the respondents shall pay the due amount of Rs.17,01,230/- by twelve equal monthly instalments on and from the month of January, 2020.

With the above observations and directions the appeal and the connected application, being CAN 1 of 2019, are disposed of.

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

Urgent Photostat certified copy of this order, if applied for, be given to the learned advocates for the appearing parties upon compliance of all necessary formalities.

(Rajarshi Bharadwaj, J.) **(Tapabrata Chakraborty, J.)**