

10 05.01.2022
RP Ct. No. 16
AN

FMA 1275 of 2016
with
IA No. CAN 1 of 2015
(old CAN No.11365 of 2015)

Nabin Kumar Jha & Ors.
vs.
State of West Bengal & ors.

Mr. Sujash Ghosh Dastidar
Mrs. Maheswari Sharma
Mrs. Tulika Ray

... for the appellants

Mr. Soumya Majumdar
Mr. Niladri Bhattacharya
Mr. Soham Banerjee
Mr. Aditya Chaturvedi

... for the CTC

Mr. Tapan Kumar Mukherjee, learned senior advocate
Mr. Somnath Naskar

... for the State

This intra-Court mandamus appeal is directed against the order dated 06.10.2015 passed in W.P. 22375 (W) of 2015. The said writ petition was filed by the appellants praying for direction upon the respondent company to pay interest on the delayed payment of arrears of salary. Learned Single Judge by the impugned order dismissed the writ petition on the ground that it is a simple money claim and a writ of mandamus would not lie. Aggrieved by the same the appellants are before this Court by way of this appeal.

We have heard the learned counsels for the parties elaborately and perused the materials on record.

At the very outset we need to point that the order passed by the learned writ Court dismissing the writ petition is incorrect. We say so because a claim for payment of interest flows from a decision taken by the Government of West Bengal, which was implemented by the respondent Calcutta Tramways Company Limited by passing memorandum dated 21.07.2000. Thus, the claim flows from a decision taken by the Government accepted by the respondent company. There is no dispute as regards the entitlement for interest for the period during which the interest is to be paid. In such circumstances, the writ petition could not have been dismissed on the ground that it is a money claim. It is true that when a claim is in dispute and adjudication is required as to decide whether the claimant is entitled for the monetary compensation or claim, the writ Court would refuse to entertain the writ petition except in tortuous claim against the State. Where a person dies due to fall of electrical pole on him, not maintained by the Electricity Department, the person loses his life or falls in a open drainage which has not been taken proper care by the municipality. Therefore we are of the view that the writ petition could not have been dismissed.

The respondent company cannot non-suit the appellants on the ground that they have approached the respondent belatedly i.e. only in the year 2015 when they gave their representation placing reliance on the memorandum dated 21.07.2000. More particularly,

paragraph 4 therein we find that it is the incumbent upon the respondent to pay interest for better appreciation, we quote paragraph 4, which is as follows:

“While fixation in the Revised Scale of Pay may be made from 1.1.96 depending on the date of option of the employee, actual payment on the basis of fixation in the Revised Scale of Pay will, however, be made with effect from 1.4.2000. The arrears for the period from 1.4.1997 to 31.3.2000 will be paid in five annual instalments, the first instalment being payable not before 1.11.2002, along with interest to be calculated from 1.4.2000 at the same rate as admissible in respect of accumulation in the General Provident Account.”

Therefore, in the light of the aforesaid decision which appears to be a policy decision to give some succor to the employees, who have lost their employment or whose salaries though revised by a scheme was not implemented and revised salary was not paid. Thus, entitlement for payment of interest has a statutory colour in the sense it is pursuant to a policy decision taken by the Government implementable by the respondent tramways company, who have no other choice and cannot wriggle out of their liability. Therefore, we reject the argument made on behalf of the respondent company that the appellants have slept over the matter, rather we are prompted to say that it is the respondent tramways company who have slept over the matter ignoring the rights of the appellants and failed to discharge the obligation which was fastened upon them in the nature of official memorandum. Therefore, no such

defense can be raised by the respondent tramways company. We find that identical claims were allowed by this Court in several writ petitions and one such writ petition being W.P. 910 (W) of 2006 in the case of Calcutta Tramways Company Vs. State of West Bengal and there are several writ petitions as well. All the orders passed in those writ petitions have been implemented and interest has been paid. Therefore, we find that there is no distinction and differentiation can be made in respect of the appellants herein.

For the reasons given hereinabove, we hold that the appellants are entitled to interest for the period in question which has been clearly set out hereinabove in paragraph 4 of the official memorandum.

In the result, the appeal and the connected application stand **allowed** and the impugned order is set aside by directing the appropriate respondent to pay interest on the arrears of revision of scale of pay for the period on and from 1.4.1997 till the payment of the last installment which is stated to have been made in the year 2008.

It is submitted by Mr. Majumder, learned counsel for the tramways company that the affairs of tramways company are now being taken over and controlled by West Bengal Transport Corporation. If that is so, the successor company, who is managing the affairs of Calcutta Tramways Company shall effect the payment of the appellants within a

period of twelve weeks from the date of receipt of server copy of this order.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)