

C.P.A.N. No.1265 of 2016

with

IA No. CAN 1 of 2018 (Old No. CAN 2812 of 2018)

in

W.P.S.T. 301 of 2010

with

IA No. CAN 1 of 2010 (Old No. CAN 8046 of 2010)

with

IA No. CAN 2 of 2012 (Old No. CAN 7924 of 2012)

with

IA No. CAN 3 of 2018 (Old No. CAN 5244 of 2018)

(A s s i g n e d)

(Jagadish Chandra Basu & Anr. Vs.
The State of West Bengal & Ors.)

Mr. Arup Kumar Lahiri

Mr. Udayan Datta

..... For the petitioners

Ms. Chaitali Bhattacharya, Ld. Sr. Govt. Adv.

Mr. Subhendu Roychowdhury

**..... For the alleged contemnor
nos. 1 & 2**

The present contempt application has been preferred alleging violation of an order dated 8th December, 2011 passed in a writ petition being W.P.S.T. 301 of 2010.

As we have invited Mr. Lahiri, learned advocate appearing for the petitioners to advance his arguments on merits of the matter, the delay in filing the restoration application is condoned. The application for condonation of delay being IA No. CAN 3 of 2018 (Old No. CAN 5244 of 2018) is, accordingly, disposed of. We are also satisfied with the explanation given towards the absence of the learned advocate of the petitioners before the Court when the matter was dismissed on 16th January, 2018. In view thereof, the said order dated 16th January, 2018 is

recalled and the contempt application is restored to its original file and number and the restoration application being IA No. CAN 1 of 2018 (Old No. CAN 2812 of 2018) is also disposed of, treating it as on the day's list. With the consent of the parties, the contempt application is taken up for final hearing.

Mr. Lahiri submits that in the order dated 8th December, 2011 there was a categorical observation that the writ petitioners being similarly circumstanced should be extended identical benefit, as their predecessors got, having joined prior to 1st October, 1971. The said identical benefits have not been disbursed in favour of the petitioners. The petitioner no.4 has also not been paid the gratuity amount up to the ceiling limit. Drawing our attention to the averments made in paragraph 25 of the contempt application, Mr. Lahiri submits that the leave encashment benefits have not yet been disbursed in favour of the petitioners and as such, the alleged contemnors had willfully violated the directions contained in the order dated 8th December, 2011.

Ms. Bhattacharya, learned senior Government advocate appearing for the alleged contemnors submits that all the directions contained in the order dated 8th December, 2011, have been complied with. The petitioners have been disbursed their dues together with interest. In view thereof, the petitioners themselves did not appear before this Court on repeated occasions and

as such, this Court was pleased to dismiss the contempt application by the order dated 16th January, 2018. Let the documents, as produced, be kept on record.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

A perusal of the order dated 8th December, 2011 reveals that this Court had directed that the petitioners would be entitled to notional benefit, which their predecessors got having joined prior to 1st October, 1971 and retired and/or died on or before 27th January, 2003. It was further directed that after calculation of the notional benefit, their pension would be revised and the differential amount would be paid to them at the earliest and that the State would also pay interest @ 9% per annum, in case the aforesaid benefit is not extended to them within three months from the date of communication of this order.

It is well settled that the Court cannot traverse beyond the order, it has passed and cannot give any further additional direction or delete any direction.

From the averments made in the contempt application and from the documents as produced on behalf of the alleged contemnors, it appears that the petitioners have been granted the notional benefits and upon proper pay fixation, the pensionary benefits had also been disbursed together with the interest. In the

said conspectus, it does not appear that there had been any deliberate or wilful violation of the order dated 8th December, 2011. The non-compliance of the order has to be willful and deliberate and not mere accidental or unintentional.

The grievance of the petitioners is that they have been paid the leave encashment benefit on the basis of their unrevised pay though they are entitled to leave encashment benefit as per the formula detailed in paragraph 25 of the contempt application. Such claim has been disputed by the alleged contemnors.

The petitioners claim leave encashment benefit on the basis of a particular formula. Such dispute involves issues which cannot be decided in a contempt application.

In view thereof, the contempt application being CPAN 1265 of 2016 is dismissed. Rule, if any, stands discharged. The application being IA No. CAN 2 of 2012 (Old No. CAN 7924 of 2012) has already been disposed of earlier by an order dated 5th March, 2013. The Registry is directed to record such disposal of the said application. The application being IA No. CAN 1 of 2010 (Old No. CAN 8046 of 2010) is also disposed of.

It is, however, made clear that dismissal of the contempt application will not prevent the petitioners from claiming further dues, if any, by preferring appropriate

application before the competent forum, if so advised and in accordance with law.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)