

Item No.1.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 25.07.2022

DELIVERED ON:25.07.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK**

**M.A.T. No.1878 of 2019
With
I.A. No.CAN 1 of 2021
With
I.A. No.CAN 2 of 2021**

**State of West Bengal & Ors.
Vs.
Someswar Ghosh.**

Appearance:-

**Md. T. M. Siddique,
Mr. Nilotpal Chatterjee**

..... for the appellants.

**Mr. Shyamal Chakraborty,
Mr. Bhusan Jain,
Ms. Manju Jaiswal,
Mr. Debjyoti Mondal**

... for the respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

Re: I.A. CAN 2 of 2021

1. This application has been filed to condone the delay of 97 days in filing the instant appeal.

2. We have heard Md. T. M. Siddique, learned Additional Government Pleader for the State/appellants and Mr. Shyamal Chakraborty, learned counsel appearing for the respondent.

3. We are satisfied with the reasons assigned in the affidavit filed in support of the application. The delay in filing the instant appeal is condoned.

4. The application being I.A. CAN 2 of 2021 is allowed.

Re: M.A.T. No.1878 of 2019

5. This intra Court appeal by the State is directed against the order dated 31st July, 2019 in W.P. No.13561(W) of 2019. By the said order, the learned Writ Court directed the appellants to pay interest @ 8% per annum from 1st April, 2013 till the

actual payment in 2019 on the principal sum of Rs.1,27,678/-. Mr. Siddique, learned Additional Government Pleader on behalf of the appellants would contend that the monetary benefit extended to the respondent is by a scheme formulated by the Government called "Financial Assistance to the Workers in Locked Out Industrial Units" (FAWLOI) notified on 20th May, 1998. The respondent was a worker in M/s. Shaktigarh Textile Industries Limited, Burdwan, West Bengal. Since the said industrial unit had been locked down, the respondent applied for financial assistance under the said scheme. The application was not considered, which prompted the respondent to file a writ petition before this Court in W.P. No.33525(W) of 2013. The said writ petition was disposed of by an order dated 16th June, 2015 directing the Secretary, Department of Labour, Government of West Bengal or any senior officer designated by him to determine whether the respondent would be covered under the scheme and if so, what financial relief he is entitled to and pass a reasoned order after hearing the respondent.

6. Thereafter, an order was passed rejecting the claim of the respondent on the ground that he was only a Badli worker. This order was once again put up for challenge by the respondent

before this Court in W.P. No.27903(W) of 2015, which was allowed by an order dated 17th December, 2015. By the said order, the appellants were directed to extend the benefit of the scheme to the respondent by way of cash assistance along with interest calculated @ 10% per annum from 1st April, 2013. The appellants / State filed an appeal against the said order in MAT 278 of 2016. It was contended that the respondent has not completed 240 days in a calendar year and he was only a Badli worker and the benefit of the scheme cannot be extended. Further, it was submitted that though the benefit of the scheme was extended to Badli workers by a subsequent notification in 2013, the benefit of the said notification cannot be extended to the respondent as the respondent by then had attained the age of retirement. However, this contention did not find favour with the Hon'ble Division Bench and it was rejected on the ground that the 2013 notification was to be applied retrospectively and since the respondent retired in 2012, he would be entitled to seek benefit under the said notification. Thus, the objection that the respondent was a Badli worker did not any longer survive. However, with regard to whether the respondent had completed 240 days of continuous employment in one calendar year, the Hon'ble Division Bench was of the view that it being a

question of fact, it needs to be established. Therefore, to that extent the order passed by the learned Single Bench was set aside and the matter was remanded back to the appropriate authority for considering such an issue.

7. The matter was once again agitated before the authority and the details of the number of days the respondent had worked was also placed before the authority and once again, the authority declined to grant relief, which prompted the respondent to approach this Court for the third time by filing W.P. No.30796(W) of 2017. The said writ petition was disposed of by an order dated 2nd May, 2018. In the course of argument, the learned Advocate appearing for the State had assured that the case of the respondent herein would be considered sympathetically. Taking note of the said submission, the Court recorded its satisfaction that the respondent herein will be given the benefit under the scheme for the financial assistance and also recorded the assurance made on behalf of the State that the same will be done within a period of six weeks.

8. It is, thereafter the department by a communication dated 18th February, 2016 sanctioned a sum of Rs.1,79,631/- being the

financial assistance under the said scheme and it appears that there was some calculation discrepancy, which was also subsequently rectified. However, the fact remains that financial assistance under the scheme has been disbursed, though belatedly.

9. The respondent claimed interest on the said amount. The same was not considered, which prompted the respondent to approach this Court for the fourth time by filing W.P. No.13561(W) of 2019. The learned Single Bench by an order dated 31st July, 2019 had directed interest to be paid on Rs.1,27,678/- @ 8% per annum from 1st April, 2013 till the date of actual payment in 2019. Six weeks time was granted to comply with the said order. The said order passed in the said writ petition is impugned before us.

10. It appears that the respondent has filed a contempt application before the learned Single Bench because the order passed in the said writ petition has not been complied with.

11. The question would be whether the respondent would be entitled for interest. The argument of the learned Additional

Government Pleader is that no interest is payable under the scheme. It may be true that the scheme does not contemplate payment of interest. However, the Court is entitled to direct payment of interest in the nature of compensation to the workman when it comes to the conclusion that the claim was unreasonably delayed or denied.

12. We have noted that initially the objection raised by the department was that since the respondent was a Badli worker, the scheme as originally notified cannot be extended. This objection was held to be not sustainable by the Hon'ble Division Bench, because by then in the year 2013 by way of a further notification, the scheme was extended to Badli workers. Even at that juncture, the appellants/State contested the claims stating that the respondent may be a Badli worker, to bring him under the amended scheme he should have completed continuous employment of 240 days in a calendar year. This issue was remanded to the authority for fresh adjudication. Before the authority, the days in which the respondent had worked in the said industry was produced. Thereafter, the authority rejected it on the ground that the respondent has not worked continuously for a period of 240 days in a calendar year. This order was

once again challenged and at that point of time, it appears that appropriate advice was given to the appellants by the learned Advocates appearing for the State and they agreed to extend the financial benefit.

13. Even thereafter, it had taken a substantial time and the amount was actually paid to the respondent only on 17th February, 2019. As noted, the respondent has been compelled to approach this Court on four occasions and various technical objections raised by the appellants at every point of time, which were ultimately found to be not tenable. Further, on seeing the number of days the respondent had worked in the said industry, we find that from 1978 onwards till 1998 at least for four years he has worked for more than 227 days. In fact in the year 1980 he has worked for 238 days and in the year 1983, he has worked for 229 days. This Court can take a judicial notice of the fact that so far as the employment of Badli worker is concerned, it is the absolute discretion of the employer and very often, the floor managers or supervisors, who for reasons best known may award work to a Badli worker or keep him away from work at their whims and fancies. Thus, a broader view of the matter has to be taken note of and precisely, that was done which prompted the

appellants to agree before the Court in WP No.30796 (W) of 2017, which was disposed of on 2nd May, 2018.

14. Therefore, We are of the view that the learned Single Bench was fully justified in granting interest @ 8% per annum for the period mentioned therein. The learned Additional Government Pleader submitted that this order may open flood gates and several similar claims may arise. The appellants need not have any such apprehension as we have assigned specific reasons as to why we are affirming the order passed by the Learned Single Bench granting interest on the financial assistance given to the respondent. Therefore, this decision has been rendered on considering the facts and circumstances of the case.

15. For all the above reasons, we find no ground to interfere with the order passed by the learned Single Bench. Accordingly, the appeal and the connected application (I.A. No.CAN 1 of 2021) stands dismissed. The appellants shall effect the payment of interest in terms of the directions issued by the learned Single Bench not later than 26th August, 2022.

16. No costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(BIVAS PATTANAYAK, J.)

NAREN/PALLAB (AR.C)