

208.
13.7.2023
S.D.

W.P.A. 11277 of 2018
With
CAN 1 of 2022

Md. Kalam Khan
Vs.
The G.M., Satgram Area Eastern
Coalfields Limited & Ors.

Mr. Rabindra Nath Bag
Mr. Rohan Raj

..For the Petitioner

Mr. Susanta Pal
Mr. Pradipta Basu

...For the ECL

The petitioner was an employee of Eastern Coalfields Limited (ECL). The petitioner joined his service in 1972.

The petitioner was **dismissed** from service with effect from December 25, 1984. The petitioner challenged the order of **dismissal** before the Central Government Industrial Tribunal, Asansol. By an award dated January 14, 1992, the Hon'ble Tribunal directed the petitioner to be reinstated in service within two months from the date of the order. It was held that the order of **dismissal** was disproportionate to the gravity of the offence. Considering the gravity of the offence of the petitioner, his back wages were forfeited. The petitioner

was directed to get his wages after expiry of two months from the date of award, whether or not he was reinstated.

Aggrieved by the fact that the Eastern Coalfield/Employer had not given the applicable dues in terms of the award, the writ petitioner filed a previous writ petition. The Hon'ble Division Bench by an order dated April 25, 2014 passed in M.A.T. 470 of 2014 directed that the petitioner will be entitled to receive the admissible service benefits and pensionary benefits even though he will be not entitled to back wages from the date of his **dismissal** in 1984 till the date of his reinstatement in 1992.

Since the petitioner was not satisfied with the benefits given to him in terms of the order passed by the Hon'ble Division Bench, a contempt application being CPAN 1296 of 2014 was moved by the writ petitioner. The said contempt application was disposed of by an order dated September 21, 2019 holding that there was no willful or deliberate attempt on the part of the alleged contemnors to defy/disobey the orders of the Court since as per the calculation sheet produced on behalf of the alleged contemnors, the increments prayed for by the petitioner have been included in the payments made to him. However, the petitioner was given liberty to pursue any remedy in accordance with law.

It is submitted on behalf of the petitioner that he is entitled to wages from March 1992 till September 1992 in accordance with the order passed by the Hon'ble Tribunal. Furthermore, the petitioner is entitled to bonus and other increments in accordance with the order passed by the Hon'ble Division Bench in M.A.T. 470 of 2014. The petitioner also claims service linked upgradation from the date of his reinstatement till the date of his superannuation in 2010.

Mr. Pal, learned counsel appearing on behalf of the ECL submits that all the notional benefits of the increments have been given to the petitioner. Since the back wages of the petitioner have been forfeited by the Hon'ble Tribunal, there is no question of actual benefits of the increments or the bonus being given to the petitioner. If there was any need to clarify/interpret the order of the Learned Tribunal, the petitioner should have approached the Tribunal itself, for clarification of the same.

He also submits that the service linked upgradation could not be given to the petitioner for want of vacancy immediately upon completion of 10 years of service. However, upon the vacancy arising such service linked upgradation was given to the petitioner.

Considering the submissions of the parties and the materials placed on record this Court is of the view that

- a. By the order dated January 14, 1992, the Hon'ble Tribunal directed the payment of wages to the petitioner from March 14, 1992 whether or not he was reinstated in service.
- b. The said order of the Hon'ble Tribunal was not carried in appeal by the respondents/ECL.
- c. Therefore, the respondents/ECL cannot be permitted to argue that the wages from March 1992 till September 1992 will not be paid to the petitioner under the provisions of National Coal Wage Agreement (NCWA).
- d. The petitioner has not approached the Hon'ble Tribunal for clarification of its order.
- e. The Hon'ble Division Bench only directed the admissible service benefits and pensionary benefits to be granted to the petitioner.
- f. The petitioner cannot, therefore, contend that the actual benefits of increments and bonus are required to be given to him in this present writ petition.
- g. There is also no reason for not granting any service linked upgradation, that is due and payable to the

petitioner from the date of his reinstatement in September 1992 till the date of his superannuation in 2010.

In the light of the discussions above, the petitioner will be paid wages from March 14, 1992 till September 17, 1992 along with interest @ 6% p.a. Such arrears will be disbursed within three months from the date of the order.

Any admissible service linked upgradation benefits from September 1992 till the date of superannuation in 2010 will also be paid to the petitioner within three months from the date of the order.

With the directions aforesaid, **W.P.A. 11277 of 2018** is **disposed of**.

CAN 1 of 2022 is an application for early hearing. The same has now become infructuous.

Therefore, **CAN 1 of 2022** is **dismissed**.

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

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

(Lapita Banerji, J.)

Re: **CAN 1 of 2019 (Old CAN 11551 of 2019)**

This is an application for substitution of the heirs and legal representative of the deceased writ petitioner. The writ petitioner died intestate on October 29, 2019 leaving behind him surviving by his wife and daughter.

In view of the submissions made, let the applicants be substituted in place and stead of the erstwhile writ petitioner in W.P.A. 7117 of 2018.

Leave is given to the learned advocate appearing on behalf of the petitioner to make necessary amendments to the cause title of the writ petition.

Accordingly, **CAN 1 of 2019 (Old CAN 11551 of 2019)** is **disposed of**.

Re: **W.P.A. 7117 of 2018**

Submissions are commenced on behalf of the petitioner. The petitioner herein prays for the benefits to be given to him in accordance with an order dated March 5, 2018 passed by the Appeal Committee, West Bengal Board of Primary Education.

Let the matter appear for further consideration under the heading “**Hearing**” on **July 20, 2023**.

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

