19.07.2023
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AN/Ct. No.07

WPA 19808 of 2019

Pradeep Kumar Mukherjee & ors.
versus
State of West Bengal & ors.

Mr. Puspal Chakraborty
Mr. Prisanka Ganguly
... for the petitioner

Mr. Sharanya Chatterjee
... for the respondent nos. 3-6

The petitioners are all retired employees of Kalyani Spinning Mills Limited, the 3rd respondent herein. The grievance of the petitioners is that though some amount on account of leave encashment has been paid but still there remains a differential amount which is to be released in favour of the petitioners.

Learned counsel appearing for the respondents submits that this writ petition is barred by the principles of constructive res judicata as well as under Order II Rule 2 of the Civil Procedure Code. By referring to the order passed by a Coordinate Bench of this Court on 28.03.2019 in W.P. 3646(W)/2019, Mr. Chatterjee submits that at the time of filing the writ petition, the petitioners have relinquished their claim insofar as the said differential amount on account of leave encashment is concerned. He submits that in an earlier round of litigation, directions were passed to release the amount on account of leave encashment and, therefore, the instant writ petition is also barred by principles of constructive res judicata.

Heard learned counsel for the parties at length and perused the materials placed.

In paragraph 7 of the writ petition at page 10, a chart showing a detailed calculation of the dates of retirement as well as the dates when the payments on account of leave encashment were made, has been shown. The amount paid on account of leave encashment as well as the amount which the petitioners are entitled to after implementation of arrear dearness allowance have also been specified therein. The petitioners have specifically calculated the differential amount on account of leave encashment. From the chart, it appears that insofar as the case of Khokon Chandra Nag is concerned, there is no differential amount on account of leave encashment.

The petitioners' claim on account of differential amount of leave encashment is after the implementation of the arrear dearness allowance. The Coordinate Bench by order dated 30.08.2017 in a batch of writ petitions and the lead case being W.P. 13828(W)/2016 directed the Managing Director to request the Principal Secretary, Finance Department to release the amount due to the petitioners towards the leave salary according to the individual entitlement of the petitioners. From the said order, it does not appear that there was any adjudication as to the entitlement of the petitioners on account of leave encashment. Since only a direction was passed to release the amount towards the leave salary according to the individual entitlement of the petitioners without making any adjudication as to the amount which the petitioners are entitled to and as to how such calculation has to be made, this Court is of the considered view that the instant writ petition cannot be said to be barred by the principles of constructive res judicata.

It appears that the Coordinate Bench only took note of the fact that the petitioners have restricted their claims only with regard to the payment of interest on account of leave encashment released in favour of the petitioner. In the case on hand, the petitioners claim the differential amount to which the petitioners are entitled to on account of leave encashment after implementation of the arrear dearness allowance and to pay the interest thereon.

Order 2 Rule 2 of the Civil Procedure Code states that every suit shall include the whole of the claim which the claim is entitled to make in respect of the cause of action but a plaintiff may relinquish any portion of the claim and if the plaintiff omits to sue or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

In W.P. 3646(W) of 2019, the cause of action was that interest on leave encashment was not paid. The cause of action of the instant writ petition is that the petitioners are entitled to further amount on leave encashment after arrear dearness allowance. The cause of action is W.P. 3646(W) of 2019 and that of the instant writ petition being different, the instant writ petition cannot be said to be barred under Order 2 Rule 2 of the Civil Procedure Code. That apart the statements made and the amounts claimed in the chart appended to paragraph 7 of the writ petition have not been specifically denied by the respondents.

Though the claim for interest cannot be allowed in view of the fact that such prayer for interest has already been rejected by a Coordinate Bench on 28.03.2019, however, insofar as the prayer of the writ petitioners with regard to the claim for differential amount on account of leave encashment after implementation of arrear dearness allowance is concerned, this Court finds that such issue was not raised in the earlier writ petitions.

In view thereof, this Court holds that such prayer cannot be said to be a hit by the principles of constructive res judicata. In the affidavit-in-opposition, the respondents have not dealt with the specific claim by the petitioners made on account of differential amount of leave encashment. Since the petitioners have specifically mentioned in the Chart with regard to differential amount of leave encashment, this writ petition is **disposed of** by directing the Managing Director, Kalyani Spinning Mills Limited, the 5th respondent herein to consider the claim made by the petitioner on account of leave encashment as indicated in the Chart from pages 10 to 12 of the writ petition and to pass a reasoned order after giving an opportunity of hearing to the authorized representative of the writ petitioners and to communicate such decision to the petitioners accordingly. The entire exercise shall be completed within a period of six weeks from the date of receipt of the server copy of this order.

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

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)