OD-1

ORDER SHEET

WPO/574/2023

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S KHAITAN AND CO
-VS-
MS SANDHYA DUTTA AND ANR

BEFORE:
HON'BLE JUSTICE RAJASEKHAR MANTHA
DATE: 1st December, 2023.

Appearance:
Mr. Soumya Majumdar, Adv.
Mr. Sachin Shukla, Adv.
...for the petitioner

Mr. Tapan Kr. Mukherjee, Adv.
Ms. Tuli Sinha, Adv.
...for State respondent

Mr. Suvadip Bhattacharjee, Adv.
Mr. Balaram Patra, Adv.
...for respondent no.7

THE COURT: 1. The present W.P. has been filed by the petitioner challenging an order dated 22nd September, 2022 passed under Section 15 (2) (b) of the ID Act, 1947 in Case No.VIII-41/2006.

2. The writ petitioner and the respondent no.1, during the pendency of the writ petition in this Hon'ble Court explored the possibility of settling the disputes amongst the parties so that all disputes and differences between the

writ petitioner and respondent no.1, including that of legal dues arising out of employment and the taxation issues that may arise on account of receipt of a lumpsum payment, can be resolved.

3. The parties through their authorised representatives deliberated on the issues in a congenial atmosphere and had arrived at a settlement which has been reduced in writing in the form of a Memorandum of Settlement. The copy of the Memorandum of Settlement duly executed and signed by the parties and witnesses has been filed in Court today through their respective learned advocates. The said Memorandum is kept on record.

4. In terms of the Memorandum of Settlement the workman has agreed to receive a sum of Rs.25 lakhs subject to deduction of applicable TDS Certificate to the workman. On deduction of tax, the cheque bearing No.003977 dated 11th October, 2023 drawn on HDFC Bank for an amount of Rs.20,47,600/- in favour of the petitioner, has been handed over by the learned advocate for the writ petitioner in Court to the learned advocate for the respondent no.1.

5. The said amount is towards full and final settlement of all dues of the workman relating to her employment with the petitioner and she has agreed that she will not have any further claim for reinstatement or reemployment with the petitioner firm or claim for money, statutory or otherwise from the petitioner firm; and this payment includes any claim towards her gratuity, bonus and leave encashment dues.

6. The aforesaid payment has been made in one go to represent all claims of the workman including for the period from her date of dismissal (29.9.2004) upto date, as also all dues including gratuity, leave encashment bonus; all within the permissible statutory limit, and hence the workman shall be entitled to claim for benefit under Section 89 of the Income Tax Act, 1961. The IT authorities shall process and decide upon the refund expeditiously.

7. It is further made clear that the amount which has been paid by the petitioner to the respondent workman, to the tune of Rs.25,00,000/- (Twenty Five Lakhs) is a golden handshake. The said amount shall be treated as back wages along with all consequential benefits from the date of termination till the actual payment to the workman. The back wages shall be computed based on periodical revision of wages. This Court makes it clear that the entire amount paid to the respondent workman must be spread over the period between the date of dismissal and the actual date of payment, which amounts to 20 years, for the reason that the respondent workman is entitled to the benefit under Section 89 of the Income Tax Act.

8. Since the parties have settled the disputes amongst themselves, there is no point in keeping the matter pending before the learned 2nd Industrial Tribunal. Hence the Reference Case being VIII-41/2006 is disposed of in light of the Memorandum of Settlement filed in Court today. The Registrar, Original Side, High Court, Calcutta is directed to return the sum of Rs.5 lakhs along with interest accrued thereof to the petitioner, which was deposited in terms of the order dated 22nd June, 2023 by the petitioner.

9. Nothing further remains to be decided in the writ petition and hence the same also stands disposed of.

(RAJASEKHAR MANTHA, J)

bp/R.Bhar