

MAT 242 of 2024
With
CAN 1 of 2024

A.P. Fashions (Private) Limited & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Shyamal Kr. Mukherjee
Mr. Soumik Ghosh
Ms. Karuna Bose

... .. for the appellants

Mr. Nayan Rakshit

... .. for the respondent no.2

1. Heard Shri Shyamal Kr. Mukherjee, learned counsel for the appellants/petitioner and Shri Nayan Rakshit, learned counsel for the respondent employee.
2. This appeal has been filed praying to set aside the judgment and order dated 18.12.2023 in WPA 11783 of 2019 with CAN 2 of 2022 and CAN 3 of 2022 (A.P. Fashions (Private) Limited Vs. Government of West Bengal & Ors.) passed by the learned Single Judge.
3. CAN 2 of 2022 was filed by the appellants herein for extension of interim order. CAN 3 of 2022 was filed by the appellants/petitioner for recall of the order dated 29.09.2022 passed in CAN 1 of 2019 filed by the respondent employee under Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947). By the impugned order the recall application being CAN 3

of 2022 and extension application CAN 2 of 2022 both were rejected.

4. We have heard the learned counsels for the parties and perused the impugned order dated 18.12.2023. It is stated jointly by the learned counsels for the parties that WPA 11783 of 2019 in which orders on CAN 1 of 2019, CAN 2 of 2022 and CAN 3 of 2022 were passed is still pending before the learned Single Judge.
5. It is undisputed that an award dated 26.09.2018 was passed by the competent authority in favour of the respondent employee directing for reinstatement and payment of all back wages and other consequential benefits. That award has been challenged by the appellants/petitioner by filing WPA 11783 of 2019 which is still pending. In that WPA 11783 of 2019 an interim order dated 27.01.2020 was passed staying the impugned order till 22.05.2020 as under :

“This matter requires affidavits to be exchanged, as the same is a challenge of order passed under the Industrial Disputes act.

Let affidavit-in-opposition be filed by four weeks from date, reply thereto, if any, two weeks thereafter.

List the matter in the combined monthly list of April, 2020.

In the meantime, the impugned order is stayed till May 22, 2020.

The respondent no.3 informs that application under Section 17B has been filed. Let the application be listed on February 10, 2020.”

The application under Section 17B filed by the respondent employee was directed to be listed on 10.02.2020. Thus, the learned Single Judge while passing the aforesaid impugned order dated 27.01.2020 himself directed the application of the respondent employee under Section 17B of the Act, 1947 to be listed on 10.02.2020. After exchange of pleadings on application under Section 17B, an order dated 29.09.2022 was passed.

6. CAN 3 of 2022 was filed by the appellants/petitioner for recall of the order dated 29.09.2022 passed by the learned Single Judge under Section 17B of the Act of 1947. This recall application being CAN 3 of 2022 has been rejected by the learned Single Judge by impugned order dated 18.12.2023.
7. We have perused the impugned order passed on CAN 3 of 2022 and we do not find any illegality in rejecting the recall application of the appellants/petitioner being CAN 3 of 2022, inasmuch as the order dated 29.09.2022 was passed by the learned Single Judge on application under Section 17B, after exchange of pleadings and after affording sufficient opportunity of hearing to the parties. That apart, the order passed by the

learned Single Judge under Section 17B of the Act of 1947, merely enforced the statutory provisions.. The appellants before us have completely failed to point out any material or ground on which the order dated 29.09.2022 passed on application of the respondent employee under Section 17B of the Act of 1947, may be recalled. Under the circumstances, we do not find any manifest error of law in the impugned order dated 18.12.2023 rejecting CAN 3 of 2022 filed by the appellants/petitioner for recall of the order dated 29.09.2022.

8. So far as the application being CAN 2 of 2022 for extension of interim order, is concerned, we find from the interim order dated 27.01.2020 (afore-quoted as produced by the learned counsel for the appellants/petitioner during the course of hearing) that while staying the impugned order/award till 22.05.2020, learned Single Judge directed the application under Section 17B to be listed on 10.02.2020. Thus, it was very clear to the appellants/petitioner that application under Section 17B filed by the respondent employee is to be heard on its own merit. As on the date the order dated 29.09.2022 allowing the application under Section 17B of the Act of 1947 was passed by the learned Single Judge, even no interim order was

operating. Even the interim order dated 27.01.2020 has not stayed the consequences of Section 17B of the Act of 1947 inasmuch as from the interim order dated 27.01.2020 it is clear that the learned Single Judge has intended to hear the application of the respondent employee under Section 17B of the Act of 1947 and accordingly directed the application to be listed on 10.02.2020. It is also admitted fact that the applicant/petitioner has not complied with the order dated 29.09.2022. Under the circumstances, we do not find any good reason to interfere with the impugned order dated 18.12.2023 passed on CAN 2 of 2022.

9. For all the reasons afore-stated we do not find any merit in this appeal. Consequently, the appeal is dismissed.
10. Learned counsels for the parties jointly prayed that the WPA 11783 of 2019 itself may be decided at an early date so that the dispute between the parties may come to an end.
11. Considering the request of learned counsels for the parties as afore-noted and with their consent, we request the learned Single Judge to decide WPA 11783 of 2019 within two months, without granting any unnecessary adjournment to either of the parties.

12. We have also perused the impugned award and since this appeal is not against the impugned award and the challenge to the validity of the impugned award is pending before the learned Single Judge in the aforesaid WPA 11783 of 2019, therefore, considering the entire facts and circumstances of the case we direct the appellants/petitioner to deposit the entire balance amount pursuant to the order of the learned Single Judge dated 29.09.2022, within three weeks from today, with the Registrar General of this Court, which shall be kept by the Registrar General in an interest bearing fixed deposit in a nationalized bank and which shall be subject to result of WPA 11783 of 2019. In the event the appellants/petitioner deposits the entire the amount within the aforesaid stipulated period, then no coercive action shall be taken against the appellants/petitioner for two months or till decision in WPA 11783 of 2019, whichever is earlier. In the event the appellants/petitioner does not deposit the amount, as aforesaid, within the stipulated period, then the protection of “no coercive action” being given by this Court shall automatically stand vacated.
13. Subject to the aforesaid request/observation, the appeal is dismissed. Connected application is also

dismissed. It is made clear that the learned Single Judge shall decide the writ petition on its own merit without being influenced any of the observation made in this order or in the order passed on application under Section 17B of the Act of 1947 or the orders passed on CAN 1 of 2019, CAN 2 of 2022 and CAN 3 of 2022.

(Surya Prakash Kesarwani, J.)

(Rajarshi Bharadwaj, J.)