27.11.2024.
Item No. 5.
Court No. 13
sp

M.A.T. No. 1314 of 2023
With
I.A. No. CAN 1 of 2023

Murlidhar Ratanlal Exports Limited
Versus
Surja Kanti Karmakar & Ors.

Mr. Soumya Majumdar,
Mrs. Amrita Pandey,
Ms. Sneha Singh.
...For the appellant.

Mrs. Aparna Banerjee.
...For the respondent no. 3.

1. The instant appeal is s directed against the judgment dated 16.06.2023 passed by the learned Single Bench of this Court whereby, 6% interest on delayed payment of pension to the petitioner/respondent no. 1 was imposed on the appellant/employer.

2. The brief facts relevant to the instant case are that the respondent/employee Surja Kanti Karmakar superannuated from service of the appellant on 1st July, 2017.

3. Prior thereto, the employee on 16th June, 2017 intimated the workman, who was in the sewing department, that he was due to attain the age of superannuation, i.e., 58, within 2 weeks, i.e., on 1st July, 2017 in accordance with the standing orders of the Jute Mill. He was advised to collect his final dues from the

main office of the Mill on any working day subsequent to the date of superannuation.

4. The Provident Fund dues of the workman were settled immediately thereafter in July, 2017. However, the pension to the employee under the Employees' Pension Scheme of 1995 was either not processed or released. It is by notice dated 9th January, 2022 that the workman through an NGO called upon the P.F. authority to release pension and complained of delayed payment thereof.

5. In terms of paragraph 17A of the Employees' Pension Scheme of 1995, the employee with due participation of the employer by way of certification, is required to submit Form- 10D to the Pension authorities. The Commissioner of Pension is required to release the pension within 20 days thereafter. In default whereof the Commissioner is required to pay 12% interest from his own pocket.

6. The Pension Scheme of 1995 is a beneficial legislation. A plain reading of the provisions of the Scheme, indicates that the employer is required from time to time to submit KYC (Know Your Customer) details to the pension authority under the Scheme of 1995. The employer is also required to certify the aforesaid Form-10D, to the effect that the particulars given by the employee are true and correct. This would enable the Commissioner under the Scheme of 1995 to release pension to the employee concerned.

7. It is in this backdrop of 1995 Scheme read with the obligations of the employer that the communication dated 16th June, 2017 issued by the appellant to the writ

petitioner/workman/respondent must be viewed. In the opinion of this Court the Pension Scheme of 1995 casts an "implied statutory obligation" on the employer to notify the employee of the requirement of filling up the Form-10D for the employee to obtain the benefit of pension.

8. In the aforesaid facts and circumstances this Court is of the view that the appellant/employer was statutorily bound to notify the workman/employee in its letter dated 16th June, 2017 and those issued prior thereto that the employee must fill in Form-10D to enable the employer to certify the same and to forward for onward processing to the Commissioner under paragraph 17A of the Scheme of 1995.

9. While this Court is of agreement with the views of the Single Bench, the impugned order is modified to the extent that it is not just a moral obligation but an implied statutory duty of the employer, to notify the employee of the requirement of filling in Form-10D to enable him to obtain the benefit of pension under paragraph 17A of the Scheme of 1995. It is only when such a statutory obligation is fulfilled by the employer that the meaning, spirit, object and purpose behind the Scheme of 1995 is given effect to.

10. It would be relevant to note that the infraction of paragraph 17A by the Commissioner under the Pension Scheme of 1995 imposes 12% interest on the Commissioner himself under act payable for release of pension for delay beyond 20 days of receipt of Form-10D. Such stringent penalty on the Commissioner in the

opinion of this Court, must be understood by the employer as casting corresponding obligation on him to notify the employee of the necessity of submitting Form-10D, immediately prior to superannuation or immediately thereafter.

11. This Court is, therefore, of the view that the imposition of 6% interest on the employer/appellant for the cavalier way in which it chose not to notify the employee of the requirement of filling Form-10D, is wholly justified.

12. Reading of such implied statutory obligation must be read into the Scheme is all the more necessary since the employer is required to certify such Form-10D to enable the Commissioner to act in terms of the mandate under paragraph 17A of the Scheme of 1995.

13.For the reasons stated hereinabove, the impugned judgment and order is upheld as modified with the observations made hereinabove.

14.MAT 1314 of 2023 fails and is hereby dismissed.

15.In view of the above, CAN 1 of 2023 shall also stand dismissed.

16.There shall be no order as to costs.

17.All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Ajay Kumar Gupta, J.*)