

03-12-2024
ct no. 13
Sl. 9
sp

MAT 1765 of 2024
With
CAN 1 of 2024
Mrinal Mazumder & Ors.
-Versus-

The State of West Bengal & Ors.

Mr. Shiv Chandra Prasad,
Mr. Sajal Kumar Ghosh
...for the appellants

Mr. Suman Sengupta,
Mr. Sambuddha Dutta
..for the State

Mr. Anjan Kumar Mukherjee
..for the respondent no. 5

1. The present appeal arises out of a judgment passed by a Single Bench of this Court dated 13th June, 2024 in W.P.A. No. 7364 of 2009 whereby the writ petition has been dismissed. The writ petitioners/appellants claimed interest on the delayed payment of dues under a settlement dated 28th December, 1998 entered into between the petitioners and the respondent no. 5/employer. The said Respondent no. 5 was under closure under the provisions of the Industrial Disputes Act, 1947.

2. Despite the settlement dated 28th December, 1998, the petitioners had moved the Deputy Labour Commissioner, Bardhaman. The Misc. Execution Case was numbered 16 of 2000. The Deputy Labour Commissioner, lodged a complaint before the concerned CJM, Bardhaman against the respondent no. 5 for recovery of Rs. 6,65,809.25/- being the settlement dues. The Magistrate's jurisdiction was invoked under Section 421(1)(a) of the Cr. P.C.
3. For delay on the part of the Magistrate to conclude proceedings, CRR 953 of 2000 was moved by the petitioners before this Court. This Court directed the Magistrate to dispose of the proceedings within 6 weeks thereafter.
4. Against an order dated 22nd January, 2003 being a distress warrant issued by the CJM, Bardhaman, the employer challenged the same before this Court being CRR 880 of 2003 dated 30th September, 2002. The said warrant was stayed by order dated 22nd January, 2003 passed by the CJM on deposit of Rs. 1 lakh by the respondent no. 5/employer.

5. The said revisional application was disposed of directing payments of balance dues of Rs. 6,65,809.25/- in three equal monthly instalments to the workman. The payment was eventually made in December, 2003 by the employer/respondent no. 5.
6. In the two proceedings before this Court in its Criminal Revisional Jurisdiction or before the learned Magistrate, there was no prayer for interest on the delayed payment of dues under the aforesaid settlement. Such claim was raised for the first time, in a proceeding under Section 33-C(2) of the I.D. Act, 1947 being Case No. 2 of 2006.
7. The said case appears to have been filed three years after receipt of the principal amount of payment. The Tribunal, without addressing the issue of delay or the earlier proceeding instituted by the petitioners, went on to hold that he has no power under the 1947 act to order any payment of dues under a settlement within the meaning of the Act.
8. The order of the Tribunal dated 30th July, 2007 challenged before the Single Bench of this Court which dismissed the said writ

petition by the impugned order dated 13th June, 2024.

9. The Single bench was of the view that since the petitioners did not raise demand for interest in the two revisional applications before this Court, the claim of the petitioners towards interest could not be maintained. The Single Bench also found favour with the view taken by the Industrial Tribunal that there was no scope of awarding interest under the terms and settlement or any other provisions of the I.D. Act, 1947 independently.
10. This Court, notes that the petitioners' claim for interest is barred by the principles of and or akin to Order II Rule 2 of the CPC, 1908 and constructive res judicata. The claim for interest was not raised either before the CJM in the aforesaid Misc. Case No. 16 of 2000 or in CRR 953 of 2002 and CRR 880 of 2003.
11. The claim must, therefore, be deemed to have been abandoned by the petitioners. There is no question of entertaining any prayer for interest by this Court in the facts and circumstances of the case.
12. Insofar as the order of the Tribunal dated 30th July, 2007 passed in Case No. 2 of 2006 is

concerned, indeed it is true that the settlement between the appellants and the respondent no. 5 did not provide for any default clause for payment of interest. A settlement entered into by a management with workman, is given a special status under the Act of 1947 as opposed to other categories of employees and an employer. The Tribunal was, therefore, bound by the provisions of the Act of 1947 which does not provide for interest on delayed payment under a “Settlement”, within the meaning of the provisions of Section 2P of the Act of 1947.

13. Since the rights of a workman vis-à-vis the employer are specifically defined with under the provisions of a statute, the general principles of equity, under which interest is claimed by the petitioners have no manner of application.
14. Reliance is placed upon a decision of a Division Bench of this Court in the case of ***Mitali Paul Vs. State of West Bengal & Ors.*** reported in ***2011 (3) CLJ (Calcutta) 47.*** The said decision was dealing with a case of interest in the form of damage in a claim for interest on compensation awarded by the

victim of a railway accident. Interest was being claimed on an award passed by the Railway Claims Tribunal.

15. Insofar as the decision of ***Ghaziabad Development Authority Vs. Union of India and another*** reported in ***2000 (6) SCC 113***, this Court is of the view that the facts of the case are distinguishable from the facts of the instant case. In the said case, the Hon'ble Supreme Court was considering a case of breach of contract and delay in payment and compensation to allottees of land against the Ghaziabad Development Authority. In the said case, the allottees were seeking interest in addition to damages ordered by the Consumer Disputes Redressal Forum under the provisions of the Consumer Protection Act, 1995. The award of interest was considered under the general law of contract and equity.
16. The last decision cited by the learned counsel for the appellants was that of a Division Bench of this Court in ***M.A.T. 1661 of 2013 (M/s. S.H. Pharmaceuticals Ltd. Vs. State of West Bengal & Ors.) on 10th September, 2014***. In the said case, the claim of an employee who was dismissed from service and

obtained an award of reinstatement and backwages was being considered by the Division Bench. A Co-ordinate Bench of this Court has applied the dicta laid down by the Supreme Court in the case of **S.K. Dua Vs. State of Haryana & Anr.** reported in **2008 (3) SCC 44**.

17. Having considered the **S.K. Dua decision (supra)**, this Court finds that the facts and circumstances in which interest was ordered in the said decision are quite different from the facts and circumstances of the instant case. In the said case, a retired senior officer of the State Government did not receive his terminal dues of about Rs. 12 lakhs for a substantial period of time after retirement. Invoking the provisions of Articles 14, 16 and 21 of the Constitution of India, the Supreme Court held that delayed payment of terminal benefits of an employee would automatically attract interest under the general law of the land. Such general law includes the principles of equity and the provisions of the Contract Act.
18. It is now very well-settled by the Supreme Court that where there is specific legislation

down to govern the relations between parties, general principles of law and equity would have no manner of application whatsoever.

19. The **S.K. Dua decision (*supra*)**, cannot, therefore, come to the aid of the petitioners.

20. This Court finds that the petitioners have been clearly forum shopping after waiving their right to claim interest in four several proceedings. Firstly, before the Deputy Labour Commissioner, secondly before the Chief Judicial Magistrate in the execution case and in two several revisional applications being CRR 953 of 2000 and CRR 880 of 2003.

21. The claim of the petitioners subsequently made before the Tribunal under the provisions of the Act of 1947 ought to have been held to be in gross abuse of process of law. The Tribunal even otherwise did not have the authority to travel beyond the settlement dated 28th December, 1998.

22. There are no other provisions within the Act of 1947 to award interest to the workman. It is a completely different issue, had the workman invoked the provisions of the Interest Act of 1974, while raising their first demand for payment under the settlement

dated 28th December, 1998. Even if raised, such prayer must be deemed to have been abandoned since it was not raised in the two CRRs and particularly in CRR 880 of 2003 which was disposed of by order dated 20th June, 2003.

23. For the reasons stated hereinabove, the appeal fails and hereby dismissed.
24. In view of the above, CAN 1 of 2024 shall stand disposed of.
25. There shall be no order as to costs.
26. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)