

**FMA 871 of 2023**

with

IA No. CAN 1 of 2023

(West Bengal Electronics Industry Development  
Corporation Ltd. Vs. Gopi Nath Pal & Ors.)

**Mr. Soumya Majumder**

**Mr. Victor Chatterjee**

**Mr. Ranajit Talukder**

**..... For the appellant**

**Mr. Gopi Nath Pal**

**..... Respondent no. 1**  
(in person)

The present appeal has been preferred by the West Bengal Electronics Industry Development Corporation Ltd. (in short, WBEIDC) challenging an order dated 10<sup>th</sup> August, 2023 passed by the learned single Judge in a writ petition being WPA 28682 of 2017 filed by the respondent no. 1 herein, namely, Gopi Nath Pal (in short, Gopi). By the said order, the learned single Judge directed, *inter alia*, as follows :

*'In the light of the discussions hereinabove, this Court directs the respondent nos. 4 and 5 to compute the retiral benefits of the petitioner by calculating the same in a manner by which the petitioner's Pay in 2017 was equivalent to Dipak Kundu's Pay at the time of his superannuation in November 2016. After taking the Basic Pay and the Gross Pay received by Dipak Kundu in 2016, all the necessary increments and the benefits till the date of his superannuation in October 2021 will have to be calculated. The retiral benefits will be calculated on the same basis. Any further contribution required to be made of the Employer's share of Provident Fund dues considering the increase in Basic Pay from 2017 will also be given to the petitioner.*

*Such computation will be done within one month from the date of this order. The arrears on account of such revised fixation of Pay shall be granted to the petitioner within 15 days*

*thereafter. The petitioner will also be entitled to interest @8% p.a. from November 1, 2021 (the date subsequent to the date of his retirement) till such time the actual dues are disbursed to the petitioner.'*

This case has a chequered history. Gopi was working as an accountant with the Webel Electro-Optics Limited (in short, WEOL) since the month of September, 1997. By an order dated 20<sup>th</sup> August, 1999, Gopi was relieved from WEOL with effect from 23<sup>rd</sup> August, 1999. Challenging the same, Gopi lodged a complaint before the Labour Commissioner, Government of West Bengal for intervention and for initiation of conciliation proceedings. As such conciliation failed, Gopi filed an application before the 2<sup>nd</sup> Labour Court, West Bengal with a prayer to adjudicate the illegal termination. Upon contested hearing, the issues involved were decided in favour of Gopi and it was held that he is entitled to reinstatement with effect from 23<sup>rd</sup> August, 1999 with full back wages and consequential benefits by an award dated 31<sup>st</sup> October, 2006. Challenging the same, WEOL preferred a writ petition being WP No. 1999 of 2006 which was dismissed by a judgment dated 7<sup>th</sup> April, 2016. Aggrieved by the same, WEOL preferred an appeal which was registered as APO 249 of 2016. Upon contested hearing, the said appeal was disposed of by a judgment dated 11<sup>th</sup> May, 2017 directing the employer to provide work to Gopi on the post of accountant or any other post in the clerical cadre with effect from 1<sup>st</sup> June, 2017 which carried

equivalent pay to that of accountant as on date. It was further directed that WEOL shall continue to pay salary month by month to Gopi till he attains the age of his superannuation, however, he shall not be entitled to any back wages or benefits thereof except for the purpose of calculation of his retiral dues/benefits (if any) that may accrue by taking his past services with WEOL. Thereafter, Gopi was issued a fresh letter of appointment on 21<sup>st</sup> June, 2017. As his pay scale was not properly fixed in consonance with the judgment delivered by the Hon'ble Appeal Court, Gopi preferred a fresh writ application which was disposed of by the judgment impugned in the present appeal. In the midst thereof, WEOL stood merged with the appellant herein and accordingly, WBEIDC was also impleaded in the writ petition subsequently.

Mr. Majumder, learned advocate assisted by Mr. Chatterjee, learned advocate appearing for the appellant submits that the judgment delivered by the Hon'ble Appeal Court would reveal that the Court moulded the relief of reinstatement with back wages in the peculiar facts and circumstances of the case and as such the said order ought not to be construed as an order towards reinstatement with all consequential benefits. On the basis of the judgment delivered in the appeal no indefeasible right accrued to Gopi in the matter of fitment of pay. Such argument, as advanced, was glossed over by

the learned single Judge and no finding was returned. Such infirmity warrants interference of this Court.

He argues that the learned single Judge erred in law in imposing unnecessary financial burden upon WBEIDC failing to appreciate that the period from 23<sup>rd</sup> August, 1999 till May, 2017 was only to be reckoned for the purpose of continuity of service and in consonance with such direction Gopi was placed in the appropriate pay scale and to the post of Senior Assistant on and from 1<sup>st</sup> June, 2017 at par with Dipak Kundu, who retired in the month of November, 2016.

*Per contra*, the respondent no. 1, appearing in person submits that WBEIDC had acted contrary to be directives contained in the judgment delivered on 11<sup>th</sup> May, 2017. By the said judgment it was categorically directed that WBEIDC would provide work to him on the post of accountant or any other post in the clerical cadre with effect from 1<sup>st</sup> June, 2017, which carries equivalent pay of accountant on the said date. Such direction was not complied with and his pay was not computed taking into consideration the past service rendered.

Drawing our attention to the judgment dated 11<sup>th</sup> May, 2017, he submits that the Hon'ble Appeal Court observed that he was being paid the wages last drawn by him under Section 17B of the Industrial Disputes Act, 1953 and he should be deemed to have been reinstated and the amount already paid to him under Section 17B of

the said Act would not be recovered and that as such it cannot be contended that for fitment of pay the Hon'ble Appeal Court disallowed his continuity of service.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The directions contained in a judgment need to be considered together and not in isolation. There is no inconsistency in the directions contained in the judgment dated 11<sup>th</sup> May, 2017 and such directions have attained finality amongst the parties. By the said judgment it was categorically directed that Gopi should be provided work either on the post of accountant or any other post in the clerical cadre with effect from 1<sup>st</sup> June, 2017, which carries equivalent pay to that of accountant as on date. As no employee was working in the post of accountant, WEOL chose to give the pay scale of one Dipak Kundu, as he was the only person, who used to work in the clerical cadre till 2016. In view thereof, the learned single Judge rightly observed that Gopi should have been inducted in June, 2017 with the basic pay that Dipak Kundu received and his gross pay could not have been less than that of Dipak Kundu. In the said conspectus, the contention of the appellant that as per the judgment dated 11<sup>th</sup> May, 2017, Gopi ought to have been paid the lowest level/stage of pay that the only clerical cadre employee was earning in WEOL, was rightly negated.

The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

In view thereof, the appeal and the connected application are dismissed.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

**(Partha Sarathi Chatterjee, J.)**

**(Tapabrata Chakraborty, J.)**