27.02.2024
Sl No.5
Court No.8
(gc)

MAT 1861 of 2023
CAN 1 of 2023

The Kalyani Spinning Mills Ltd. & Ors.
Vs.
Pradeep Kumar Mukherjee & Ors.

Mr. Sharanya Chatterjee,
Mr. Ayaskanta Ghosh,
...for the Appellants.
Mr. Puspal Chakraborty,
Mr. Prisanka Ganguly
...for the Respondent Nos.1 to 11.
Mr. Tapan Kr. Mukherjee, Ld. A.G.P.
Mr. Arindam Ghosh
...for the Respondent Nos.12 to 14.

1. The appellants are aggrieved by an order dated 19th July, 2023 passed by the learned Single Judge in a writ petition in which the petitioners have prayed for differential amount of leave encashment along with interest.
2. The writ petitioners are all retired employees of the appellants. Initially, they filed a writ petition being WP 13843(W) of 2016 for a direction upon the appellants for release of leave encashment salary, however, without any prayer for interest. This writ petition was filed in the year 2016 and disposed of on 30th August, 2016 by which the appellants were directed to release the leave encashment. Thereafter, the petitioners filed another writ petition being WP 890 (W) of 2019 for payment

of arrear salary and dearness allowance. The said writ petition was disposed of in presence of the parties with the following direction:-

> *"The funds were requisitioned in August 2018. The Finance Department of the Government of West Bengal is directed to release the funds in favour of the Company at an early date and in any event within three months from the date of communication of this order. The Company shall release the arrear dearness allowance in favour of the petitioners within four weeks from the date of receipt of funds from the Finance Department along with interest at the rate of eight per cent per annum from the date of entitlement of the petitioners to receive such dearness allowance till the date of payment thereof. In the event, the funds requisitioned by the Company from the Finance Department do not include the interest element, immediate requisition may be sent by the Company to the Finance Department for release of funds on account of interest. Interest should be calculated and paid both on arrear dearness allowance and the pay revision as per Fifth Pay Commission."*

3. Thereafter the writ petitioners filed the third writ petition, namely, WP 3646(W) of 2019 praying for interest on account of delayed payment of leave encashment. This application was dismissed on 28th March, 2019 on the principles of *res judicata*. Subsequent thereto, the present writ petition has been filed being WPA 19808 of 2019 in which the writ petitioners have prayed for

release of the differential amount on account of leave salary and/or leave encashment after implementation of arrear dearness allowance and further to pay an interest on such arrears due from the date of its payable till payment. The learned Single Judge disposed of the writ petition by directing the Managing Director, Kalyani Spinning Mills Limited, the 5th respondent herein to consider the claim made by the petitioner on account of leave encashment as indicated in the Chart from pages 10 to 12 of the writ petition and to pass a reasoned order after giving an opportunity of hearing to the authorized representative of the writ petitioners and to communicate such decision to the petitioners accordingly. The entire exercise shall be completed within a period of six weeks from the date of receipt of the server copy of the said order. This order is presently under challenge.

4. The learned Counsel for the appellants/ Company has submitted that the 4th writ petition is barred by principle of constructive *res judicata* as well as Order 2 Rule 2 of the Code of Civil Procedure.

5. In order to appreciate the said argument, it is necessary to refer to the pleadings in the 4th writ petition with regard to their claim for the

differential amount. In paragraph 7 of the writ petition, the writ petitioners have stated that the cause of action for filing 4th writ petition was the failure of the Mill to pay the differential amount entitled by the petitioners towards leave encashment and/or leave salary after payment of arrear on account of dearness allowance declared by the Government of West Bengal way back in the month of December, 2010 and January, 2012 respectively. The writ petitioners have stated that the arrear on account of such dearness allowance was paid to the petitioners only in the year 2019 and in compliance of the order dated 6th February, 2019. The petitioners have disclosed a Chart indicating the differential amount payable on the basis of the implementation of the order dated 6th February, 2019 which was not possible for the writ petitioners to assess at the time when the earlier writ petition or petitions were filed with regard to the amount that would be payable to each of the writ petitioners on account of leave encashment after the pay revision as per 5th Pay Commission. In fact, as observed by the learned Single Judge that one Khokan Chandra Nag as mentioned in the said Chart, there was no differential amount on account of leave encashment. It was, fact, a mistake and an error on the part of the appellants to calculate the leave encashment payable to the writ petitioners on account of Pay Revision and in the course of implementation of the order dated 6th February, 2019. The petitioners have specifically calculated the differential amount on account of leave encashment, the factum of which is not being denied. The appellants do not dispute that if the said order is implemented in its true spirit and correctly the writ petitioners would not be entitled to the differential amount as claimed. However, this aspect of the matter by reason of the order of the learned Single Judge now is required to be considered upon verification of the Chart as directed by the learned Single Judge. There cannot be any doubt that the claim of the petitioners on account of differential amount of leave encashment is only after implementation of the arrear dearness allowance in terms of the order dated 6th February, 2019.

6. The learned Counsel for the appellants and for the State have argued on the principle of *res judicata* and bar under Order 2 Rule 2. The learned Counsel for the Company has relied upon a decision of the Hon'ble Supreme

Court in ***State of U.P. Vs. Nawab Hussain*** reported at ***AIR 1977 SC 1680*** to argue that the principle of constructive *res judicata* would apply in a writ petition. There cannot be any doubt that the principle of *res judicata* and/or constructive *res judicata* or bar under Order 2 Rule 2 would be applicable in a writ petition, however, in order to arrive at whether the future relief would be barred on the aforesaid principle, one has to carefully look into the pleadings and whether there has been any relinquishment of any right that was available to the writ petitioners at the time when the earlier proceeding was initiated.

7. In view of the fact that the writ petitioners could not have made their claim in the earlier writ petitions, the principle of *res judicata* or constructive *res judicata* or bar under Order 2 Rule 2 would not apply in the instant case.

8. Under such circumstances, the appeal fails.

9. The learned Counsel for the petitioners has prayed for extension of time for compliance of the order passed by the learned Single Judge.

10. In view thereof, we extend the time by a period of four weeks from the date of receipt of the server copy of this order by the Managing Director of the appellants for

compliance of the order dated 19th July, 2023.

11. Accordingly, the appeal and the application are dismissed.

12. However, there shall be no order as to costs.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.) **(Soumen Sen, J.)**