28.11.2025
Ct. 3
Item No.
AD 7
Sayandeep

WPA 22655 of 2023

Sudin Provat Mallick
Versus
The Assistant Provident Fund Commissioner,
Exempted Compliance and Jute Cell Hooghly
Employees' Provident Fund Organization & Anr.

Mr. Sudin Provat Mallick
... For the petitioner-in-person

Mr. Soumya Majumder, Sr. Adv.
Ms. Sanjukta Dutta
... For the respondent no. 2

Mr. S.C.Prasad
...For the PF authorities

1. The present writ petition has been filed, inter alia, praying for a direction upon the provident fund authorities to disburse the guaranteed statutory pension along with the interest in terms of paragraphs 16A of the Employees' Pension Scheme, 1995 (hereinafter referred to as the said Scheme).

2. The matter has checkered history. The petitioner had joined the ICI India Private Limited on 1st March, 1997 as a clerk on probation. After successfully completion of his work, he continued in the company as a clerk. The respondent No. 2 herein is the successor-in-interest of ICI India Private Limited insofar as the award dated 24th September, 2014 is concerned. In this context, it would be relevant to indicate that while in service, the petitioner's service was terminated with effect from

23rd February, 1999. Following the above, an industrial dispute was raised, and by an order dated 7th October, 1999 read with corrigendum dated 7th July, 2011 a reference had been made under sub-Section 10(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act"), thereby referring the disputes as to whether the termination of the petitioner with effect from 23rd February, 1999 is justified. The aforesaid proceedings before the tribunal culminated in an award dated 24th September, 2014 whereby the tribunal was, inter alia, pleased to direct as follows:

> *"Viewed from all angles, this Tribunals is of the considered view that Shri Mallick is entitled to 75% of the back-wages from the date of termination till the date of his superannuation as his termination from services has been held to be illegal. He is also entitled to consequential benefits along with back-wages for the said period. The management of the company is directed to make payment as per order of this Tribunal to Shri Sudin Provat Mallick within one month from the date of publication of this Award after adjustment of the payment towards interim relief already make by the management, failing which, the payable amount shall carry interest @ 9% p.a. from the date of publication till the date of recovery."*

3. Although, the above award was challenged, the challenge ultimately did not succeed and culminated in the Judgment delivered by the Division Bench of this Court dated 4th May, 2022 by, inter alia, observing as follows:

> *"51. In course of his submission Mr. Mallick drew the attention of the court to the order dated January 27, 2016 passed in MAT 18840 of 2015 and submitted that by the said order liberty was granted to the appellant to raise the issue with regard to non-payment*

of his due He further submitted that learned single judge while passing the order impugned failed to take note of the directions contained in the said order. He submitted that a substantial sum of money on account interest on provident fund amount is due to the appellant and direction is to be passed upon the respondent company to pay su amount. According to him a sum of Rs. 5, 76, 718 was due as September, 2015 and the said amount has also increased in t meantime.

52. A learned Single judge by an order dated 10.12.2014 passed interim direction upon the respondent authority to release provident fund dues in favour of Mr. Mallick within a specified time. Since such direction was not complied with a contempt application was filed being WPCRC 316 (W) of 2015 and on such application an order passed by learned single judge on 28.09.2015 directing the company to pay simple interest at the rate of 8% per annum. Mr. Mal preferred an appeal being MAT 1884 of 2015 contending that as the statute he is entitled to higher rate of interest than 8%. Hon'ble Division Bench by an order dated 27.01.2016 reserved liberty to Mr. Mallick to seek such enhancement of interest at time of final consideration of the writ petition on merits.

53. The grievances of Mr. Mallick is that in spite of the fact that he raised such issue before the learned single judge at the time of hearing the writ petition but the learned single judge by the order impugned instead of deciding the said issue observed that he shall be entitled to file afresh only for the purpose of getting interest on provident fund amount if so advised, in accordance with law if it is available.

54. In course of hearing of the appeal Mr. Mallick filed a statement of interest on accumulated provident fund of Rs. 4,29,900/- (Rupees four lakh twenty nine thousand nine hundred) lying to his credit as per the rates declared by the government from August, 2000 to September, 2015. It appears from the said statement that the sum of Rs. 5, 76, 718/- (Rupees five lakh seventy six thousand seven hundred eighteen) is lying due and payable and, according to him, such calculation was made on the basis of rate of interest declared by the Government of India from time to time. Apart from the said statement no other material was placed by the parties at the time of hearing of this appeal for this court to arrive at a *finding as to the amount which is still due to the petitioner on account of interest on accumulated provident fund. The provident fund authority is also not a party to this proceeding as this proceeding arises out of an award passed by the Tribunal for adjudication of the issue referred before it as to whether the termination of service of Mr. Mallick was justified and other reliefs which he is entitled. The issue relating to interest on accumulated provident fund was not raised before the Tribunal and thus, there could not have been any adjudication of such issue by the Tribunal. A writ court exercising powers under judicial review is to consider only whether the learned Tribunal was justified in passing the award. However, in view of the liberty granted to Mr. Mallick by a co-ordinate bench to raise such issue, this court made an endeavour to decide the same but is unable to render any conclusive finding with regard to Mr. Mallick's entitlement on account of interest on accumulated provident fund due to lack of materials in this regard. In view thereof the impugned order passed by the learned single judge in so far as liberty was granted to Mr. Mallick to file a fresh writ petition for the purpose of getting interest on provident fund amount is required to be modified.*

55. This Court is of the considered view that the interest of justice would be sub served if liberty is granted to Mr. Mallick to make a detail representation before the appropriate provident fund authority with regard to his claim for interest on accumulated provident fund.

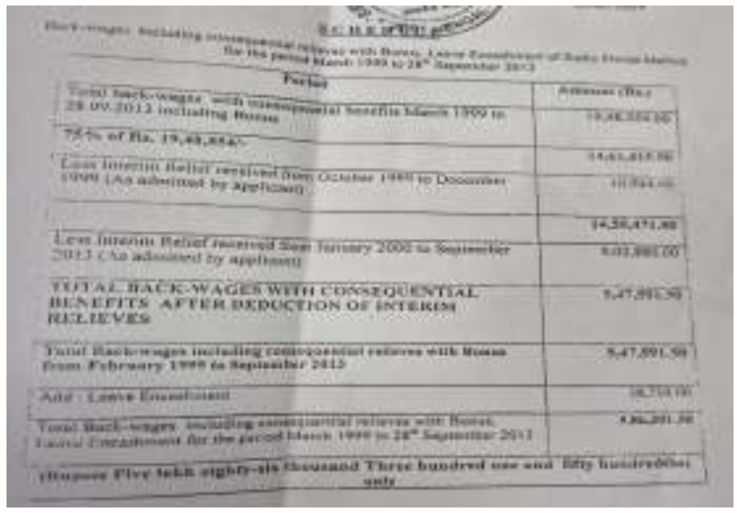
56. For the reasons as aforesaid, award of the learned Tribunal dated 24.09.2014 directing the management to pay back wages is not interfered with by this Court. Consequently, WP No. 5437(W) of 2015 also stands dismissed. The order of the learned Single Judge granting liberty to the appellant herein to file a fresh writ petition for interest on provident fund is modified by granting liberty to Mr. Mallick to make a detailed representation before the appropriate provident fund authority with regard to his claim for interest on accumulated provident fund. If such representation is made before the appropriate authority, the said authority shall consider the representation of the petitioner and dispose of the same by passing a reasoned order as *expeditiously as possible but positively within a period of four weeks from the date of submission of such representation after giving an opportunity of hearing to the petitioner and the management. The pending reference being Case No. VIII-1/2003 also stands disposed of in terms of this order. The part of the impugned order passed by the learned Single Judge granting liberty to Mr. Mallick to renew his prayer for full back wages after the Tribunal takes a decision on the reference case arising out of the transfer order also stands set aside. The order of the learned Single Judge dated 21.08.2019 is modified only to the extent as indicated hereinbefore. The appeal along with the connected application accordingly stand disposed of. There shall be, however, no order as to costs.*

57. Registry is directed to communicate this order to the learned Tribunal forthwith to enable the Tribunal to take appropriate steps in Reference Case No. VIII-1/2003.

58. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

I agree."

4. In the interregnum a proceedings under Section 33C(2) of the said Act, was initiated by the petitioner which was registered as computation case 24 of 2022. By a judgment and order dated 30th May, 2024 the learned Judge 1st Court, Kolkata was pleased to dispose of such proceedings thereby directing payment of consequential benefits on the following terms:

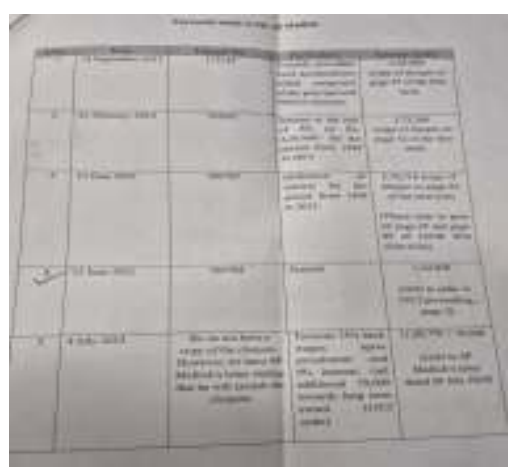


SCHEDULE

Back-wages including consequential relieves with Bonus, Leave Encashment [illegible] for the period March 1999 to 28th September 2013

Particulars	Amount (Rs.)
Total back-wages with consequential benefits March 1999 to 28.09.2013 including Bonus	19,48,[illegible]
75% of Rs. 19,48,[illegible]/-	14,61,[illegible]
Less Interim Relief received from October 1999 to December 1999 (As admitted by applicant)	[illegible]
	14,50,471.[illegible]
Less Interim Relief received from January 2000 to September 2013 (As admitted by applicant)	[illegible]
TOTAL BACK-WAGES WITH CONSEQUENTIAL BENEFITS AFTER DEDUCTION OF INTERIM RELIEVES	5,47,891.[illegible]
Total Back-wages including consequential relieves with Bonus from February 1999 to September 2013	5,47,891.[illegible]
Add : Leave Encashment	[illegible]
Total Back-wages including consequential relieves with Bonus, Leave Encashment for the period March 1999 to 28th September 2013	[illegible]
(Rupees Five lakh eighty-six thousand Three hundred one and fifty hundredths only)	

5. According to Mr. Majumder, learned senior advocate representing the respondent No. 2 the entire amount as directed by the learned Judge in 33C(2) proceedings has been disbursed in favour of the petitioner. In support of such contention, he has placed before the Court a chart showing payments made to the petitioner. To morefully appreciate the same, the aforesaid chart is extracted herein below:



6. Mr. Mallick, appearing in-person would, however, contend that the aforesaid payment has nothing to do with payment of pensionary benefits under the said scheme. Insofar as the determination made by the learned Court in 33C(2) proceedings is

concerned, a challenge to the same is pending in WPA 5579 of 2025.

7. It may be placed on record that the provident fund authorities pursuant to the directive issued by this Court has filed a report wherefrom it would transpire that the provident fund authorities have only received provident fund computations payable to the petitioner up to the date of his termination in the year 1999.

8. Mr. Prasad, learned advocate, representing the provident fund authorities has, however, clarified that the respondent No. 2 or its predecessor had not made payment on account of the pensionary benefits in terms of the said scheme.

9. I, however, find that Mr. Majumder, learned senior advocate taking note of the pendency of the proceedings and to resolve the disputes once and for all on instructions would submit that the respondent No. 2 is ready and willing to make payment of the employer share of the pension contributions to the extent of 8.33% on the amount payable to the petitioner by treating the petitioner to be entitled to a pensionable salary of Rs. 5,000/- up to May 2001, and for the balance period up to the date when the petitioner reached his superannuation age to be Rs. 6500/- i.e. upto the date when the petitioner reached 58 years.

10. Having heard the learned advocates appearing for the respective parties including the petitioner appearing in-person, I find that only issue that falls for consideration in the present petition is with regard to non-payment of pensionary benefits in favour of the petitioner under the said scheme. In this context, it may be relevant to note that since the petitioner was not in service, it is difficult for respondent No. 2 to make the computation of the actual salary pyable, however, to resolve such dispute once and for all since the respondent No. 2 has agreed to make payment of the employer share of the pensionary benefits as per the said scheme by treating the petitioner to be an eligible member under the said scheme, I direct that for the purpose of this petition, the petitioner's pensionable salary shall be computed as the maximum eligible salary per the statutory ceiling as was applicable from time to time. Accordingly, I direct the provident fund authorities to re-compute the amount payable by the respondent No. 2 on account of employer share of pension for the period between 1995 till the petitioner reached the age of 58 years. The aforesaid computation must be made by the provident fund authorities to the respondent No. 2 within a period of 2 weeks from the date of communication of this order. Immediately upon receipt of the communicated amount, the

respondents provident fund authorities must prepare and issue pension payment order and start disbursing pension along with arrear pension to the petitioner.

11. With the above observations and directions, the writ petition is disposed of.

12. The above writ petition shall, however, not interfere the right of the petitioner in the writ petition being WPA 5579 of 2025 which seeks to challenge the determination made under Section 33C(2).

(Raja Basu Chowdhury, J.)