

19.02.2025
Item No.6
BR

WPA 28369 of 2024
Tarak Roy and Ors.
-vs-
State of West Bengal and ors.

Mr. Victor Chatterjee
.... For the petitioners
Mr. Somnath Ganguly, Sr. Adv, AGP,
Mr. Rajaram Banerjee
... for the State

Affidavit of service filed by the petitioner be kept with the record.

The present writ application has been preferred praying for direction upon the respondents to act as per the order dated 21.09.2022 passed by the First Labour Court, West Bengal in Case No. 04/18/33C(2) under Section 33C(2) of the Industrial Disputes Act, 1947.

On hearing the learned counsel for the parties and considering the materials on record it appears that vide an award dated 12.9.2017 the First Industrial Tribunal, Calcutta had directed as follows:

“The management namely, M/s. Writer Safeguard Pvt. Ltd. is directed not to give any effect or further effect of the order of

transfer dt. 23.12.2011 in respect of the aforesaid 8 workmen. Said management is directed to allow those 8 workmen to join their normal duties where the workmen used to perform such duties prior to 23.12.2011. The said management is also directed to pay to the each of the said 8 workmen their back wages to the extent of 25% from the date of last payment made to them till the date of their joining, in default, the said amount will carry simple interest @ 7% per annum.”

The petitioners within a month prayed before the respondent company for implementation of the said award dated 12.9.2017 and expressed their willingness to join their duties from the date of their letter.

It is submitted that the said award was challenged in the High Court and was pending hearing for some time. The petitioners then filed an application under Section 33C (2) of the Industrial Disputes Act praying for computation of their monetary benefits. The Labour Court in disposing of the said application held as follows:

“ Thus this Court on meticulous consideration Annexure to computation application by applicants and materials on record including exhibits holds that rate of

last drawn for workman Tarak Roy was Rs. 7,200/- per month, for workman Soumitra Mondal it was Rs. 6,679/- per month, for workman Dipankar Dutta it was Rs. 9,818/- per month, for workman Madhusudan Sen it was Rs. 7,400/- per month for workman Swapan Das it was Rs. 10,721/- per month, for workman Gobinda Halder it was Rs. 6,800/- per month, for workman Soumen Mondal it was Rs. 6,251/- per month.

Besides , there cannot be any doubt that Hon'ble Division Bench, Calcutta High Court passed the order on 30.6.2022 holding that the award of the Tribunal as well as the order passed by the Ld. Single Judge do not suffer from infirmity and dismiss the appeal of the opposite party company. Consequently due to pendency of such proceedings, the opposite party company could not pay any back-wages to the workmen @25% as awarded by the Ld. First Industrial Tribunal. So this Court is of the view that the interest claimed by the workmen shall be computed only from 1.7.2022 till date 20.9.2022."

Being aggrieved with the said order the petitioners have approached this Court. An order of a Co-ordinate Bench dated 8.2.2024 passed in WPA 24357 of 2023 has been placed before this Court wherein the said Co-ordinate Bench held:

“Accordingly, this Court holds that the increment and the wages payable on paid holidays come within the meaning of Wages and, therefore, while paying the back-wages the private respondent, being the employer, shall pay to the petitioners the yearly increment from 24.12.2011 to 31.3.2018 and wages payable on paid holidays from 2012 to October, 2017.

Leave Salary and Yearly Bonus are not part of the Wages. Therefore, these amounts cannot be paid by the employer while complying with the said Award dated 12.9.2017”.

It is further seen that, though the petitioners expressed their willingness to join their duties on 25.10.2017, they could not do so, due to the pendency of the appeal before the High Court which was finally dismissed on 30.6.2022.

The petitioners have not been paid their full wages since their willingness to join but were paid at the rate of 25% during the period till dismissal of the appeal by the High Court.

It appears that there was no laches on the part of the employees and as such they are entitled to full wages from the date of willingness to join, which the company did not permit by filing an appeal. The interest of justice requires that the petitioners who

expressed their willingness to join are entitled to full back wages from the date of willingness to join.

Under such circumstances, the employer is directed to pay the full wages to the petitioner from the date of willingness to join after the award along with yearly increment and wages payable on paid holidays. The said payment is to be made within one month from the date of communication of this order.

WPA 28369 of 2024 is accordingly disposed of.

Parties to act on the server copy of this order.

Urgent photostat certified copy of this order, if applied for, be given to the learned counsel for the parties on usual undertakings.

(Shampa Dutt (Paul), J.)