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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 23155 of 2023

**M/S Kamala Tea Company Ltd.
-Vs-
The State of West Bengal & Ors.**

Mr. Srijib Chakraborty,
Mr. Aditya Mondal

... for the petitioner

Mr. Rajarshi Basu,
Mr. K. M. Hossain

... for the State

The matter pertains to Group-III of the Classification List, the determination whereof is presently with this Bench. The matter has been brought into the list on being mentioned by citing urgency.

The petitioner is the employer. The employer has suffered an Award Dated 31st January, 2019 passed by the learned 2nd Labour Court, Kolkata. The operative portion of the Award is as follows:

“that the instant petition U/s. 10 (1B)(d) of Industrial Disputes Act, 1947 is hereby allowed on contest but without cost. The applicant is hereby entitled to get reinstatement of his service and full back wages. The Opposite Party is hereby directed to reinstate the applicant to his original position of service and to pay him full back wages starting from 26th day of June, 2006 till his reinstatement, along with other consequential benefits within a

period of 90 days from the date of passing this award, in default the applicant is at liberty to put the award in execution.”

Despite there being specific direction for reinstatement of the service of the employee (respondent no. 5) with full back wages within a period of 90 days from the date of passing of the Award, the employer had filed a review petition before the learned 2nd Labour Court on or about 20th March, 2019. The said review petition was heard and dismissed on 6th April, 2022. The certified copy of the order of review was obtained on 5th May, 2022. The employer thereafter filed an application for recalling of the order passed in review. The said recalling application was dismissed on 19th June, 2023. The employer being the petitioner herein has, therefor, exhausted all the avenues available to it before the Labour Court and being unsuccessful, has filed this instant writ petition on 22nd September, 2023. The writ petition was kept pending. The urgency cropped up when the Award has been put into execution by the employee (respondent no. 5).

The fact remains that in this process, the employee (respondent no. 5) has not been reinstated within 90 days from 31st January, 2019 and has also not been paid the back wages. The law is very clear. In view of the provisions of Section 17B of the Industrial Disputes Act, 1947 (in short, ‘1947 Act’), the employer is required to pay the workman during the period of

pendency of proceedings before the High Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court.

Although the matter was mentioned for being brought into the list but no notice has been served on the private respondent (employee). The affidavit of service filed in Court, which is taken on record, has been affirmed on 3rd October, 2023, i.e. when the writ petition was filed.

The learned advocate for the State is represented but the employee (respondent no. 5) being the most effected person remains unrepresented probably because no notice has been served upon him informing him that the matter has been mentioned and will be taken up by this Bench.

In the instant case, the petitioner says that the claim of the employee (respondent no. 5) before the Labour Court is barred by limitation. Moreover, it is contended that the learned Labour Court had no jurisdiction to pass the Award. It is further contended by the petitioner that the Award is an *ex parte* Award. On perusal of the Award, it is clear that the petitioner (employer) was aware of the proceedings. It has filed its written statement but did not choose to adduce

evidence as recorded by the Labour Court. In such background, it cannot be contended that the Award is an *ex parte* Award. So far as the jurisdiction and the limitation aspect are concerned, the said issues have been considered by the Labour Court while passing the award but will be again considered at the time of hearing of the writ petition since a challenge to the findings on these issues have been raised. However, the provisions of Section 17B of the 1947 Act does not make any distinction with regard to an Award being challenged on the ground of jurisdiction or limitation. The statutory provision directs the payment of back wages in case where the challenge to an order of the Labour Court is pending before the High Court. Since the employee (respondent no 5) is not before the Court, an affidavit which is required to be obtained from him as provided under Section 17B of the 1947 Act cannot be obtained before the Puja Vacation which commences from 9th October, 2024.

In the aforesaid facts and circumstances, the petitioner (employer) is directed to compute the back wages in terms of the Award dated 31st January, 2019 for the period prior to his reinstatement and the wages payable to the employee(respondent no. 5) on being reinstated in terms of the Award dated 31st January, 2019 till 30th September, 2024. The petitioner is further directed to deposit the entire amount of back wages as

also the wages the employee (respondent no. 5) has become entitled to on being reinstated till 30th September, 2024 with the Registrar General, High Court, Calcuta by 8th October, 2024 failing which the order under challenge will become immediately executable notwithstanding the pendency of the writ petition. In the event the money is deposited by the petitioner as directed, the Registrar General of this Court shall keep it invested in an interest bearing account and have the same renewed from time to time until further orders and the order impugned shall remain stayed till the disposal of the writ petition or until further orders whichever is earlier.

Let this matter appear before the regular Bench immediately after the ensuing Puja Vacation.

(Arindam Mukherjee, J.)