

Writ Appeal  
*Presents:(MOHIT S. SHAH, CHIEF JUSTICE)*  
*And*  
*(K.J. SENGUPTA, J.)*  
Judgement on 04 04.05.  
F.M.A. 339 of 2005

Points:

**Second writ:** Order passed in 1999- Post-retiral benefits of the deceased employee had not been paid- whether second writ maintainable-Constitution of India-Art. 226

Facts:

The previous order of the Court was passed on 18th March, 1999 and the period of more than one year had already elapsed when the second writ petition, giving rise to the present appeal, was filed. Though this Court may have the jurisdiction to pass appropriate orders in the contempt jurisdiction for compliance of the previous order dated 18th March, 1999, but other proceedings are also maintainable for giving similar directions or even the same directions again. Moreover, the contempt proceedings were barred when the second writ petition was filed. Therefore, also the learned Single Judge ought not to have declined to exercise the discretionary writ jurisdiction on the ground of availability of the remedy for contempt.

Held:

Having regard to the fact that the order dated 18th March, 1999 had become final as the same was not challenged and the directions given as far back as on 18th March, 1999 regarding the post-retiral benefits of the deceased employee had not been complied with for a long time, even after production of the succession certificate, which, according to the learned advocate for the appellant/writ petitioner, was produced before the authorities, this appeal should be allowed and the matter deserves to be remitted back to the learned Single Judge for passing appropriate orders for payment of post-retiral benefits to the concerned heirs of the deceased employee who are entitled to receive the same.

Para-4

Md. Salauddin....For the appellant

The Court:

This appeal is directed against the order dated 2nd April, 2004 of the learned Single Judge dismissing the writ petition of the appellant herein for recovery of post-retiral dues only on the ground that there was previous order dated 18th March, 1999 of this Court and that hence, appropriate remedy for the appellant was to file contempt application for violation of the previous order.

2) The learned advocate for the appellant submits that the previous order of the Court was passed on 18th March, 1999 and the period of more than one year had already elapsed when the second writ petition, giving rise to the present appeal, was filed. It is further submitted that though this Court may have the jurisdiction to pass appropriate orders in the contempt jurisdiction for compliance of the previous order dated 18th March, 1999, but other proceedings are also maintainable for giving similar directions or even the same directions again. Moreover, the contempt proceedings were barred when the second writ petition was filed. Therefore, also the learned Single Judge ought not to have declined to exercise the discretionary writ jurisdiction on the ground of availability of the remedy for contempt. No one appears for the respondents, though served.

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3) In the facts and circumstances of the case, we find considerable substance in the submission of the learned advocate for the appellant that the contempt proceedings were barred as the one year period of limitation, stipulated in section 20 of the Contempt of Courts Act, 1971, had already expired when the second writ petition was filed in the year 2004.

4) Having regard to the fact that the order dated 18th March, 1999 had become final as the same was not challenged and the directions given as far back as on 18th March, 1999 regarding the post-retiral benefits of the deceased employee had not been complied with for a long time, even after production of the succession certificate, which, according to the learned advocate for the appellant/writ petitioner, was produced before the authorities, we are of the view that this appeal should be allowed and the matter deserves to be remitted back to the learned Single Judge for passing appropriate orders for payment of post-retiral benefits to the concerned heirs of the deceased employee who are entitled to receive the same.

5) In the result, the impugned order dated 2nd April, 2004 of the learned Single Judge is set aside and the writ petition being W.P. 3953(W) of 2004 shall be heard and decided by the learned Single Judge according to the present determination, as F.M.A. 339 of 2005 expeditiously as possible and preferably within three weeks from the date, this order is brought to the notice of the learned Single Judge. The appeal stands disposed of accordingly. There will be no order as to costs.  
*(MOHIT S. SHAH, CHIEF JUSTICE)*  
*(K.J. SENGUPTA, J.)*