
(1993) 07 CAL CK 0044
In the Calcutta High Court
Case No : C.O. No's. 7423-24 (W) of 1991

Alliance Mills (Lessees) Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 02-07-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 15, 15(1), 15(2), 17B

Citation : 98 CWN 284 : (1993) 2 ILR (Cal) 461

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : Amaresh Chakrabarti, Bulu Chatterjee and M. Mishra, for the Appellant; D.P. Mazumdar and Sambhunath Dey, for the Respondent

Final Decision : Dismissed

Judgement

Ajoy Nath Ray, J.

1 The writ Petitioner employer has made this writ application challenging an order of October 15, 1990, passed by the Fifth Industrial Tribunal whereby the third Respondent Pankaj Kumar Nath was directed to be paid interim maintenance u/s 15(2)(b) of the Industrial Disputes Act, 1947, as amended in West Bengal. Section 15 as applicable in West Bengal is as follows:

West Bengal - (i) Section 15 of the principal Act shall be renumbered as Sub-section (1) of that section and in Sub-section (1) as so renumbered, the words "a Labour Court, Tribunal or" shall be omitted,

(ii) After Sub-section (1) as so renumbered, the following Sub-section shall be inserted:

(a) after filing of statement and taking of evidence, give day to day hearing and give its award, other determination or decision in the manner specified in Section 17B without any delay ;

(b) upon hearing the parties to the dispute, determine, within a period of sixty

days, from the date of reference under Sub-section (1) of Section 10 or within such shorter period as specified in the order of reference under Sub-section (1) of Section 10, the quantum of interim relief admissible, if any:

Provided that the quantum of interim relief relating to discharge, dismissal retrenchment of termination of service of workmen shall be equivalent to subsistence allowances as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969.

2. The workman was dismissed sometime in 1976. An earlier dispute raised by the Union in 1979 proved to be infructuous because the Union at the material time had lost its registration.

3. Ten years thereafter the Government sought to raise and refer the dispute on August 4, 1989.

4. An interim order restraining giving of effect to the order of the Fifth Industrial Tribunal was obtained in aid of the writ on May 8, 1991.

5. This is an application on the part of the dismissed workman for vacating of the said interim order.

6. The learned Counsel for the dismissed workman has relied upon two cases being that of Ganges Printing Ink Factory Employees Industrial Co-Operative Society Ltd. and Another Vs. The 7th Industrial Tribunal and Others, and General Electric Company of India Ltd. v. 5th Industrial Tribunal and Ors. (1990) 1 C.H.N. 453. The first is a Division Bench judgment of this Court and next is the decision of a learned Single Judge.

7. I am bound by the above two decisions, but it does not appear to follow therefrom that in every case where a workman in relation to a raised industrial dispute has been dismissed, there must necessarily follow an interim relief and that only the quantum therefore is to be determined by the labour authority.

8. I have not been able to find out from the Statute any particular, section which grants the authority power to grant interim relief pending the first decision of the First Labour Authority. The only section is the said West Bengal Act 15(2)(b) which speaks of determination of the quantum.

9. As opposed to this there is Section 17B of the 1947 Act under which an interim payment is a must where a favourable decision of a Labour Court is taken for challenge either to the High Court or to the Supreme Court. In my opinion it cannot be said at this stage without further examination of the matter in the hearing of the main writ that by introduction of Section 15(2)(b), the West Bengal Government has totally changed the status of the dismissed workman in West Bengal and that a dismissed workman in this State enjoys the same benefits of interim relief even pending the decision, of the First Labour Court which workmen over the rest of India enjoy only when they have won the first reference before the concerned Labour Court.

10. The reference itself by the Government made in 1989 has been challenged before the Industrial Tribunal. Whether such challenge is appropriately made before such Tribunal is not being pronounced upon by me at this stage. But it does appear the long delay between 1976 and 1989 during which the workman did subsist without any subsistence allowance is an extremely material and relevant consideration which should be taken into account by any industrial authority before coming to a decision whether any interim relief at all is called for at this stage. It is only after coming to such a preliminary decision in favour of the workman that the Tribunal can further proceed to determine the quantum of such relief and if it does so proceed to determine the quantum, then it has to be bound by the proviso to Section 15(2)(b) and be compelled to grant subsistence allowance in case of a dismissed workman at the rate as is provided there.

11. Vacating the order dated May 8, 1991, would mean that nearly two years after passing of the order I would be compelling the writ Petitioner to pay subsistence allowance to the dismissed workman for the entire period from 1976 until date, i.e. for the past 17 years. In my opinion this should not be allowed summarily at this stage.

12. Under these circumstances, the vacating application is dismissed. Liberty to mention the writ matter for an early hearing were the Bench taking Appellate Side Service matters. Liberty to pray there for treating the vacating application as the opposition to the writ and the parties would naturally abide by the order to be passed by the learned Judge actually taking up the writ matter.

13. Let xerox copies of this order be made available to the learned Advocates for the parties on their undertaking to apply for and to obtain a certified copy thereof.