
(2013) 06 CAL CK 0004
In the Calcutta High Court
Case No : C.W.J.O.S. W.P. No. 593 of 2011

Assam Carbon Products Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2013) 5 CHN 51 : (2013) 139 FLR 16 : (2013) 5 LLN 502 : (2013) LLR 1218

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Soumya Majumdar and Sunny Nandy, for the Appellant; S.K. Bhattacharya and Somnath Banerjee, Council for the State, for the Respondent

Judgement

Dr. Sambuddha Chakrabarti, J.—The subject-matter of challenge in this writ petition is an award dated March 23, 2011 passed by the learned Judge 4th Industrial Tribunal in Case No. VIII-45/2004.

The principal issue which cropped up for consideration in the industrial dispute before the Tribunal below was whether the management of the writ petitioner was justified in changing the existing Service Rules of 1969 by new Service Rules of 1984.

The company had its factories in Guwahati and Hyderabad and had its corporate office in Kolkata. The service conditions of the workmen were guided by the General Service Rules of the company of 1969 along with periodical terms of settlement. The workmen represented by the union were aware of the facts of the General Service Rules of 1969. After the implementation of those rules appointment letters to different employees were issued. So far as one Sri Aditya Kumar Das is concerned mere was dispute relating to the age of his retirement. It appears mat the company circulated another service rules of 1984 for the Calcutta through a Memo dated January 30, 1997. The grievance of the workmen is that the company at no point of time intimated them that another service rule of the company was in existence. The company, in fact, always relied on the

1969 Rules and the settlements were also arrived at in terms thereof. Several instances of post 1984 appointments have been cited where it was particularly mentioned that service would be governed by the 1969 Rules.

2. The further grievance of the workmen was that the 1984 Rules were prepared without the consent of the workmen represented by the union which amounted to contravening the provisions of the Industrial Disputes Act, 1947 (the Act, for short). The new Rules of 1964 aimed at curtailing the age long right and service protection benefits of the workmen which they had been enjoying under the 1969 Rules. The real areas of difference between the existing service benefits under the old rules and the new rules have been tabled under the Award impugned. Since the company was unwilling to accede to the demands of the workmen it raised an industrial dispute and ultimately it resulted in a reference.

3. In the written statement the company had raised the issue of maintainability of the reference on the plea that the order of reference did not make it an industrial dispute within the meaning of section 2(k) of the Act and the union lacked locus standi. The further stand of the company was that when the 1969 Rules was introduced the Calcutta office had no existence. And as such it became necessary to have a separate service rules for Calcutta and in the year 1984 a separate rule was introduced taking into consideration the applicability of different labour laws in west Bengal. The company's further stand was that the service rules may be amended by the company from time to time as provided in the concerned Service Rules both of 1969 and of 1984. The company claimed that the 1984 Rules were more beneficial than the earlier one. The earlier rules were more discriminatory while the 1984 Rules introduced a uniform practice of retirement.

4. The learned Trial Judge of the Tribunal below after considering the respective submissions made by the respective parties and the evidence on record concluded that the union had the focus standi to raise the dispute before the appropriate forum and though the learned Judge was of the view that the 1984 Rules were more beneficial but no benefit could be given to the company as it failed to comply with the provisions of section 9A of the Act and the Tribunal was of the view that the company was not justified in changing the existing Service Rules.

5. Thus the principal issue involved in this writ petition is whether a notice u/s 9A of the Act was required to be issued for the introduction of the new rules in place of the 1969 Rules when the members of the union have taken benefit of the subsequent rules. The petitioner has particularly assailed the Award by holding that the Tribunal itself having held that the 1984 Rules were more beneficial than the earlier one the question of the latter Rules adversely affecting the right of the workmen did not arise.

6. A more interesting point taken by the petitioner is that section 9A of the Act is attracted only after the conditions of services of workmen are adversely affected

in respect of any matter specified in Schedule IV of the Act and, according to them, since none of the terms mentioned in the Fourth Schedule has been affected section 9A does not apply.

7. In support of their contentions the petitioners have relied on the case of Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt., Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, Janta Gramudiyog Samiti Delhi v. Vidyadhar Mishra and others 2007 (III) LLJ 528 and Sri Achyuta Charan Panda Vs. The Managing Director, Paradeep Phosphates Ltd.,

8. Admittedly no notice was issued to the Union by the company at the time of introducing the 1984 Rules. In support of their contention the respondents have referred to the case of M/s. Tata Iron and Steel Company Limited v. The Workmen and others 1972 (24) FLR 399 (SC) : (1972) 9 SCLJ 124 in mat case the Supreme Court had held that the real object and purpose of enacting section 9A of the Act is to afford an opportunity to the workmen to consider the effect of the proposed change and if necessary to represent their point of view on the proposal. In order to effectively achieve the object underlying section 9A it would be more appropriate to place on the Fourth Schedule read with section 9A a construction liberal enough to include change of weekly rest days from Sunday to some other week day. The Supreme Court had further held that prior consultation with workmen serves to stimulate the feeling of common joint interest of management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect harmonious and sympathetic co-operation in improving the dignity and status of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital.

9. The learned Trial Judge relied on this judgment and concluded that prior to change of rule an employer should comply with the provisions of section 9A read with 4th Schedule of the Industrial Disputes Act. This is evident from a bare reading of section 9A itself which inter alia injuncts an employer from effecting any change in the conditions of service applicable to a workman in respect of any matter specified in the IV Schedule to the Act without giving to the workmen likely to be affected by those changes a notice in the prescribed manner of the nature of the change proposed to be effected or within twenty one days of giving such notice provided that no notice shall be required for effecting any such change.

10. In the case of Hindustan Lever Ltd. v. Ram Mohan Ray and others (supra), the Supreme Court had held that under item 10 of the 4th Schedule to the Act rationalization or standardization or improvement of plan or technique likely to lead to retrenchment requires notice of change. Again in the case of the The Management of Indian Oil Corporation Ltd. Vs. Its Workmen, the Supreme Court held mat the grant of compensatory allowances was an implied condition and that by withdrawing the same the employer sought to effect a substantial change

which adversely and materially affected the service conditions of the workmen for all time to come. The Court further held that section 9A of the Act was clearly applicable and as it was not been complied with the withdrawal of the concession of the compensatory allowance was clearly bad. It was held in the case of Punjab State Co-op. Supply and Punjab State Co-operative Supply and Marketing Federation Ltd. Vs. Presiding Officer, Industrial Tribunal, that if the service conditions of the employees are to be changed the workmen have to be informed. The object underlying this requirement is to enable them to make representation against the proposed change and take a decision whether or not to continue in the employment of the particular employer.

11. The learned Trial Judge has rightly held on the point of locus standi that the union under the order of reference came in the picture in the year 1988. The evidence is silent as to when the Rules of 1984 were given effect to. But it is admitted that the 1984 Service Rules were not circulated amongst the employees. The tribunal after, considering this aspect had held that the union has locus standi to raise the dispute before the appropriate forum and delay should not stand in the way of union's right to raise the dispute.

12. In the judgment cited by the petitioners in the case of Harmohinder Singh v. Kharga Canteen, Ambala Cantt. (supra), it was specifically held that the conditions of service for change of which notice is to be given under the Fourth Schedule do not in terms include the subject-matter of para 3-A, namely, the fixation of a period of service or date of retirement. The Supreme Court had clearly held that the provisions of section 9A are no doubt mandatory but the preconditions of their applicability are that there must be a change in the condition of service and secondly the change must be such that it adversely affects the workmen in respect of any of the matters provided in the Fourth Schedule to the Act. The Supreme Court had relied on the case of Hindustan Lever Ltd. (supra) which very clearly held that section 9A requires notice to be given to the workmen likely to be affected. "Affected" in the circumstances could only mean and refer to adversely affected.

13. I find sufficient force in the submission of Mr. Majumdar that the Tribunal below having itself held that the 1984 Rules are more beneficial in nature could not come to the conclusion about the violation of section 9A simultaneously. The Tribunal below made a comparative chart showing the benefits under the respective Rules of 1969 and of 1984 and came to the clearest conclusion that workmen were enjoying the more benefits under the 1984 Rules and after thirteen years they raised the dispute. The Tribunal below unmistakably concluded that the 1984 Rules were more beneficial than the 1969 Rules but in spite of that it held the company guilty of violation of section 9A without considering the Supreme Court judgment in the case of Harmohinder Singh v. Kharga Canteen, Ambala Cantt. (supra), that one of the preconditions for invoking the provisions of section 9A of the Act is that the changes contemplated in the subsequent rules must adversely affect the workmen, The necessary

corollary that follows from it is that if the changes are more beneficial than the previous rules section 9A has no application and merely because the beneficial rules were not I circulated amongst the workmen it could not be held that the company was guilty of violating the provisions of section 9A. The Tribunal below having held that the subsequent rules are more beneficial it should have simultaneously held that there was no dispute to be raised over the issue and in such view of it the Tribunal erred in holding against the writ petitioners for violating section 9A of the Act. The writ petition is allowed.

There shall, however, be order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.