(2021) 04 CAL CK 0003

In the Calcutta High Court

Case No : WPA 20315 Of 2014

Balaram Banerjee APPELLANT

Vs

M/s. Gladestone Lyall and Co. Ltd. & Ors. RESPONDENT

Date of Decision : 13-04-2021

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 29, 32, 33C(2)
Companies Act, 1956 — Section 456, 457(C), 546

Citation : (2021) 04 CAL CK 0003

Hon'ble Judges : Abhijit Gangopadhyay, J

Bench : Single Bench

Advocate : Soumya Majumdar, Victor Chatterjee, M.C. Ghosh, K. J. Tiwari

Judgement

Abhijit Gangopadhyay, J

1. The petitioner had filed an application under Section 33C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act) on or about 21.05.1996 numbered as Case No. COMP.39/96 which was decided by the First Labour Court, West Bengal on 19th May, 2014. Thus the computation case was kept pending for nearly 18 years. The First Labour Court took this 18 years time to reject the said application.

2. Against such rejection present writ application has been filed.

Some relevant dates, as appears from the writ application are given below to understand the facts :

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No Date/Year Event

1. 1960: The petitioner joined service of a company(M/s. Gladestone Lyall)

2. 23.11.1970: Retrenched from service along with other employees. (His date of retirement, had he been in service, was 31.12.1990)

3. 1971: A dispute was raised and the Government of West Bengal referred it as an Industrial Dispute between the company and their workmen under the ID Act and the matter was heard by 8th Industrial Tribunal.

4. 02.04.1973 The award passed by the Industrial Tribunal was published in the official gazette under Section 17 of the ID Act. The award was in favour of some of the employees including the petitioner.

5. 28.02.1975 The award was challenged by filing a writ application. The Single Bench of this court upheld the award.

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6. 17.12.1982: The Division Bench of this Court dismissed the appeal by the company and upheld the order of the Single Bench.

7. 16.04.1984: The Supreme Court dismissed the Special Leave Petition preferred by the company.

8. 23.04.1984: Petitioner wrote to the company for his back wages, and also for allowing him to join pursuant to reinstatement order. Not reinstated by the company.

9. 18.04.1991 The company went into liquidation.

10. 1996: The petitioner filed his claim in Form Q-2 (under the ID Act).

11. 19.05.2014: Petitioner's application for quantification of claim under Section 33C (2) was dismissed by the Ist Labour Court.

12. 15.07.2014: The present writ application has been filed challenging the order of the Learned First Labour Court dated 19.05.2014.

When the present writ application was filed the age of the petitioner was 81 years. Now he is 90 years of age. The petitioner is fighting the legal battle for last 50 years or so.

3. From the award relating to the retrenchment as was notified in the Calcutta Gazette dated 02.04.1973 (annexure P-1 of the writ application) inter alia, the following is found;

"I have thought it fit that each of the 33 retrenched employees should get 25 per cent of their back wages from the dates of their retrenchment up till now....they are also entitled to get reinstatement".

The award of the 8th Industrial Tribunal was neither interfered with by the Writ Court nor by the Appeal Court (in Mandamus Appeal) and nor by the Supreme Court. The Supreme Court only made one observation while dismissing the Special Leave Petition (against the appeal court's judgment and order) filed by the company, which is as follows:

"The Special Leave Petition is dismissed with the observation that those employees who have already attained the age of superannuation, i.e. 58 years shall be entitled only to the monetary benefits including the retirement benefits on the date of their retirement and not reinstatement".

4. The petitioner was to retire on 31.12.1990 and therefore, he was not affected by the observation of the Hon'ble Supreme Court. Therefore, so far as the petitioner is concerned his 25% back wages till the date of the award (the award said "back wages from the date of their retrenchment up till now") and his right to be reinstated was confirmed up to Supreme Court. There cannot be any dispute that reinstatement signifies payment of full monthly wages.

5. Therefore, the company was liable to do the following after the award:

(i) To pay 25% of the back wages from the date of retrenchment to the date of the award.

(ii) To reinstate the petitioner.

This order of reinstatement entitled the petitioner to get full monthly wages from the company from the 30th day of the publication of the award - as reinstatement was to be made by 30 days from the publication of the award - till the date of his retirement. Thus

(i) for the period for which the petitioner was under retrenchment till the date of the award he was entitled to get 25% of back wages and

(ii) on notional reinstatement (as the petitioner was not allowed to join) he was entitled to get full back wages till his date of retirement (i.e. 31.12.1990).

6. The company only paid to the petitioner an amount 17,430.71 which the petitioner accepted without prejudice as he was entitled to get full wages from the date of reinstatement till his date of retirement. As he was not allowed to join the date of the reinstatement should be the 30th day of publication of the award.

The company did not allow him to join, though as appears from annexure P-4 (at pages 61-62) of the writ application, the petitioner wanted to join his service. No affidavit-in-opposition was filed by the respondents.

7. Therefore, from the facts it is clear that the entitlement of the petitioner as to his back wages and his reinstatement was confirmed up to the level of Supreme Court in 1984 before the company went into liquidation on and from 18.04.1991. When after adjudication in 4 levels i.e. the 8th Industrial Tribunal, the Writ Court, the Appeal Court and the Supreme Court it has been confirmed that the petitioner is entitled to 25% of back wages for the period from the date of retrenchment till the date of the award and when further he was entitled to be reinstated which has been confirmed by the Supreme Court, it is wholly illegal not to comply with the order of the Supreme Court with which the judgments and orders of the other Forum below Supreme Court had been merged.

Disobeying order of court cannot be tolerated where rule of law is established. Here the respondent company has disobeyed the order of the Supreme Court with temerity. The Supreme Court's order was passed on 06.04.1984 and the company went into liquidation with effect from 18.04.1991 i.e. after 7 years from the date of the order of the Supreme Court. The company flouted the order of all judicial authorities for more than 7 years before it had gone into liquidation.

8. From the impugned final order dated 19.05.2014 of the First Labour Court, Kolkata, it is found that the director of the company who appeared before the Labour Court althroughout submitted that as the company was in liquidation the application for quantification of the claim could not be decided by the Labour Court and as the company was in liquidation the Labour Court did not have jurisdiction to decide the matter and therefore the application was not maintainable before the Labour Court and it is the Official Liquidator who would decide the claim and the applicant (i.e. the petitioner herein) may claim his dues from the Official Liquidator.

9. Considering the facts and circumstances of the mater I hold that the Tribunal has taken a wholly erroneous view of the matter without any application of mind. It has not taken note of the fact that the claim of the petitioner had already been confirmed by the Supreme Court in the year 1984. It is not a matter where it has to be adjudicated on the question whether the retrenchment was right or wrong and whether the petitioner was entitled to be reinstated or not; all of such issues had been settled by the Industrial Tribunal 41 years back (in the year 1973) from the date of the First Labour Court's order dated 19.05.2014 which has been challenged by filing the present writ application. The Labour Court has squarely misdirected itself by following some paragraphs of the judgments reported in (2013) 7 SCC 754 (Bank of Maharashtra -versus- Pandurang Keshav Gorwardkar& Ors.) as the present case is completely different from the facts that was involved in the above Bank of Maharashtra case. The Labour Court has completely failed to understand that there is nothing which could be adjudicated by the official liquidator in this matter as the of adjudication on rights of the petitioner had been completed up to the level of Supreme Court and taking the risk of repetition, I say 41 years back from the impugned final order of the Labour Court.

The petitioner's date of superannuation was 1990 which was also before the company went into liquidation 18.04.1991. Therefore, the quantification of claim is for a period when the company did not go into liquidation.

Thus, every relevant fact, every claim, every accrual and confirmation of right got completed and adjudicated and confirmed before the company went into liquidation and therefore this is a claim with which the company's going into liquidation cannot have and does not have any relation whatsoever.

10. It is to be noted that in respect of his application for quantification of the dues under Section 33C (2) of the ID Act 1947 the petitioner took permission

from this Court (Company Court) to proceed with the same on 17.09.2009 and nobody has challenged the said order granting permission.

11. Now, we need to take a look at Section 33C (2) of the ID Act which is as follows:

"(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

From Section 33C (2) it is found that the Section provides for quantification of the dues.

This Court while granting permission to the petitioner as aforesaid in its order dated 17th September, 2009 held as follows :

"Since the proceeding by him is at this stage only for quantification of the dues, I do not think interest of any of the parties and secured creditors would be prejudiced in any manner in the event the proceeding under Section 33C (2) is allowed to continue".

12. The petitioner has correctly submitted in ground No. V of the writ application that in an application under Section 33C (2) of the ID Act the Court has to just pin point on the computation of the claim of the applicant and not as to whether the company is entitled to pay or not, or whom from when the claim is to be realised. The petitioner has also correctly submitted in ground VI, inter alia, that there is no bar under law to compute the legitimate dues of the petitioner from the respondent company.

13. After considering such submission I hold that the Labour Court's reliance as found from the impugned order, on Section 456, Section 457 (C) and Section 546 of Companies Act, 1956 is a result of total non application of mind and a result of ignoring the facts and circumstances of the case of the petitioner.

14. We have to keep in mind that the right of the petitioner to get back wages and to get re-employment whose most important result is getting the full monthly wages from the date of reinstatement as has been directed in the award and on confirmation of such crystallised right by the Supreme Court by its order dated 16.04.1884 (quoted above) the director of the company who appeared before the Labour Court and also before this Court in this matter cannot take shelter under the cover of winding up of the company which happened 7 years

after the order of the Hon'ble Supreme Court.

15. The Labour Court in the impugned order has also made a serious mistake by ignoring the provision of Sections 29 and 32 of the ID Act. Section 32 of the said Act is required to be quoted which will have some consequences in this matter.

"32. Offence by companies, etc.-

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence."

Under Section 32 every director, manager, Secretary etc. shall be deemed to be guilty of the offences committed under the Act. The Act of the company and its director when the company was not in liquidation for 7 years from the date of the order of the Supreme Court has continued to commit offence by breaching the award which is binding on the company and its directors.

16. As the judgment referred to by the respondent No. 2 (Bank of Maharashtra judgment) is not applicable in the facts and circumstances of the case and as the right of the petitioner as has been indicated above was crystallised and confirmed before the company had gone into liquidation, there is no mistake on the part of the petitioner to file an application under Section 33C (2) of the ID Act 1947 before the Labour Court and the petitioner has further protected by the order of this Court dated 17th September, 2009 whereby the petitioner was granted permission to proceed before the Labour Court under Section 33C (2).

17. For the reasons as aforesaid this writ application succeeds. The final order passed by the First Labour Court dated 19.05.2014 is set aside.

18. The First Labour Court is directed to decide the application under Section 33C (2) by 45 days from date.

19. Respondent No. 2 is directed to deposit Rupees 7 Lakhs with Registrar General of this court who will keep the said amount in a short term interest bearing fixed deposit in any nationalized Bank.

20. After computation under Section 33C (2) of the ID Act 1947 the Labour Court will send a copy of the order by 7 days from the date of the order to the Registrar General of this court and the Registrar General will disburse the quantified amount to the petitioner (which in the absence of the petitioner will be his legal representatives) and the rest of the amount, if any, would be returned to the Respondent No. 2 by 4 weeks with the accrued interest on the excess amount after payment made to the petitioner. The shortfall, if any, of the quantified amount shall be recovered by the Registrar General as a public demand from the Respondent No. 2.

21. The respondent No. 2 is liable to pay cost of Rupees one Lakh to the petitioner within a period of 14 days from the date of this judgment and further Sections 29 and 32 will start operating against him on an application, if filed, by or on behalf of the petitioner before the appropriate Forum.