
(2014) 02 CAL CK 0089
In the Calcutta High Court
Case No : Writ Petition No. 4573 (W) of 2003

Bimal Chandra Kar

APPELLANT

Vs

West Bengal State Electricity Board and Another

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 32(2)(b) 33 33(2)(b) 33A

Citation : (2014) 2 CALLT 351 : (2014) 5 CHN 589 : (2014) 141 FLR 510 :
(2014) 1 LLJ 755 : (2014) LLR 397

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Mrinal Kranti Mukherjee, Mr. Mrinal Kranti Sasmal and Mr. Narayan Debnath, for the Appellant; Rammohan Chattopadhyay, for the Respondent

Final Decision : Allowed

Judgement

Arindam Sinha, J.—The writ petitioner, since deceased was in service with the West Bengal State Electricity Board doing the job of Store Keeper Gr. II. While in such service a charge sheet dated 20th July, 1993 was issued against him with the allegation, inter alia, of misappropriation of the Board's materials worth Rs. 22,22,871.75/-. An inquiry was held pursuant to which the Disciplinary Authority by order dated 8th January, 1998 directed dismissal from service. The deceased writ petitioner had preferred an appeal therefrom which was also dismissed on 26th June, 2000. It appears from paragraph 21 of the writ petition that the deceased writ petitioner had made an application u/s 33A of the Industrial Disputes Act, 1947, sometime early in the year 2001, to the Ld. Third Industrial Tribunal, West Bengal which was registered as case No. 8 of 2000. It was alleged by the writ petitioner, since deceased that the Board had also earlier filed an application u/s 33(2)(b) of the said Act in the said Tribunal but no steps had been taken by it thereafter. By reason of pendency of the aforesaid two applications before the said Tribunal, the since deceased writ petitioner had come up to this court by Writ Petition 17362 (W) of 2001 which was disposed of by

order dated 13th December, 2001 directing the said Tribunal to decide the application filed by the Board u/s 33(2)(b) along with the application filed by the since deceased writ petitioner u/s 33A of the said Act.

2. It appears that thereafter the Board by an application dated 23rd July, 2002 sought to withdraw its application made u/s 33(2)(b) of the said Act on the ground that since no dispute was pending regarding dismissal of the deceased writ petitioner, the application u/s 33(2)(b) was misconceived. By order dated 29th August, 2002 the Ld. Tribunal allowed the said application to be withdrawn. It is sometime after this that the writ petitioner died and by order dated 10th February, 2005 his heirs and legal representatives were brought on record as the substituted writ petitioners.

3. Mr. Mrinal Kranti Mukherjee appearing on behalf of the substituted writ petitioners submitted that by the said order dated 13th December, 2001 of this court, the concerned industrial tribunal was directed to decide both the said applications made respectively u/s 33(2)(b) and 33A of the said Act. At that time, during the pendency of the application seeking approval of the order of dismissal made by the Board, it was put on notice that the deceased petitioner had initiated a proceeding before the concerned tribunal u/s 33A of the said Act which was pending. In such circumstances, the subsequent withdrawal by the Board of its application u/s 33(2)(b) of the said Act rendered the order of dismissal inoperative. He went on to rely on the decision reported in AIR 2002 Supreme Court 643 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Shri Ram Gopal Sharma and Ors.).

4. Mr. Ram Mohan Chattapadhyay appearing on behalf of the Board submitted that there was no dispute pending raised by the deceased writ petitioner regarding his order of dismissal from service when the Board had mistakenly made its application u/s 33(2)(b) of the said Act. As such there was no requirement for the Board to seek approval of the order of dismissal in the absence of any dispute in regard thereto. The said application being misconceived was, therefore, withdrawn by the Board. According to him, the case in the writ petition was distinguishable on facts from the judgment in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Shri Ram Gopal Sharma and Ors.

5. Mr. Chattapadhyay relied on two unreported decisions of this court in-

(i) MAT 2002 of 186 (WBSEB v. Shri Ashutosh Halder); and

(ii) WP 378 of 2006 (WBSEB and Ors. v. The Learned Judge Third Industrial Tribunal and Ors.)

for the proposition that the employer's applications for approval to the tribunal were allowed to be withdrawn to give effect to the order of punishment where such applications were filed in spite of there being no dispute pending raised by the employee against the orders of punishment.

6. Section 33(2)(b) of the said Act provides, inter alia, as follows:--

33. Conditions of Service, etc, to Remain Unchanged under Certain Circumstances during Pendency of Proceedings.--1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or a Tribunal or national tribunal in respect of an industrial dispute, no employer shall-

(a)

(b)

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman]-

(a)

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. It is clear from the provision as set out above that in cases where a dispute has been raised by the employee and such dispute is pending before, as in this case the concerned industrial tribunal, the employer to give effect to an order of discharge or dismissal must, inter alia, make an application to the said Tribunal before which the proceeding is pending, for approval of the action taken by the employer. It, therefore, becomes clear that the effect of the provision is that in the event an order of discharge or dismissal made by the employer is disputed by the employee then the employer must obtain approval of such order from the authority before which such dispute is pending.

8. In this case even though there may not have been a dispute raised by the deceased writ petitioner regarding the order of his dismissal from service at the time the Board made its application but during the pendency of the said application he had made his application u/s 33A of the said Act praying for an award thereunder. The Third Industrial Tribunal by its award dated 26th September, 2002 found that since the application u/s 33(2)(b) of the said Act was withdrawn by the employer, the deceased writ petitioner was not entitled to make any complaint u/s 33A thereof.

9. The deceased writ petitioner in the writ petition had not challenged the said award but had prayed, inter alia, for issuance of a writ of certiorari for quashing of the said order of dismissal dated 8th January, 1998. This court finds that the

Board upon notice of the dispute raised by the deceased writ petitioner in a situation where it had already filed its application for approval of its order of dismissal, thereafter, withdraw its application with the obvious deliberate intent of not having its case for approval adjudicated. The Board was, in the circumstances, required to satisfy the said tribunal that the order of dismissal was justified, the inquiry had been held as prescribed and the other conditions required by the proviso to Sub-section (2) of Section 33 of the said Act had been complied with.

10. The essential conditions provided u/s 33(2)(b) of the said Act requiring the Board to seek approval of the order of dismissal passed against the deceased writ petitioner were all present in this case. It appears to this court that even if the Board had made its application seeking approval mistakenly, it thereafter sought to take advantage of its mistake. The act of the Board in filing its application u/s 32(2)(b) of the said Act cannot but be seen as made with a view to preempt any dispute being raised by the deceased writ petitioner. The Board did not take any steps pursuant to filing its said application and consequently the deceased writ petitioner cannot be faulted for any delay in raising a dispute as he did by his application u/s 33A of the said Act. The said Section 33A itself provides that on receipt of a complaint made in writing under that section by, inter alia, the Tribunal, it shall adjudicate upon the complaint as if it were a dispute referred to or pending before it in accordance with the provisions of the said Act and submit its award to the appropriate government. In those circumstances the Board not having pursued its application had before it a dispute raised by its employee and, therefore, was obliged to seek approval of its order of dismissal from service made against the said employee which it did not do and thus is deemed to be that approval was not given.

11. In the circumstances aforesaid the writ petition is allowed. The order of dismissal dated 8th January, 1998 being Annexure P-3 to the writ petition is set aside and quashed. The Board is directed to pay the wages of the deceased writ petitioner that would have been payable to him for the period commencing from the date of dismissal, that is 8th January, 1998 up to the date of withdrawal of the application seeking approval of such order of dismissal being 29th August, 2002 deemed to be the date on which such approval was not given. Such arrear wages should be disbursed to the substituted writ petitioners within four weeks from the date of communication of this order upon the Board by them.

12. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

Arindam Sinha, J.

Later:

Upon delivery of Judgment in this matter Mr. Chattapadhyay, learned Advocate appearing on behalf of the Respondents prays for stay of operation thereof. Such prayer is considered and refused.