

(2018) 11 CAL CK 0018
In the Calcutta High Court

Case No : Writ Petition No. 245 (W), CAN 1944 Of 2018

Buddhadev Samanta

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 20-11-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(k), 12(2)

Citation : (2018) 11 CAL CK 0018

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Supriyo Chattopadhyay, Soumya Majumder, Paritosh Sinha, Amitava Mitra, Parag Chaturvedi

Final Decision : Dismissed

Judgement

CAN 1944 of 2018 is an application for restoring the writ petition dismissed for default by order dated 16th February, 2018. Mr. Chattopadhyay,

learned advocate appears on behalf of applicant and submits, his client was prevented by sufficient cause from being represented when the writ

petition was called on and dismissed for default.

Mr. Majumder, learned advocate appears on behalf of the Bank and in his fairness does not oppose the application.

Causes shown are found to be sufficient. Order dated 16th February, 2018 is recalled and writ petition restored to file and number.

Writ petition is taken up for hearing.

Mr. Chattopadhyay draws attention to impugned order by which conciliation proceeding was closed. Relevant extract from impugned order is as

below:-

Since Mr. Samanta could not produce any documentary proof to substantiate his stand so the case may be closed. However the bank authority is

requested to renew his contract of hiring generator immediately since his contract got expired in July 2016 and his work is still going on and in future

any other job assigned to him may be equated with financial return in future keeping in view of his economic condition.

He relies on judgment of Supreme Court in S.K. Verma versus Mahesh Chandra and Another reported in (1983) 4 SCC 214, in particular paragraph 2

and submits, Conciliation Officer has exhibited conduct like a bad employer. His client's grievance has been nipped in the bud without a failure

report so as to enable a reference. Conciliation Officer was clearly wrong in closing the proceeding thereby denying statutory remedy available to

petitioner. He seeks interference.

Mr. Majumder, learned advocate appears on behalf of respondent bank and submits by relying on sub-section (2) in section 12 of Industrial Disputes

Act, 1947, Conciliation Officer is to investigate the dispute. He sought to investigate whether there is a dispute. Petitioner could not produce any

documentary proof to substantiate his stand of being an employee. He refers to definition of industrial dispute in clause (k) under section 2 to submit, it

has to be one between employer and workman as connected with employment or non-employment for the terms of employment or conditions of

labour of any person, being those described in the clause. He then refers to petitioner's representation dated 3rd January, 2017 and points out that

his claim is for absorption. He submits, petitioner is, therefore, by admission, not a workman being an employee of his client. He submits further, an

individual cannot raise industrial dispute for absorption. Only in case of termination individual workman can raise industrial dispute.

In S.K. Verma (supra) Supreme Court said, it is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication,

a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of

any charge of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby

satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. This has been relied upon both on

behalf of petitioner and respondent bank. While petitioner's submissions are recorded above, Mr. Majumder submits, there was no reference

made in this case as there is no industrial dispute and is as such distinguishable on facts.

Question for consideration in S.K. Varma (supra) was whether a Development Officer in Life Insurance Corporation is a workman. Supreme Court

considered nature of duties of Development Officers as gathered from letter of appointment issued to appellant. On perusal of extracted terms in the

judgment, from letter of appointment, Supreme Court said it shows a Development Officer is to be a whole time employee of Life Insurance

Corporation of India. In this case Conciliation Officer in investigating dispute found there was none. Petitioner was found to be a contractor who was

claiming absorption as sub-staff and as such, Conciliation Officer in closing the case is taken to have found there was no dispute. This Court is not

inclined to interfere with such finding. On record in impugned order is that petitioner could not produce any documentary proof to substantiate his case

which finding would cover his claim of being a workman employee being rejected.

On reasons aforesaid this writ petition is dismissed.