
(1968) 05 CAL CK 0006
In the Calcutta High Court

Budge Budge Municipality (by Municipal Commissioners)	APPELLANT
Vs	
Seventh Industrial Tribunal and Others	RESPONDENT

Date of Decision : 02-05-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1969) 1 LLJ 812

Hon'ble Judges : S.C. Ghose, J

Bench : Single Bench

Judgement

S.C. Ghose, J.—This is an application made in the constitutional writ Jurisdiction of this Court under Article 226 of the Constitution of India, inter alia, for the issue of a writ in the nature of certiorari to respondent 1, seventh industrial tribunal, requiring it to transmit and Certify to this Court the records of the proceedings held before it in connexion with the dispute between the petitioners, Municipal Commissioners and Prafulla Kumar Chakravarti of Budge Budge, 24-Parganas, and the award published by the said respondent 1 in the Calcutta Gazette on 4 March 1965, in connexion with the said dispute and for quashing and setting aside the said award, for the issue of a writ in the nature of mandamus upon the respondents to forbear and refrain from giving any effect to the said award and from enforcing or taking any step to enforce the same and for further or other reliefs.

2. The facts leading to the present application, are as follows.

3. Upon a report made by the Local Auditor under the Accountant-General, West Bengal, on or about 11 July 1963, that there was a defalcation of Rs. 11.524.96 by respondent 3, respondent 3 was charged by the Chairman of the Budge Budge Municipality by a letter dated 18 July 1963 with embezzlement and was called upon for an explanation within three months from the receipt of the said letter. By the said letter, respondent 3 was also suspended.

4. Respondent 3 by letter dated 22 July 1963 prayed for time till 31 August

1963, to repay the said money by instalments.

5. The petitioners on 10 August 1963 accepted the said offer to repay the said sum by respondent 3, subject to the opinion of the Government Pleader. The petitioners on the said date also confirmed the suspension of respondent 3.

6. Thereafter, on 22 August 1963. the police started a criminal case against respondent 3 being case No. G. R. 3443 of 1963 in the Court of Subdivisional Officer, Alipore.

7. At all material times an adjudication proceeding had been pending before respondent 1, seventh-industrial tribunal, in respect of an industrial dispute between the municipalities in West Bengal including the Budge Budge Municipality and their workmen represented by the West Bengal Municipal Employees' Federation in respect of

decasualization of conservancy and other staff, i.e., personnel employed on "no work, no pay" basis, with effect from 1 April 1960 and the benefits of provident fund and of gratuity, paid leave and other allied benefits for such staff.

8. On. 18 December 1963 respondent 3 filed before respondent 1 an application u/s 33A of the Industrial Disputes Act, 1947, in the aforesaid proceedings pending before respondent 1 against the said order of suspension on the ground of wrongful change of the condition of service by withholding wages illegally and unjustly and also inflicting punishment by way of suspension. Written statements were filed by the petitioners in the said application filed by respondent 3.

9. By letter, dated 19 September 1964, the petitioners informed respondent 3 that an enquiry into the charges against respondent 3 would be held by a one-man enquiry committee on 27 September 1967. Respondent 3 was directed to attend the enquiry. Respondent 3 however did not attend the said enquiry. The enquiry was held in his absence and respondent 3 was found guilty of the charges brought against him. Thereafter, the petitioners accepted the report of the said enquiry committee and resolved to dismiss respondent 3 subject to the approval of the State Government. The petitioners applied for such approval or consent in accordance with the provisions of law but such consent has not yet been obtained.

10. The petitioners brought the aforesaid fact of the resolution dismissing respondent 3 to the notice of respondent 1. Notwithstanding the objection, inter alia, as to the jurisdiction of respondent 1 to go into the said dispute between the petitioners and respondent 3, respondent 1 adjudicated upon the said dispute and by award published in the Calcutta Gazette on 11 March 1965, rejected the contentions of the petitioners and held that respondent 3 was entitled to get his wages from the petitioners for the entire period of suspension, mentioned above.

11. Hence, this application has been filed for the relief/s mentioned hereinbefore.

12. Before me it was contended on behalf of the petitioners by Sri Sanyal as follows, to wit:

(1) The award contains an error of law apparent on the face of it in that

(a) respondent 3 had no connexion with the dispute over the issue of decasualization of conservancy and other staff employed on "no work, no pay" basis. As such Section 33A of the Industrial Disputes Act was not attracted to the dispute between respondent 3 and the petitioners-;

(b) the petitioners as employers has the right to suspend their employee pending the investigation of an alleged misconduct charged against the employee;

(c) inasmuch as the said suspension of respondent 3 was followed by dismissal the said suspension merged in the dismissal and respondent 3 was not entitled to any wages for the period of suspension ; and

(d) respondent 3 had admitted that he had defalcated the money, as such was admittedly guilty of misconduct and liable to be suspended and dismissed.

Industrial dispute has been defined as

any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

13. The contention of Sri Sanyal is that Section 33A of the Industrial Disputes Act was not attracted inasmuch as there could not be any contravention of the provisions of Section 33 of the Industrial Disputes Act by the said suspension of respondent 3, Respondent 3 is not a "concerned workman" in the dispute pending before respondent 1 under the order of the Government bearing No. 3623 I.R., dated 19 July 1960. The subject-matter of adjudication under the aforesaid order of reference was decasualization of conservancy and other staff working on "no work, no pay" basis and the amenities or other benefits to which they were entitled. Respondent 3, being a tax collector and cashier, was not at all concerned in the said dispute. It has been held by the tribunal being respondent 1 following the case in New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, that

...workman concerned does not necessarily mean a workman who is practically or immediately concerned with the dispute in Question but would include all workmen by whom or on whose behalf the dispute is raised, The same would include also all workmen who would be bound by the award to be made in the said dispute

as such respondent 3 does not undoubtedly belong to the category of the workers of the Budge Budge Municipality who would be bound by award made in the said reference, The tribunal has found that the dispute pending was raised by all the workmen of the Budge Budge Municipality, No ground has been established before me in order to enable me to interfere with the said finding of

the tribunal.

14. The tribunal has held that there was no rule or terms of contract of employment between respondent 3 and the petitioner-municipality entitling the municipality to suspend without pay any worker including respondent 3. In *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, , the Supreme Court has held that a workman may be deprived of the wages during the period of suspension pending enquiry only if there is a provision in the standing order or in the contract of service to that effect. In my opinion, the subsequent dismissal of respondent 3 has no connexion with the impugned award. Reference in this connexion may be made also to the case of *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, wherein it has been held by the Supreme Court to the following effect, to wit, at p. 548:

...It is now well-settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension....

15. Such deprivation of wages cannot also be made in a case where permission was required to be obtained u/s 33 of the Act. Both the aforesaid contentions apply to the instant case. Thus in the instant case respondent 3 could not be deprived of his wages during the period of suspension notwithstanding the fact that respondent 3 was subsequently dismissed. The rule regarding suspension framed by the municipality came into effect only from 28 August 1963, as has been rightly held by respondent 1 and does not apply to the contract of employment between the petitioners and respondent 3

16. For the reasons aforesaid all the contentions of Sri Sanyal must fail and in the premises the rule is discharged. No order as to costs.