

(2024) 08 GAU CK 1123
In the Gauhati High Court
Case No : WP(C) Of 3704 Of 2016

Dharma Kanta Nath And 18 Ors

APPELLANT

Vs

Union Of India And 9 Ors

RESPONDENT

Date of Decision : 01-08-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Industrial Dispute Act, 1947 — Section 11, 29, 34

Citation : (2024) 08 GAU CK 1123

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : AK Purkayastha, SP Choudhury

Final Decision : Disposed Of

Judgement

Sanjay Kumar Medhi, J

1. The issue of regularization of service has been raised in this writ petition filed under Article 226 of the Constitution of India. As per the facts projected, the petitioners were continuously working as casual workers with the Jute Corporation of India, a Government of India Enterprises and in spite of there being no difference with the nature of the duties performed by them and the Grade IV workers, they were not given the benefit of regularization of service. The petitioners, as workmen had raised a dispute under the Industrial Dispute Act, 1947 and a Reference was made before the Central Government Industrial Tribunal (CGIT), Kolkata in Reference No. 4/2012. The said Reference was answered by the learned CGIT vide an Award dated 31.07.2014 in favour of the workmen. It was held that the workmen were entitled to get all the benefits given to the remaining employees from the date of passing of the Award. Since the Award was not implemented and the petitioners are residents of the State of Assam, the present writ petition was instituted.

2. I have heard Shri AK Purkayastha, learned counsel for the petitioners. I have

also heard Shri SP Choudhury, learned counsel appearing for the Jute Corporation of India Ltd.

3. Shri Purkayastha, learned counsel for the petitioners submits that the issue as such has been resolved vide the Award dated 31.07.2014 by the learned CGIT and it is only the matter of implementation of the Award. It is submitted that the Award was not put any further challenge by the Management of Jute Corporation of India and therefore, had attained the finality. Non-implementation of the Award amounts to frustrating the outcome of a judicial process.

4. On the other hand, Shri Choudhury, learned counsel for the respondent – Corporation has submitted that the present forum is not be the correct forum for execution of an Award. He submits that a Writ Court cannot be used as a platform for execution for any Award or Decree as the statute holding the field provides for a mechanism for such execution.

5. Section 11 of the Industrial Dispute Act, 1947 is a part of Chapter IV on the aspect of "Procedure, Powers and Duties of Authorities". The said Section had undergone various amendments including an amendment in the year 2010 whereby Sub-Section (9) was inserted. As per the said provision, every Award is to be executed in accordance with the procedure for execution of a decree of a Civil Court. For ready reference, Section 11(9) is extracted hereinbelow-

"11(9) Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under Order 21 of the Code of Civil Procedure, 1908 (5 of 1908).

By the same amendment, Sub-Section 11(10) was also introduced on the mode of execution which reads as follows:

"11(10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it."

6. Apart from the aforesaid sub-sections which were introduced in 2010, Section 29 of the Act, 1947 is in connection with penalty for breach of Settlement or Award. The said Section is a penal provision for such breach of Settlement or Award. The said Section is however required to be read with Section 34 relating to cognizance of offences.

7. In the opinion of this Court, when the statute holding the field itself lays down a mechanism for redressal of grievances related to execution of an Award, taking the recourse of a Writ Court would not be proper. This Court is also of the opinion that the powers under Article 226 of the Constitution of India are extraordinary in nature by which a High Court may issue prerogative writs and such powers are not be exercised in every matter, more so, when the statute holding the field provides for an effective remedy. The powers under Article 226 cannot be

invoked for execution of any Award or Decree.

8. In the context of filing applications before the High Courts invoking the jurisdiction under Article 227 of the Constitution of India for matters where remedies under the Code of Civil Procedure is available, the Hon'ble Supreme Court in the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors., reported in (2019) 9 SCC 538 has made the following observations:

"13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

9. Taking a cue from the aforesaid observations, this Court is of the opinion that since the petitioners are not left remediless and rather the Act of 1947 having provided for an effective mechanism for such execution of the Award, the instant writ petition is closed. However, liberty is given to the petitioners to take the appropriate recourse of law laid down in the Act of 1947, as mentioned above.

10. At this stage, Shri Purkayastha, learned counsel for the petitioners prays for some observations regarding the aspect of limitation in case the petitioners approach the appropriate forum, as indicated above.

11. It is provided that in case the aspect of limitation arises while the petitioners approach the appropriate forum as indicated above, they may make suitable prayer for condonation of the delay by citing the pendency of the matter in this Court since the year 2016 and if such prayer is made, the same is to be considered in accordance with law.

12. Accordingly, the writ petition stands disposed of.