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**(2008) 05 CAL CK 0067**

**In the Calcutta High Court**

**Case No : Writ Petition No. 16980 (W) of 1995**

Eastern Coalfield Ltd.

APPELLANT

Vs

Niranjan Chatterjee and Others

RESPONDENT

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**Date of Decision : 02-05-2008**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 17, 18, 2, 8(3)  
Sick Industrial Colliery Act — Section 3(1)

**Citation :** (2009) 121 FLR 1080 : (2009) 1 ILR (Cal) 60 : (2008) 3 LLJ 439

**Hon'ble Judges :** Debasish Kar Gupta, J

**Bench :** Single Bench

**Advocate :** R.N. Majumder, Susanta Pal and P. Basu, for the Appellant; Kalyan Bandopadhyay and Swapan Banerjee, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Debasish Kar Gupta, J.—The subject matters of challenge in this writ application are the order dated December 24, 1990 passed by the respondent No. 3 referring a dispute for adjudication to the Central Government Industrial Tribunal-cum- Labour Court, Asansol and the award dated December 21, 2004 passed in reference No. 5/1999 by the Central Government Industrial Tribunal-cum-Labour Court, Asansol.

2. The petitioner is a Government Company within the meaning of Companies Act, 1956. By reason of enactment of Coal Mines (Nationalization) Act, 1973, the right, title and interest of the petitioner company, being a Colliery, vested in the Central Government. According to the petitioner company the respondent No. 1 was a permanent employee under the petitioner company and he was posted at Kumardihi "A" Colliery in the capacity of clerk. The date of retirement of the respondent No. 1 from the services of the petitioner company on attaining the age of retirement on superannuation was April 8, 2002. An application was filed by the petitioner for assessment of his physical fitness under the provision of N.C.W.A. IV (V). On the basis of such assessment the above services of the

petitioner was terminated on and from March 8, 1994.

A son of the respondent No. 1, namely Shri Jayanta Kumar Chatterjee applied for compassionate appointment under the petitioner company in accordance with the provisions of Clause (9.4.3.) of N.C.W.A. IV. for premature termination of the services of his father.

3. Since the above son of the respondent No. 1 was not appointed by the petitioner company, the respondent No. 2 agitated the grievance to the Government of India, Ministry of Labour and the dispute was referred to the Central Government Industrial Tribunal-cum-Lower Court, Asansol, the terms of reference being as follows:

Whether the action of the Management of ECL, in not providing employment to the dependent of Shri Niranjan Chatterjee, Clerk of Kumardihi "A" Colliery is legal and justified? If not, to what relief the workman is entitled?

4. The petitioner company filed their written statement-cum-rejoinder before the respondent No. 3. The respondent No. 1 being represented by the respondent No. 2 filed his written statement in the above reference case. Finally the respondent No. 3 passed the impugned award dated December 21, 2004 in the reference No. 5/1999 directing the petitioner company to give employment to the dependent son of the respondent No. 1 in a suitable post within the period of three months. Hence this writ application is filed by the petitioner company challenging the order of reference dated December 24, 1998 as also the above award dated December 21, 2004 passed in reference No. 5/1999 by the respondent No. 3

5. Appearing on behalf of the petitioner company Mr. Rabin Majumder, learned advocate submitted that the respondent No. 1 was not a workman on the date of reference i.e. on December 24, 1998. Therefore, there cannot be any industrial dispute in between the petitioner company and the respondent No. 1, who was represented by the respondent No. 2, in view of the provisions of Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947 and on the basis of the settled principles of law as decided in the matter of Standard Chartered Grindlays Bank Retired Employees Association v. Union of India 2007 Lab IC 1134.

6. The next submission of Mr. Majumder was that assuming that the point of maintainability had not been raised before the respondent No. 3, the jurisdiction of the Learned Tribunal could be examined by the High Court in its writ jurisdiction at that stage in view of the settled principles of law laid down in the matter of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, .

7. Mr. Majumder submitted that the impugned award dated December 21, 2004 passed in Reference No. 1989 could not be sustained in law in view of the fact that there was no suitable vacancy to appoint the aforesaid son of the respondent No. 1 under the petitioner company. The petitioner company had

been referred to BIFR in the month of February 2001. The petitioner company was declared as a sick company in terms of Section 3(1)(o) of Sick Industrial Colliery Act.

8. However the respondent No. 1 was directed to appear before the Apex Medical Board. He did not comply with such direction. Mr. Majumder also submitted that in terms of any item appearing in the second or third schedule to Section 17 of the Industrial Disputes Act, 1947 the petitioner company was not under obligation to give employment to the aforesaid son of the respondent No. 1.

9. Mr. Majumder further submitted that the N.C.W.A. IV. was a bipartite settlement and as such the same was not binding upon all, parties in view of the provisions of Section 18 of the Industrial Disputes Act, 1947.

10. Appearing on behalf of the respondent Nos. 1 and 2 Mr. Kalyan Kumar Bandopadhyay, learned Senior Advocate submitted that the objection with regard to the legality of the terms of reference was not raised before the respondent No. 3 i.e. the Learned Tribunal. Drawing the attention towards impugned award dated December 21, 2004, Mr. Bandopadhyay submitted that no argument was advanced before the respondent No. 3 with regard to the legality of terms of reference under challenge.

11. Mr. Bandopadhyay submits that the definition of "Industrial Dispute" was worded in very wide terms which unless they were narrowed down by the meaning given to the term "Workman" would similar to include all employees, of employment and all workmen, whatever the nature or scope of employment might be. Reinstatement was the employment of a person non-employed and was thus within words "all employment." Therefore, terms of reference was maintainable before the respondent No. 3 Mr. Bandopadhyay submitted that the definition of workman as contained in Sub-section (s) of Section 2 of the Industrial Disputes Act, 1947 would confer a right upon the respondent No. 1 to obtain appointment of his dependant son on compassionate ground. He also submitted that the workman could nevertheless espouse the cause of persons, who at the time were workman and only ceased to be so on retirement, if the dispute as to them concerns a matter which was bound to workmen would fall within the meaning of expression "any person" as in the definition clause of workmen, Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947.

12. Drawing the attention towards Clause (6) of the Second Schedule to Section 17 of the Industrial Disputes Act, 1947, Mr. Bandopadhyay submitted that considering the provisions of Clause (6) of the 2nd Schedule to Section 17 of the Industrial Disputes Act, 1947 it does not lie on the mouth of the petitioner that the same did not permit them to give employment on compassionate ground.

13. Regarding the question of financial condition of the company Mr. Bandopadhyay submitted that there was no enquiry with regard to the financial condition of the petitioner company. Mr. Bandopadhyay further submitted that Learned Tribunal came to a definite conclusion that there was no material before

it to prove that the termination of the delinquent employee had no way affected the financial position of the dependant family members of the ex-employee.

14. With regard to the question of examination of the physical fitness of the respondent No. 1 by the Apex Medical Board, Mr. Bandopadhyay submitted that there was a finding of the Learned Tribunal that the respondent No. 1 had never been asked to appear afresh before the Apex Medical Board before his services was terminated. Mr. Bandopadhyay further submitted that it was the finding of the learned Tribunal that the action of the Management to direct the respondent No. 1 to appear before the Apex Medical Board after termination of his services could not be sustained in law.

15. Regarding the provisions of Clause (9.4.3.) of N.C.W.A. IV., Mr. Bandopadhyay submitted that N.C.W.A. IV. was a tripartite settlement. Therefore, in view of the provisions of Clause (d) of Sub-section (3) of Section 8 of the Industrial Disputes Act, the same is binding upon all the parties. Mr. Bandopadhyay further submitted that it is was never argued before the learned Tribunal that N.C.W.A. IV was a bi-partite agreement.

16. Mr. K.K. Bandopadhyay, Learned senior advocate appearing for the respondent Nos. 1 and 2, relied upon the decisions of Punjab and Sind Bank and Others Vs. Mohinder Pal Singh and Others, , Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, and S. Nazeer Ahmed Vs. State Bank of Mysore and Others, in support of his submission that impugned terms of reference should not be challenged after passing of the impugned award. Mr. Bandopadhyay relies upon the decision of Western India Automobile Association v. The Industrial Tribunal, Bombay and Ors. 1949 II LLJ 245 (SC) and Mohan Mahto Vs. Central Coal Field Ltd. and Others, to submit that the dispute in between the employer and all workmen was covered by the term of workman under Sub-section (k) of Section 2 of the Industrial Disputes Act. Relying upon the decision Standard Chartered. Grindlays Bank Retired Employees Association and Ors. v. Union of India (supra) Mr. Bandopadhyay submitted that the workmen could take up the issue of a retired workman having a direct bearing on the substantial interest of the workmen.

17. I have given my anxious considerations to the submissions made on behalf of the respective parties and I have, considered the facts and circumstances of the case. Admittedly the services of the respondent No. 1 was terminated on the ground of his physical disablement before the date of attaining the age of retirement on superannuation. Admittedly, the physical fitness of the respondent No. 1 was assessed by the Medical Board before termination of his services under the provisions of the N.C.W.A. IV(V). It is not in dispute that the respondent No. 1 had not been asked to appear before the Apex Medical Board for re-examination of his physical fitness before his services was terminated. Admittedly, no material was produced before the learned Tribunal in support of the claim that the financial position of family of the respondent No. 1 had not

been affected due to the termination of services. It was also not in dispute that no enquiry was conducted in this regard.

18. The first question which falls for consideration is a point of law. Whether the terms of reference was maintainable before the learned Tribunal since the respondent No. 1 was not in service at the point of time. It has already been held by this Court in the matter of the Standard Chartered Grindlays Bank Retired Employees Association v. Union of India (supra), that a retired employee is not a workman under the provisions of Sub-section (s) of Section 2 of the Industrial Disputes Act, 1947. So, a retired workman cannot raise an industrial dispute in accordance with the provisions of Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947. Unlike the facts of the above case, in the case the dispute was raised by the respondent No. 2 being the trade union of the work of the petitioner company. So, the moot question involved in this case is whether the workmen can espouse the cause of person, who at one point of time had been workman and only ceased to be so on retirement. In this regard the relevant portions of the decision of the Standard Chartered Grindlays Bank Retired Employees Association v. Union of India (supra) are quoted below:

12. It appears from the above provision that a retired employee cannot be included in the definition of workman for the purpose of Industrial Disputes Act, 1947. Further, coming back to the provisions of Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947, in my opinion, the industrial dispute means and includes any dispute or difference between the employers and workmen. As such the workmen are entitled to be the parties to a bipartite settlement in between the employers and the workmen under the Industrial Disputes Act, 1947 and it is also open for them to take up an issue of any person including the retired workmen. Because the payment of pension has a direct bearing on substantial interest of the workmen who will enjoy such pension after retirement. But no retired workman can be a party to any dispute or difference with their erstwhile employers. The provisions of Sub-section (p) of Section 2 of the Industrial Disputes Act, 1947 makes the position clear. The provisions of Sub-section (p) of Section 2 of the Industrial Disputes Act, 1947 are quoted below:

(p) "Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to (an officer authorized in this behalf by) the appropriate Government and the conciliation officer;

In this regard the relevant portions of the decisions of Bilash Chandra Mitra Vs. Balmer Lawrie and Co. Ltd., are quoted below:

The order pensioning off the plaintiff which was served on him on April 1, 1947 shows "that the company did not dismiss the plaintiff but instead forced him to retire on a pension. The union, however, treated it as a discharge (see statement

of union before Tribunal). In my view when an employee retires or forced to retire on a pension he cannot be said to be still in employment. He ceases to be an employee or a workman but he received the pension in consideration of his past services. (See OXFORD CONCISE 4 DICTIONARY page 847.)

13. I fully agree with the submissions made by P.S. Sengupta Learned Advocate appearing on behalf of the respondent Bank that in the bipartite settlements the workmen took up the issue of pension of the retired employees of the respondent bank because the interest of any person can be the subject matter of a settlement in between the employers and the workmen having a direct bearing on the substantial interest of the workmen. In this event the issue of pensionary benefit relates to the persons falling within the meaning of expression "any person" as defined in Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947. But a retired employee cannot be a party to the industrial dispute. In this regard the relevant portions of the decision of Workman of Hoare Miller & Co. v. State of West Bengal and Ors. (supra) are quoted below:

It is true that the workmen cannot espouse the cause of the persons who never came within the definition of "workman" as in Section 2(s) of the Industrial Disputes Act, and who could not themselves be parties to an industrial dispute. But workmen can, nevertheless, espouse the cause of persons, who at the time were workmen and only ceased to be so on retirement, if the dispute as to them concerns a matter which is bound to workmen will fall within the meaning of expression "any person" as in the definition Clause of workmen, Section 2(k) of the Industrial Disputes Act. I, therefore, uphold the first branch of the contention.

19. Therefore, though the respondent No. 1 could not raise an industrial dispute, it was open for the respondent No. 2 to raise the dispute under reference taking into consideration the meaning of expression "any person" as defined in Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947 that dispute having a direct bearing on the substantial interest of the work of the petitioner company.

20. With regard to the question of non-availability of suitable vacancy to give employment to the dependent son of the respondent No. 1, I am not inclined to interfere with the decision of the learned Tribunal that after fulfilment of all the requisite criteria for applicability of the provisions of Clause (9.4.3.) N.C.W.A. IV of N.C.W.A, it was not open to the petitioner company not to offer employment to the dependant son of the respondent No. 1.

21. I find substance in the submissions made on behalf of the respondent Nos. 1 and that considering the provisions of Clause (6) of the 2nd Schedule to the Section 17 of the Industrial Disputes Act, 1947, it could not be said that the provisions of Clause (9.4.3.) of N.C.W.A. IV had no binding effect.

22. I find no substance in the submissions made on behalf of the petitioner company that the respondent No. 1 was bound to appear before the Apex Medical Board in view of the admitted facts of the case that he had not been asked to appear before the Apex Medical Board prior to the termination of his

service.

23. In view of the admitted fact of this case that no material was placed before the learned Tribunal with regard to the financial solvency of the family of the respondent No. 1, I find no substance in the submissions made on behalf of the petitioners that financial condition of the family of the respondent No. 1 had not been affected adversely due to the termination of his service.

25. In view of the observations made hereinabove this writ application is dismissed.

There will be, however, no order as to costs.

24. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.