
(1999) 06 CAL CK 0015

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction APOT No. 516 of 1996 G.A. No. 3105 of 1995 W.P.No. 948 of 1990

Eastern Coalfields Ltd.

APPELLANT

Vs

The Central Government Industrial Tribunal

RESPONDENT

Date of Decision : 10-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)
Industrial Disputes Act, 1947 — Section 10(1)(c), 2

Citation : (1999) 3 CALLT 140

Hon'ble Judges : Satyabrata Sinha, J; Samarendra Nath Bhattacharya, J

Bench : Division Bench

Advocate : Mr. Asoke De and Mr. Partha Sarathi Bhattacharya, for the Appellant; Mr. D. K. Samantha and Ms. Mitali Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This appeal is directed against a Judgment and order dated 5th June, 1996 passed by a learned single Judge of this Court in Matter No. 948 of 1990 whereby and whereunder the said learned Judge dismissed the writ application filed by the Appellant herein questioning an Award dated 28th March 1984 and published in the Gazette on 19th April 1994, of the Central Government Industrial Tribunal, the respondent number 1 herein. The fact of the matter lies in a very narrow compass.

2. The concerned workmen who were seventy one in number had been working in Sodepur sub area of the Appellant Company as casual Wagon loaders. A notification was issued by the Central Government in exercise of its power u/s 10(1) of the Contract Labour (Regulation and Abolition) Act 1970 whereby and whereunder employment of contract labour inter alia in the matter of loading and unloading of coal was abolished. The said notification came into force with effect from First May, 1974. According to the Appellant upon abolition of employment of

the contract labour in terms of the aforementioned notification, the concerned workmen had been working as casual workmen as and when their services were required. However, admittedly, 401 workmen used to be engaged on casual basis for the purpose of loading of coal on the wagons. The Appellant alleges that for the purpose of appointing such casual workmen on a regular basis a screening committee was constituted in consultation with a Trade Union whereupon, all other casual workmen except the workmen in question had been appointed. An Industrial Dispute was raised through another union and upon submission of the report by the Conciliation Officer the Central Government issued a notification on or about First August, 1978 in exercise of its power u/s 10(1)(c) of the Industrial Dispute Act, 1947 in terms whereof the following dispute was referred for adjudication before the First respondent herein;

" Whether the action of the management of Sodepur sub-area of Eastern Coalfields Ltd. P.O. Dishergarh, District Burdwan in denying employment to the 71 Casual Wagon Loaders as mentioned in the Annexure with effect from 8.10.1975 is Justified ? if not, to what relief are the concerned workmen entitled and from what dates?"

3. The learned Tribunal considering the materials on records placed by the parties to the said dispute inter alia came to a finding of fact that at least for about sixteen months, i.e. In between First May 1974 and August 1975 the concerned workmen had exclusively worked as casual employees of the colliery management. It was further found that in the matter of loading and unloading of coal the casual workers are not strictly speaking casual labour. Upon taking into consideration the other materials on records and further in view of the fact that even the management absorbed 18 out of 71 concerned workmen the learned Tribunal was of the view that action on the part of the management in denying employment of 71 casual wagon loaders was not justified. The Appellant filed a writ application before this court. Before the learned trial Judge as also us, Mr. Ginwalla the learned counsel appearing on behalf of the Appellant inter alia submitted that in the strict sense of the provision of this Act, a casual workman is not a workman in-as-much as he does not and cannot be given any benefit of a regular workman by the management and in that view of the matter the entire reference was bad in law. The learned counsel further submitted that the concerned workmen did not derive any right to be permanently absorbed in service only on the basis of abolition of contract labour. According to the learned counsel the findings of the learned trial Judge upholding the award cannot be sustained in view of the fact that the respondent No. 1 did not arrive at the said finding on the basis of any materials on record.

4. Mr. Dasani, the learned counsel appearing on behalf of the respondents on the other hand submitted that the finding of fact arrived at by the learned Tribunal had not been questioned. Drawing our attention to the definition of the Industrial Dispute as envisaged and as contained in section 2(k) as also the definition of workmen as contained section 2(s) of the Industrial Dispute Act it had been

contended that the reference was valid in law. Mr. Dasani submits that the Court in exercising its Jurisdiction under Article 226 of the Constitution of India would exercise its power of Judicial review with some restraint and an effort should be made that the award made by the Industrial Tribunal be upheld. Reliance in this connection has been placed on Calcutta Port Shramik Union v. Calcutta River Transport Association reported in AIR 1978 SC 2168 and Bank of Maharashtra Vs. O.P. Singla and another,

5. Lastly it was submitted that keeping in view the fact that the learned trial Judge in view of the delay on the part of the management in filing this writ application refused to exercise its jurisdiction, this court also may not interfere with the said order.

6. Having heard the learned counsel for the parties we are of the opinion that it is not a fit case wherein this court should interfere with the impugned judgment and order as apart from the fact that the learned trial Judge has refused to exercise its power of judicial review it had also recorded a finding as regards the question of delay in the following terms:-

"Before parting with this case it should be noted that though the learned Tribunal passed the award as far back as 28th March 1984 the writ application was not filed before 8th February 1990 on the plea that delay was due to the fact that Government permission could not be obtained before 7.2. 1989. The explanation is not satisfactory. The plea of delay on the ground of office formalities is absolutely untenable especially in case of Industrial Disputes where there was illegal termination of service about 20 years ago. It was submitted on behalf of the respondent union that this long delay on the part of the management of all the workmen not only the wasting of their valuable years of lives but have also caused death to some of them. It is true, that there is no limitation in filing the writ application but that shall not automatically entitle the petitioner to make limitless delay in filing the writ application, especially, in case of the present nature, where such delay brought untold miseries to the workmen. There being unreasonable delay in filing the application on frivolous ground the writ court would have refused to grant any relief to the petitioner, even if it had been otherwise entitled to it. The writ petition is liable to be rejected on the ground of delay also"

7. Mr. Ginwala submits that delay cannot be considered to be a ground for refusing to exercise Its jurisdiction by the High Court in a case where the writ of prohibition is to be Issued. The submission of the learned council cannot be accepted for more than one reasons. The appellant primarily has prayed for issuance a writ of certiorari for quashing of the aforementioned award dated 28.3.1994 passed by the Industrial Tribunal. Prayer for issuance of a writ of prohibition had been sought for and the same could be issued only in the event the primary prayer of the appellant vi2 a writ of certiorari could be issued. It is now a well settled principle of law that the delay defeats equity. It is further well settled that a person who sleeps over its right cannot claim any equity in

enforcing its right before a writ court.

8. Writ of certiorari as is well known is a discretionary remedy. A writ court does not exercise its jurisdiction under Article 226 of the Constitution of India merely because it is lawful to do so. While exercising its jurisdiction under Article 226 a writ Court may take into account several factors, delay being one of them. As noticed by the learned trial Judge the concerned workmen were refused employment as far back as in the year 1975 and reference was made by the Central Government which is the Appropriate Government only on First August 1978. The learned Tribunal below made its award on 28th March 1984. The writ application had been filed only on 8th February 1990. The only explanation which the appellant gave before the learned Trial Judge was that it was required to obtain permission of the Central Government for filing a writ application which could not be obtained before 7th February 1989. The said explanation, having been offered without any particulars, did not find favour with the learned trial Judge. He, therefore, refused to exercise its discretion.

9. Having considered the rival submissions made before us we tend to agree with the opinion of the learned trial Judge. In our considered opinion it is not a fit case, having regard to the facts and circumstances of the case, in which this court should have exercised its extraordinary jurisdiction. It is further well known that an appeal Court does not interfere with the discretion exercised by a court of the first instance only because the order is wrong. It is not the case of the appellant that the discretion exercised by the learned trial Judge was contrary to any provision of law or was not rational. In Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, the apex court has clearly held that the appeal court does not interfere with the order passed by the Court of first instance only because it is not correct, but interferes therewith only when the same is clearly wrong.

10. In view of the aforesaid principles of law as enunciated by the apex court we are of the view that it is not a fit case that this court should interfere with the order passed by the learned trial Judge.

For the reasons aforementioned, this appeal is dismissed. However, in the facts and circumstances of the case there will be no order as to cost.

S. N. Banerjee, J.

11. I agree

12. Appeal dismissed