
(2001) 05 CAL CK 0038
In the Calcutta High Court
Case No : C.A.J.M.A.T. No. 1649 of 2000

Hindustan Motors Ltd.

APPELLANT

Vs

Janardhan Singh and Others

RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 17AA, 2
West Bengal Industrial Disputes Rules, 1958 — Rule 22, 22, 27

Citation : (2002) 92 FLR 75 : (2001) 2 LLJ 1588

Hon'ble Judges : Tarun Chatterjee, J;Hrishikesh Banerji, J

Bench : Division Bench

Advocate : S.N. Dey, for the Appellant;Arunava Ghosh, Anant Kr. Shaw and D. Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Banerji, J.—This appeal is directed against the Judgment and Order dated April 28, 2000, passed by a learned Judge of this Court in the writ application being C.R. No. 8201 (W) of 1994 upholding the order dated December 17, 1993 passed by the Third Industrial Tribunal, West Bengal.

2. Respondent No. 1, Shri Janardhan Singh was employed as member of the security staff in the factory owned by Hindustan Motors Ltd., the Appellant herein at Hind Motor in the District of Hooghly, West Bengal. His services were terminated by a letter of dismissal allegedly for certain misconduct.

3. By an order of reference dated March 18, 1987 the dispute was referred by the State Government to the Fifth Industrial Tribunal, West Bengal ("the Tribunal" for short) u/s 10 read with Section 2A of the Industrial Disputes Act, 1947 (hereinafter, called "the 1947 Act").

4. In spite of service of Notice the parties did not appear and a "NO DISPUTE" award was made by the Tribunal in terms of Rule 22 of the West Bengal Industrial Disputes Rules 1958 (hereinafter called "the 1958 Rules") on

November 2, 1987 and the same was published by the State Government on December 10, 1987. After such publication no steps were taken for review in terms of Rule 27(iii) of the 1958 Rules for setting aside the "NO DISPUTE" award.

5. However, a second reference was made afresh by the State Government by an order dated June 6, 1990, at the instance of Respondent No. 1, on the identical issue of termination of Respondent No. 1.

6. The Tribunal rejected the contention on behalf of the Appellant/Company that the; second reference was not maintainable on the ground that the "NO DISPUTE" award had not been set aside in accordance with the provisions of Rule 27(iii) of the 1958 Rules.

7. The learned single Judge affirmed the order of the Tribunal relying on the decision in the case of B.R. Harman & Mohatta (India) Pvt. Ltd. v. Seventh Industrial Tribunal, West Bengal and Ors. reported in 1975 C.H.N. 371 wherein it has been held by a Division Bench of this Court that a "NO DISPUTE" award is not an award within the meaning of Section 2(b) of the 1947 Act and that a second reference on the same dispute is maintainable.

8. Shri Dey, learned lawyer appearing for the Appellant contends that the "NO DISPUTE" award dated November 2, 1987 having not been set aside in accordance with the provisions of Rule 27(iii) of the 1958 Rules, the second reference on the self-same dispute by the State Government is barred. Shri Dey further contends that resort to a second reference on the self-same dispute without taking any steps for setting aside the "NO DISPUTE" award cannot be sustainable in view of the Privy Council decision in 63 LA. 372 (Nazir Ahmed v. King Emperor,) and the Supreme Court decisions in Gujarat Electricity Board Vs. Girdharlal Motilal and Another, and in Ballabhdas Agarwala Vs. J.C. Chakravarty, . It has been held in these decisions that when the legislature provides a mode for exercising certain powers, the said powers shall be exercised in that manner and in no other manner.

9. Mr. Ghosh, learned counsel appearing for the workman on the other hand submits that a "NO DISPUTE" award cannot be an award within the meaning of Section 2(b) of the 1947 Act and therefore, a second reference is maintainable and the State Government has power to make a second reference if in fact, the dispute exists. Mr. Ghosh also submits that Rules 22 and 27 are merely rules of procedure and cannot override the provisions of the Act.

10. The decisions reported in Ballabhdas Agarwala Vs. J.C. Chakravarty, , Gujarat Electricity Board Vs. Girdharlal Motilal and Another, are not at all applicable to the facts of the case at hand. In the case at hand, in our view, the concerned statute viz, the 1947 Act empowers the State Government to make a second reference at the instance of the workman where the latter has not taken recourse to the provisions contained in Rule 27(iii) of the 1958 Rules in as much as there has neither been any adjudication of the dispute nor any award within the meaning of Section 2(b) of the 1947 Act.

11. Referring to Sub-section 10 of Section 17-AA of the 1947 Act as it stands in its application to West Bengal by virtue of the West Bengal Acts Nos. 57 of 1980 and 34 of 1983, Mr. Dey contends that the award passed under Clause (1) shall subject to the provisions of Section 17-AA, be final and shall not be called in question by any Court in any manner whatsoever.

12. Sub-sections (1) and (10) of Section 17-AA are as follows:

"(1) every award, other determination or decision by an arbitrator or a Labour Court or a Tribunal shall be pronounced on a date notified for the purpose and shall be dated and signed by the person or persons pronouncing the award, determination or decision and such award, determination or decision once signed and dated shall not be altered save in the manner provided in this Act.

(10) the award, other determination or decision pronounced under Clause (1) shall, subject to the provisions of this Section, be final and shall not be called in question by any Court in any manner whatsoever".

13. Mr. Dey contends that even a "NO DISPUTE" award is final and cannot be called in question by any Court in any manner whatsoever.

14. We find that the term "award" appearing in Sub-section (10) as also in Sub-section (1) of Section 17-AA is followed by the words "other determination or decision". The context in which the words "other determination and decision" appear following the word "award" in both the Sub-sections clearly indicates that the term "award" in these sub-sections means some interim or final determination of a dispute as contemplated by the term "award" defined in Section 2(b) of the 1947 Act and not a "NO DISPUTE" award within the meaning of Rule 22 of the 1958 Rules.

15. From the provisions of Sub-section (1) of Section 17-AA of the Act it is found that the award the Tribunal is to be pronounced in open Court on a date to be notified for the purpose of such pronouncement of award. A "NO DISPUTE" award when the parties do not appear, cannot be said to be an "award" within the meaning of Section 17-AA(1) inasmuch as the "NO DISPUTE" award (when the parties do not appear) is not pronounced by notifying the date of such pronouncement as contemplated by Sub-section (1) of Section 17-AA of the 1947 Act. Section 2(b) of the 1947 Act defines the word "Award" to mean an interim or a final determination of any industrial dispute by a Tribunal.

16. In view of the above we hold that a "NO DISPUTE" award passed under Rule 22 of the 1958 Rules for non-appearance of the parties, cannot be said to be an award within the meaning of Section 2(b) nor u/s 17-AA of the 1947 Act. As there has been no award within the meaning of Section 2(b) of the 1947 Act, the dispute still subsists and awaits adjudication, notwithstanding the "NO DISPUTE" award under Rule 22. Therefore, the State Government's second reference of the self-same dispute to the Tribunal for adjudication cannot be said to be bad.

17. No other point was raised by the learned counsel for the appellant excepting

the point discussed hereinabove.

18. Accordingly, we do not find any infirmity in the order passed by the learned single Judge confirming the order of the Tribunal and this Appeal is accordingly, dismissed.

19. No order as to costs.

Hrishikesh Banerji, J.

20. I, Agree.