
(2018) 05 CAL CK 0225

In the Calcutta High Court

Case No : M.A.T. No. 213 of 2018, CAN 1475 of 2018

Howrah Zila Contractors' Shramik Union

APPELLANT

Vs

Rakshak Subidha (P) Ltd. & Ors.

RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

West Bengal Industrial Disputes Rules, 1958 — Section 20D(1)

Citation : (2018) 05 CAL CK 0225

Hon'ble Judges : DEBASISH KAR GUPTA, J; SHAMPA SARKAR, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharya, Rananeesh Guha Thakurta, Soumya Majumdar, Victor Chatterjee, Balai Ch. Paul, Ruma Sarkar

Final Decision : Disposed Of

Judgement

This appeal is preferred against a judgment and order dated January 15, 2018 passed in the writ application directing the respondent No.2 to take steps

to allow raising of the question as to whether there was retrenchment of 140 workmen by way of the refusal of employment with effect from June 25,

2016 at all. Liberty was further given to the respondent No.2 to frame additional issue by way of an addendum to the reference dated June 30, 2017

read with addendum dated September 21, 2017 or to withdraw those references to make one afresh or do it in any other way permissible in law within

time framed by the order impugned to this appeal. Having heard the learned Counsel appearing for the respective parties as also after considering the

facts and circumstances of this case, we find that an order of reference was passed on June 30, 2017 with the following issues;

(1) Whether the retrenchment of 140 workmen by the way of the refusal of employment with effect from June 25, 2016 is justified? And

(2) If not, what relief is entitled to the workmen?

There was a subsequent addendum dated September 21, 20-17 to the above order of reference as follows:

ADDENDUM

In continuation of this Department Order No.Labr/300/(LCIR) dated 30.06.17 the following Addendum is hereby issued:

Please read :

i) and a group of workmen mentioned in the enclosed list represented by after the address of M/s. Technomake Solutions Private Limited in the fourth line of first para of this Department's Order quote above. ii) (mentioned in the enclosed list) after 140 workmen in the ISSUE

No.1.

The respondent No.1 immediately filed the writ application challenging the aforesaid order of reference claiming that there was no retrenchment of

any of the aforesaid 140 workmen, as a result the above order of reference read with the addendum was not sustainable in law. The above writ

application was allowed by the learned Single Judge by passing the order impugned to this appeal.

Before entering into the issue involved in this appeal, let it be recorded that with the consent of the parties the respondent No.3, i.e. The Second

Industrial Tribunal, West Bengal, is expunged from the cause title in view of the settled principles of law as laid down by a Division Bench of this

Court in the matter of Ananda Koley vs. State of West Bengal reported in (2016) 3 WBLR (Cal) 577 in which one of us (Debasish Kar Gupta, J.)

was the presiding Judge.

According to Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate appearing for the appellants, though the terms of reference was for

determining the justification of retrenchment it was open for the learned Tribunal to frame the additional issue as to whether there was retrenchment

of any of the 140 workmen but the writ application was entertained even before filing of the written statement before the learned Tribunal and of

course framing the issues of it.

It is submitted by Mr. Soumya Majumdar, learned Advocate appearing for the respondent No.8, that in the event the validity of the order of reference

is not challenged at the threshold, it would not have been permissible for the respondent No.1 to raise the above additional issue at a subsequent stage with the above writ application was filed.

Having heard the learned Counsel appearing for the respective parties as also after considering the aforesaid facts and circumstances of this case, we

are of the opinion that in the event the objection with regard to the presumption of retrenchment is raised before the learned Tribunal by way of filing

written statement by the respondent No.1 it will always be open for the learned Tribunal to frame additional issue in this regard as a matter incidental

thereto in exercise of powers conferred under Rule 20D(1) of the West Bengal Industrial Disputes Rules, 1958 and the same is quoted below:

â??R.20D. Addition of issues of parties to the proceedings.

(1) After the parties have filed their statements, the Industrial Tribunal Labour Court may fix a date for framing, if necessary, issues relating to and

arising out of the point or points in dispute, as referred, and matters incidental thereto, as well as additional or subsidiary issues, not enlarging in any

way the scope of the points referred for adjudication on the merits, nor adding to their number but required for dealing with extrinsic contentions raised

by the parties about the reference and for its hearing.â??

In that view of the matter the order impugned to this appeal is liable to be quashed and set aside by relegating the matter to the learned Tribunal for

adjudication of the dispute on the basis of the order of reference in the light of the observations made hereinabove. Since no other issue is involved in

this appeal, this appeal is treated as on dayâ??s list and the same is taken up for disposal with the consent of the parties. The order impugned to this

appeal stands quashed and set aside.

The learned Tribunal is directed to take into consideration to frame the additional issue as to whether there was any retrenchment of any of the 140

workmen at all at the appropriate stage invoking the powers conferred on it under Rule 20D(1) of the West Bengal Industrial Disputes Rules, 1958.

This appeal together with application bearing CAN 1475 of 2018 is disposed of. There will be, however, no order as to costs. Urgent photostat

certified copy of this order, if applied for, be given to the parties at an early date.