
(1988) 04 CAL CK 0040
In the Calcutta High Court
Case No : Matter No. 30 of 1983

Indian Aluminium Co. Ltd.

APPELLANT

Vs

Third Industrial Tribunal and Others

RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 93 CWN 825 : (1994) 3 LLJ 1167

Hon'ble Judges : P.K. Majumdar, J

Bench : Single Bench

Advocate : P.P. Ginwala and Gopal Dutta, Tapan Mukherjee, for the Appellant; Bhaskar Gupta and Partha Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Prabir Kumar Majumdar, J.—The respondent No. 2 Animesh Chandra Sen is an employee of the petitioner Indian Aluminium Company Ltd. He was initially employed as an Assistant Geologist on a temporary basis at petitioner's Lohardaga Mines near Ranchi in the State of Bihar with effect from 1st November, 1963 at a salary of Rs. 500/- per month. He was appointed on a permanent basis with effect from 1st June, 1965 in the said post at an increased salary of Rs. 550/- per month, later his salary was further increased to Rs. 988/- per month.

2. The respondent No. 2 has been promoted to the post of Geologist with effect from 25th September, 1969 and he was assigned technical, personnel and public relations activities, and there was further increment in his salary.

3. On or about 5th December, 1970 the respondent No. 2 along with two other officers of Chandgad Mines, namely, Mr. T.K. Dey, and Mr. A.K. Mandal met with serious accident on the highway while travelling in a taxi hired for the purpose of taking holiday trip to Goa. On the way the car had a head-on collision with a speeding State Bus and as a result of the accident the occupants including the

respondent No. 2 were injured and admitted to a nursing home in Belgaum. The injury sustained by the respondent No. 2 was serious in nature and his right hip bone was fractured. It is alleged by the petitioner that at his request the respondent No. 2 was transferred to Calcutta with effect from 31st December, 1970 and was stationed at the Head Office of the petitioner. According to the petitioner such transfer was made purely on compassionate ground in order that he might receive the facility of medical care and treatment according to his choice.

4. It is the case of the petitioner that the respondent No. 2 continued to remain ill and unfit to take up the responsibilities of Geologist in the field for any continuous period of time as a result of such continued ill, health. It is also the case of the petitioner that the petitioner required the respondent No. 2 to return to Chandgad for field work during the dry season from October 1979 to May, 1990. According to the petitioner one Dr. S. Dasgupta examined the respondent No. 2 and advised him to avoid strenuous work involving standing and walking for a long period. As a result, the respondent No. 2 expressed his inability to go to Chandgad and perform the work for which he was employed and refused to do so. Therefore, it is the case of the petitioner that the respondent No. 2 thereby terminated his employment.

5. It is further alleged by the petitioner that the respondent No. 2 continued to remain ill and was unfit to take the responsibilities of a Geologist in the field throughout the season and as such the respondent No. 2 was incapable of continuing his service in the same manner in which it was being carried on before 6th September, 1970 and consequently, according to the petitioner, the service of the respondent No. 2 came to an end. It is also the case of the petitioner that the petitioner duly communicated the same to the respondent No. 2 by its letter dated 26th November, 1979.

6. On or about 10th December, 1979 the respondent No. 2 by a letter dated 10th December, 1979 addressed to the Labour Commissioner, raised an industrial dispute on the said alleged termination of his employment. The petitioner, however, contended that the respondent No. 2 was never a "workman" within the meaning of Section 2 of the Industrial Disputes Act, 1947 (hereinafter called the said Act) and was not, therefore, entitled to raise any industrial dispute within the meaning of Section 2(k) of the said Act, nor could the Labour Commissioner or the Conciliation Officer entertain such dispute for conciliation. The petitioner as alleged, also represented to the Assistant Labour Commissioner acting as a conciliation officer that the service of the respondent No. 2 was brought to an end by reason of his continued ill-health.

7. The Assistant Labour Commissioner being the conciliation officer held a meeting for the conciliation on 30th June, 1980 and the petitioner in the said meeting reiterated the same contention that the respondent No. 2 was not a "workman" within the meaning of the said Act and was not capable of continuing his service in the same manner in which he discharged his duty on or before 5th

December, 1970, and, as such his service was brought to an end by reason of his continuing ill-health.

8. The conciliation efforts, however, failed and by a reference No. 4884 -I.R./IR/10I/86/78 dated 4th November, 1980 the Government of West Bengal referred to the Third Industrial Tribunal, which is the respondent No. 1 in this proceeding, for adjudication of the said industrial dispute alleged to exist between the petitioner and the respondent No. 2 on the following issue:

"Whether termination of service of Shri Animesh Chandra Sen is justified? To what relief, if any, is he entitled?

9. After adjudicating the said issue the respondent No. 1 the Third Industrial Tribunal made an award dated 16th November, 1982 holding, inter alia, that the petitioner terminated the employment for respondent No. 2 without justification and it was very much a case of retrenchment without fulfilling Section 25-F of the said Act. The respondent No. 1 finally held that the termination of service of Animesh Chandra Sen, the respondent No. 2 was not justified and he was entitled to reinstatement in the service of the company with full back wages.

10. The submission of the petitioner in substance before the respondent No. 1 was that because of the continued ill-health of the respondent No. 2 and because he had no work at the Head Office of the company, the company, being the petitioner had to come to a decision that he could no longer be retained as a Geologist in the petitioner company. It was the case of the petitioner before the Tribunal that the petitioner terminated the employment of the respondent No. 2 on account of continued ill- health with immediate effect and such communication was made by the letter dated 26th November, 1979. It was also submitted on behalf of the company before the Tribunal that Animesh Chandra Sen was not a workman at all as he was assigned with Administrative and Personnel Department work and he was projecting the image of the company before others and it could hardly be said that he was a "workman". It was also contended by the petitioner before the Tribunal that the respondent No. 2 was supervising the activities of the drillers and samplers who were working under him with his technical knowledge. His job was somewhat akin to the one of transport engineer who has been found to be not a workman by the Supreme Court in the case of *Burmah Shell Company Limited*, reported in : 1970-II LLJ 590. The petitioner also referred before the Tribunal to a decision of this Court in the case of *Baldev Sing v. Indian Explosive*, reported in (1972) 76 Calcutta Weekly Notes 342. The petitioner contended that in this case the Air Craft Maintenance Engineer who was assigned with supervising and managerial functions akin to the powers enjoyed by the respondent No. 2 was held not to be a "workman". According to the petitioner the said respondent No. 2 was exercising managerial and administrative functions and was receiving the salary above Rs. 500/-. The respondent No. 2, however, disputed the said contention of the petitioner and maintained that he was a workman within the meaning of the said Act and his services were terminated in violation of the provision of the said

Act and particularly the said termination amounted to retrenchment within the meaning of the said Act and without compliance with the provision relating to retrenchment. The petitioner, therefore, could not terminate the service of the respondent No. 2. It is the contention of respondent No. 2 that the continuous ill-health could not be established by the petitioner and it is a case of termination simpliciter without following the provisions of the Act required to be followed before terminating the service of a workman.

11. The Tribunal after analysing the evidence on record observed that there was no paper to show that the respondent No. 2 was employed while working in the head office in a supervisory capacity and exercised functions mainly of a managerial nature. The Tribunal also found that the respondent No. 2 merely took the assistance of manual labourers such as drillers and samplers but there was no definite material that the respondent No. 2 was working in a managerial or supervisory capacity. The Tribunal, therefore, held that the respondent No. 2 was a workman. On the appraisal of the evidence of Tribunal held that the job which the respondent No. 2 was asked to perform as a Geologist was totally different from that of a transport engineer in the case of the Burmah Shell Co., on Air Craft Maintenance Engineer in the case of Indian Explosives. On the question of continued ill- health the Tribunal held that it was not established that the respondent No. 2 was ill throughout during the period in question. The Tribunal also found that the illness of the respondent No. 2 did not prevent the respondent No. 2 from carrying out his work whenever required to be performed.

12. The Tribunal, therefore, found that the respondent No. 2 was workman within the meaning of the Act, and his services were not terminated on the ground of the continued ill-health but such termination amounted to retrenchment within the meaning of the Section 25-F of the Act. The Tribunal further found that the said termination of the services of the respondent No. 2 was without justification.

13. The petitioner has challenged the said award by this application under Article 226 of the Constitution of India, inter alia, on the ground that the respondent No. 1 had no jurisdiction to entertain the reference made by the appropriate Government or to make any award thereon inasmuch as the respondent No. 2 was not and is not workman, the said reference made by the Government did not confer any jurisdiction in the respondent No. 1 to adjudicate on the issue referred or to make any award, the finding of the respondent No. 1 that the respondent No. 2 was a workman is erroneous in law or face of the records and in any event such finding was relating to a fact on which the jurisdiction of the respondent No. 1 depends, the respondent No. 1 committed an error of law on the face of the record by holding that the prospecting work of the respondent No. 2 as Geologist was technical in nature and further committed an error of law appearing on the face of the record by holding the respondent No. 1 was a workman within the meaning of the Act and the conclusion of the respondent No. 1 was perverse in nature.

14. Mr. P. P. Ginwalla appearing with Mi Gopal Dutta for the petitioner mainly

takes point that the respondent No. 2 not being workman, the respondent No. 1 the Tribunal assumed jurisdiction which the Tribunal did not possess. Mr. Ginwalla had also submitted that it appears from the documents exhibited before the Tribunal, which, according to Mr. Ginwalla" the Tribunal failed to appreciate, that the respondent no. 2 was in ill-health and was not capable of continuing with his job and to perform the duties assigned to him. Therefore according to Mr. Ginwalla, as is the case of the petitioner, that by reason of continued ill-health the petitioner's employment was terminated his employment came to an end. It has also been submitted by Mr. Ginwalla that it would or cannot be a case of retrenchment within the meaning of the Act if the employee's employment is terminated on the ground of continued ill-health as, according to Mr. Ginwalla is the case here. It is, therefore, the submission of Mr. Ginwalla that the Tribunal wrongly held that the termination of the service of the respondent No. 2 was not justified or that such termination of employment amounted to retrenchment within the meaning of the Act.

15. Mr. Ginwalla has also submitted that the respondent No. 1 by wrongly holding that the respondent No. 2 was a workman within the meaning of the Act, the respondent No. 1 wrongly assumed jurisdiction which the respondent No. 1 did not possess, and as such, the entire proceeding before the Tribunal including the making of the impugned award is vitiated, and this Court should interfere with the award and set aside the same, as, according to Mr. Ginwalla, the respondent No. 1 wrongly assumed jurisdiction by arriving at a wrong finding of fact. Mr. Ginwalla has also submitted that in any event, the conclusions as arrived by the respondent No. 1 was not supported by any evidence and as such perverse.

16. Mr. Ginwalla has also submitted that on the question of jurisdictional fact the Court in the exercise of jurisdiction under Article 226 of the Constitution can substitute its own conclusion on the basis of evidence before the Tribunal and the Court can make independent assessment of the evidence adduced before the Tribunal to find out whether the Tribunal correctly assumed the jurisdiction.

17. In support of the contentions noted above, Mr. Ginwalla cited several decision of the Supreme Court and of this Court. The decisions are in the case of D.P. Maheswari v. Delhi Administration and Ors. reported in (1984)-2 LLJ 425 Sandhu Ram v. Delhi Transport Corporation reported in (1983)-2 LLJ 383 in the State of Madras Vs. C.P. Sarathy and Another, , in the case of The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, in the case of State of Himachal Pradesh v. D.K. Jadav, reported in AIR 1968 SC 1186, in the case of Baldev Singh v. Indian Explosives reported in 76 CWN 342, in the case of Burmah Shell Oil Storage of India v. Burmah Shell Management Staff Association reported in (1970)-2 LLJ 590 in the case of Surinder Singh Vs. Hardial Singh and Others, and the case of Enamelnagar Development v. Second Industrial Tribunal reported in 1986 (1) CHN 481.

18. Mr. Ginwalla has also submitted that because of his continued ill-health and because he had no work at the Head Office of the petitioner and the petitioner

had to come to the conclusion that the respondent No. 2 could no longer be retained as Geologist or in any other post. It is the submission of Mr. Ginwala that it cannot be a case of retrenchment as the very definition of the retrenchment in the Industrial Disputes Act means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a retrenchment inflicted by way of disciplinary action but does not include termination of the service of the workman on the ground of continued ill-health. According to Mr. Ginwala, the petitioner has been able to establish by evidence that petitioner had been in continuous ill-health and the petitioner having waited for about 7 years had to take the decision that the petitioner could not be retained any longer in the service of the petitioner on the ground of his continuous ill- health. Therefore, according to Mr. Ginwala, since it is not a question of retrenchment there is no question for compliance with the provisions relating to the retrenchment within the meaning of the Industrial Disputes Act nor payment of retrenchment compensation as provided for in the Industrial Disputes Act. Finally, it is the submission of Mr. Ginwala that the Tribunal completely misdirected itself in resuming the jurisdiction which the Tribunal did not possess and also its conclusion that the respondent No. 2 as a workman was not supported by any evidence and further the tribunal had also failed to appreciate that the termination of employment of the respondent No. 2 was on the ground of continuous ill-health. Therefore, according to Mr. Ginwala, the entire award of the Tribunal impugned in this proceeding is bad and should be set aside.

19. Mr. Bhaskar Gupta, Learned Counsel appearing with Mr. Partha Sarathi Sengupta for the respondent No. 2 has argued that the Tribunal after analysis of the evidence on record has come to a definite conclusion that it was very much a case of retrenchment without fulfilling the provisions of Section 25-F of the Industrial Disputes Act. According to Mr. Bhaskar Gupta, it is also the conclusion of the Tribunal on evidence that it could not be said that the respondent No. 2 was ill throughout for he had been working at the Head Office and further the respondent No. 2 did not say at any point of time that he would not do any field work. Mr. Gupta also submits that the Tribunal has rightly held that the respondent No. 2 was a workman within the meaning of the Section 2(s) of the Industrial Disputes Act, 1947 and according to Mr. Gupta the preliminary objection taken by the petitioner had been justifiably overruled by the Tribunal.

20. Mr. Bhaskar Gupta has also submitted that the conclusions arrived at by the tribunal as appearing from the impugned award cannot be interfered with by this Court in exercise of jurisdiction under Article 226 of the Constitution unless it is established that there is no evidence to support the conclusions or that the evidence adduced before the tribunal is wholly contrary to the conclusions arrived at by the Tribunal or that the conclusion arrived at by the Tribunal cannot be a conclusion which a reasonable man would have made.

21. Mr. Gupta has also submitted that it is now settled proposition that a

domestic Tribunal can also consider the jurisdiction fact and in order to find out whether the Tribunal has a jurisdiction to entertain the litigation before it can go into the facts from which it could be concluded that the Tribunal has jurisdiction in the matter. Mr. Gupta has also submitted that the Tribunal is fully competent to decide the question of jurisdiction on the basis of the evidence adduced before it, and any decision as to its assumption of jurisdiction on basis of its enquiry into the relevant facts cannot be interfered with by this Court in a petition under Article 226 of the Constitution. In support of the above contention Mr. Gupta has heavily relied on two decisions of the Supreme Court one reported in 1984-II LLJ 425 (D.P. Maheswari v. Delhi Administration and Ors. and the other reported in 1983-II LLJ 383 Sadhuram v. Delhi Transport Corporation). In D.P. Maheswari's case the Supreme Court has observed that if the authority concerned reordereed positive finding that the delinquent employee whose service were terminated was discharging the duties of a clerical nature and was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, the High Court should not interfere with such finding in a petition under Article 226 of the Constitution. Similarly in the other case Sandhu Ram v. Delhi Transport Corporation the Supreme Court has observed that High Court in a proceeding under Article 226 of the Constitution is not entitled to interfere with the findings of the Tribunal on jurisdictional fact. Therefore, according to Mr. Gupta, the tribunal's finding as also the conclusion that the respondent No. 2 was a workman and as such the tribunal was competent to entertain and decide the reference cannot be and should not be interfered with by this Court in its jurisdiction under Article 226 of the Constitution.

22. Mr. Gupta has also argued that if it is found by this Court that there are some materials on record before the Tribunal supporting its conclusion that the respondent No. 2 was not in continuous ill-health and the petitioner was not justified in terminating the services of the respondent No. 2 on that ground, such a conclusion cannot be interfered with in a proceeding under Article 226 of the Constitution. It is well known proposition that the Court in the exercise of jurisdiction under Article 226 of the Constitution is not sitting in judgment over the decision of the Tribunal in a matter like this. It is also well known, according to Mr. Gupta, that the Court can only interfere with the finding of the Tribunal if it is found by the Court that the finding of the Tribunal is not supported by any evidence or the conclusion arrived at by the Tribunal is directly contrary to the evidence on record. It is also well known proposition, as submitted by Mr. Gupta, that in testing the conclusion arrived at by the Tribunal, the Court in the exercise of jurisdiction under Article 226 of the Constitution cannot weigh or re-appraise evidence adduced before the Tribunal nor can the Court make an enquiry as to whether the Tribunal has properly appreciated the evidence in making its own conclusions.

23. Mr. Gupta has drawn attention of this Court to the observation of the Tribunal as appearing from the impugned award that from the resume of evidence it is clear to the Tribunal that prospecting job of the respondent No. 2 as Geologist

under the company was not his final work and the respondent No. 2 in carrying out his job merely took assistance of manual labourers and according to the Tribunal, there was no material to show that from 1971 onwards, while working in the Head Office the respondent No. 2 had any managerial or supervisory job and as such, the Tribunal came to the conclusion that the respondent No. 2 was a workman within the meaning of the Industrial Disputes Act.

24. I find from the impugned award that the Tribunal has elaborately discussed the evidence before it and after such discussion the Tribunal has come to a definite conclusion as to jurisdiction and also as to the question whether the termination of the service of respondent No. 2 was justified or not. There is no quarrel to the proposition that the court in its jurisdiction under Article 226 of the Constitution is not a Court of Appeal and it is not entitled to correct a finding of fact arrived at by the tribunal and also a finding of fact based on appraisal of the evidence on record cannot be reappraised by this Court exercising its writ jurisdiction. It is also well known that Court cannot go into the question of insufficiency and credibility of evidence, and even a wrong appraisal of evidence by inferior Tribunal would not justify the writ court in weighing the evidence as if it were sitting in Appeal against the order of Tribunal. The scope of jurisdiction of the writ court in a matter like this, is also well defined. The scope of interference by this Court in a proceeding under Article 226 of the Constitution is that where it appears to the Court that the Tribunal acted contrary to the principles of natural justice or that the conclusion reached by the Tribunal was patently opposed to well settled principles of law or that the conclusion arrived at by the Tribunal was not supported by the evidence on record.

25. On the question of jurisdictional fact, it is well-known that such facts are then facts on the determination of which the jurisdiction of the Tribunal depends and the ascertainment of such facts is entirely within the jurisdiction of the Tribunal. Now the question is how far the Court under Article 229 of the Constitution can review the Tribunal's decisions as to the jurisdictional fact. The legislature has vested the Tribunal with a power of entertaining the reference referred by the appropriate Government under the Industrial Disputes Act and by series of a decision of the Supreme Court as also other High Court it has been more or less a settled proposition that the facts on which the jurisdiction of the Tribunal depends and can come to a conclusion on the basis of the facts adduced before the Tribunal whether the Tribunal has jurisdiction or not to entertain and decide the reference. It is also now more or less settled that when the legislature has entrusted the Tribunal with a jurisdiction which includes jurisdiction to determine whether the preliminary state of facts exists and on the finding that it does exist, to proceed further to do something more and in that case the conclusions arrived at by the Tribunal cannot be interfered with by the Court under Article 226 of the Constitution unless it appears to the Court that the conclusion arrived at by the Tribunal as to its jurisdiction is not supported by the facts adduced before the Tribunal.

26. On this question a very recent decision of the Supreme Court is clear. In the case of *Sadhu Ram v. Delhi Transport* (supra) the Supreme Court has observed that the jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the Court to constitute itself into an appellate Court over Tribunal constituted under the special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to read adjudicate upon questions of fact decided by those Tribunals. That the questions decided pertain to the jurisdictional facts does not entitle the Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. The Supreme Court has also in the case of *D.P. Makeswari v. Delhi Administration* (supra) expressed the same view that whether the delinquent employee was a workman or not within the meaning of the Industrial Disputes Act the Tribunal findings as to that cannot be interfered with by High Court under Article 226 of the Constitution.

27. Mr. Ginwalla, however, has sought to distinguish these two cases by contending that the Supreme Court in earlier decisions has expressed a definite view that such a question should clearly be referred to the Tribunal and the Tribunal should decide and is competent to decide such question and the Court under Article 226 of the Constitution should not take upon itself the burden in deciding such issue, but that does not mean that the party aggrieved by such decision cannot take the matter before High Court by writ petition and on a proper challenge the High Court under Article 226 of the Constitution can review the entire findings of the Tribunal and come to a different conclusion on the basis of the findings adduced before the Tribunal. According to Mr. Ginwalla, it is not a definite view of the Supreme Court that the writ court cannot go into at all the question as to whether the Tribunal has properly come to a finding on the question of jurisdiction or whether it assumed properly the jurisdiction which the Tribunal endeavoured to exercise.

28. It appears from the impugned award that the Tribunal has taken into consideration the evidence adduced before it in order to find out whether the respondent No. 2 was a workman or not within the meaning of the Industrial Disputes Act and on proper evidence has come to a finding that the respondent No. 2 was a workman and I do not see any reason to interfere with such finding and try to find out whether on such evidence a different conclusion can be arrived at. In my view, that is not the scope of enquiry of this Court, exercising jurisdiction under Article 226 of the Constitution and I also find that the question as to jurisdiction as decided by the Tribunal did not depend on some disputed facts or that some further investigation as to the facts found by the Tribunal would be necessary. I am also of the view on the basis of the recent decision of the Supreme Court that the preliminary issues such as, whether on the facts of the case a dispute is an industrial dispute or not, or whether the concerned person is workman or not can be validly examined and adjudicated upon by the

Tribunal itself and the Court should not embark upon an independent enquiry as to whether the concerned person is a workman or not unless this Court comes to a finding that the conclusion as arrived at by the Tribunal is contrary to the facts on record before the Tribunal. On my scrutiny of the impugned award, I do not find any such infirmity in the impugned award and according to me, it does not call for any interference by this Court.

29. Mr. Ginwalla has referred to several decisions of Supreme Court as also of this Court. I need not and I do not propose to deal with those cases in detail as the proposition enunciated by the said decision are not in a dispute. Mr. Ginwalla has placed great reliance on a bench decision of this Court in Baldev Singh v. Indian Explosive reported in 78 CWN 343. On the question of jurisdictional fact, I have already referred to the observation in the recent Supreme Court decision as to the question of jurisdictional fact and the scope of interference of the Court exercising jurisdiction under Article 226 of the Constitution. I need not express my view on the ratio of the Bench decision reported in 76 CWN 343.

30. I hold that the Tribunal was perfectly justified in coming to the conclusion that the termination of the service of the respondent No. 2 was not justified and the respondent No. 2 is entitled to reinstatement in the service of the petitioner with full back wages. I uphold the impugned award.

In the result, this writ application fails and is hereby dismissed but in the fact's and circumstances of the case, there will, however, be no order as to costs. The Rule is discharged. All interim orders are vacated.