
(2009) 07 CAL CK 0076

In the Calcutta High Court

Case No : Writ Petition No. 31230 (W) of 2008

Jagadamba Motors and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(1), 2A

Citation : (2009) 122 FLR 1083 : (2010) 3 LLJ 488

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Partha Bhanja Chowdhury, S.K. Sharma, for the Appellant; L.C. Halder for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—Order no. 72 dated 18.9.2008 passed by the Judge, 2nd Industrial Tribunal is called in question in the present petition. By the said order, the petitioner (hereafter the employer) has been directed to pay a sum of Rs. 13,500/- to the third respondent (hereafter the workman) within three months from date. It is noticed from the impugned order that the Tribunal overruled the objection raised by the employer that the reference is not maintainable.

2. While arguing that the impugned order is illegal and hence unsustainable in law, Mr. Bhanja Chowdhury, Learned Counsel for the employer contended that the workman did not raise any dispute with the employer and, therefore, the Government erred in making the reference vide order dated 31.3.2004. Reliance was placed on the decision in The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, , wherein the Apex Court held as follows:

"*****If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial

dispute, as defined, must be a dispute between employers and employees, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute.*****"

3. The order of reference dated 31.3.2004 was next questioned. According to him, the workman had on his own left the service of the employer without taking any permission after defalcating an amount of Rs. 5,000/-. Since the workman had voluntarily left service, the reference made by the Government ought to be interdicted by the Court of Writ.

4. Learned Counsel for the employer and the workman have been heard at length.

5. Two questions fall for a decision of this Court, viz.

i) assuming that the workman did not raise any dispute with the employer, was the Government justified in making the reference?

ii) whether the order of reference is bad in law and hence liable to be set aside?

6. It appears from paragraphs 5 and 7 of the petition that the workman had raised dispute before the Labour Directorate pursuant where to the employer received notice from the Conciliation Officer.

Conciliation proceeding was initiated, which ultimately culminated in a failure report being submitted. It was thereafter that the Government made an order referring the industrial dispute between the employer and the workman to the 2nd Industrial Tribunal for adjudication.

7. The very fact that the workman insisted for reinstatement in service through the Conciliation Officer and the employer did not agree to take him back, in course of conciliation proceeding, is sufficient proof of a demand being raised which resulted in its refusal. The parties were at logger-heads and, therefore, an industrial dispute did exist which could be referred.

8. The decision in *Sindhu Resettlement* (supra) apparently supports the contention raised by Mr. Bhanja Choudhury but in *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, , the Apex Court ruled that the decision turns purely on the facts of the case.

9. In *Shambhu Nath Goyal vs. Bank of Baroda*, Jullundur, reported in 1978 (1) LLJ 484, the Apex Court after considering *Sindhu Resettlement* (supra) ruled that the question whether an industrial dispute exists at the date of reference is a question of fact to be determined on the material placed before the Tribunal with the cautions enunciated in *State of Madras Vs. C.P. Sarathy and Another*, . While interfering with the award of the Tribunal holding the reference to be incompetent, the Apex Court noticed the further fact that when the union had approached the Conciliation Officer, the management had appeared before him and contested the claim for reinstatement.

10. In view of the aforesaid decisions and the finding of fact reached by this Court that on the date reference was made an industrial dispute did exist between the employer and the workman, the first question is answered in the affirmative.

11. To appreciate the submission of Mr. Bhanja Chowdhury in relation to the second question, it would be appropriate to notice the issue that was referred to the Tribunal for adjudication by the Government. The issue, ignoring the spelling mistakes, reads as follows:

1) Whether the termination of service of Shri Jamuna Rai by way of refusal of employment by the management of M/s. Jagadamba Motors with effect from 1.3.2000 is justified?

2) What relief, if any, is the workman entitled to?

12. The sheet anchor of the employer's claim that the order of reference is bad in law is a decision dated 16.2.2007 of a learned Judge of this Court on W.P. No.1557 (W) of 2003 (Hindusthan Engineering & Industries Ltd. vs. State of West Bengal & Ors.). The terms of reference appear to be similar and that was also a case argued by Mr. Bhanja Chowdhury for the employer. Since the same submissions have been repeated before this Court, it would be appropriate to note his submissions as precisely recorded by His Lordship:

"Mr. Bhanja Chowdhury, learned Advocate appearing for the petitioner, submitted that termination of service and the refusal by the employer to continue to employ a workman employed under the employer, are two different concepts which are diametrically opposite to each other. According to Mr. Chowdhury, termination of service means cessation of employment permanently, but refusal of employment by the management means suspension of work amounting to lock out within the meaning of Section 2(1) of the said Act. Lock out does not mean termination of service as the employees remain in service during the period of lock out. Thus, placing an employee under lock out does not amount to termination of service.

Mr. Chowdhury, further submitted that while referring the said dispute to the tribunal for its resolution, the appropriate Government acted illegally by clubbing the said two diametrically opposite disputes in one issue and thereby made the said reference ineffective and useless.

Under such circumstances, Mr. Chowdhury invited this Court to reframe the issues appropriately, so that the dispute between the parties can be resolved once for all by the tribunal."

13. Having considered such submission, His Lordship proceeded to rule as follows:

"It is no doubt true that termination of service means cessation of employment permanently. Termination of service amounts to severance of relationship between the employer and the employee permanently.

Refusal to give employment to an employee by the employer amounts to lock out within the meaning of Section 2(1) of the said Act. Lock out has been defined u/s 2(1) of the said Act in the following manner :-

"Section 2(1) - lock-out means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;"

Thus, lock-out cannot be equated with termination of service at par, as those two concepts are diametrically opposite to each other. Under such circumstances, this Court holds that those two disputed (sic disputes) cannot be clubbed together in one issue, as clubbing of those two diametrically opposite disputes in one issue will create confusion resulting failure of justice."

14. The decision having been rendered by a bench of coordinate strength, Mr. Bhanja Chowdhury urged this Court to follow the same.

15. Having considered the decision of His Lordship dated 16.2.2007, this Court is unable to hold that it constitutes a binding precedent.

16. It has not been disputed by Mr. Bhanja Chowdhury that the provisions contained in Section 2A of the Industrial Disputes Act, 1947 (hereafter the Act) [as amended by West Bengal Act XXXIII of 1989 being the Industrial Disputes (West Bengal Amendment) Act, 1989] had not been placed for His Lordship's consideration. Section 2A, as it applies to the State of West Bengal, reads as under:

"2A.-Dismissal, etc. of an individual workman to be deemed to be an industrial dispute.- Where any employer discharges, dismisses, retrenches, refuses employment or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment, refusal of employment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute".

(words in bold font are incorporated by amendment)

17. Though the words "refusal by an employer to continue to employ" have been used in Section 2(1) of the said Act to connote "lock-out", the words "refuses employment" and "refusal of employment" in Section 2A of the Act in the context of the purpose for which they were incorporated therein by the Amendment Act of West Bengal have an entirely different meaning. Section 2A broadly deals with the right of an individual workman to raise an industrial dispute concerning his discharge/dismissal/retrenchment from service or if the employer refuses him employment or otherwise terminates his service irrespective of the fact that no other workman or union of workmen are party to the dispute. To understand what the words "refuses employment" and "refusal of employment" in Section 2A connote, the doctrine noscitur a sociis provides true and proper guidance. The words discharge, dismiss, retrench are modes by

which service of an employee may be terminated. Section 2A also uses the expression "otherwise terminates". When the words "refuses employment" and "refusal of employment" have been grouped together with discharge, dismiss, retrench and termination in Section 2A, each word draws colour from the other words therein. This is the principle of *noscitur a sociis*. This Court, accordingly, holds that the said words in Section 2A of the Act ought not to be understood in the light of Section 2(1) thereof, for, the context does not require it to be so understood and it would be inconsistent with the object of the statute. In *Raghubans Narain Singh Vs. The Uttar Pradesh Government Through Collector of Bijnor*, it was held as follows:

"***It is a well settled rule of construction that where the legislature uses the same expression in the same statute at two places or more then the same interpretation should be given to that expression unless the context requires otherwise.***"

(underling for emphasis)

18. The decisions cited by Mr. Bhanja Chowdhury reported in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, *F. S. Gandhi (Dead) by LRs. Vs. Commissioner of Wealth tax, Allahabad, and Municipal Board, Kanpur Vs. Janki Prasad and Another*, are not directly on the point and hence would have no application in the facts of the present case.

19. The decisions in *Feroz Din and Others Vs. State of West Bengal*, and *Sabitri Motor Service Pvt. Ltd. vs. State of West Bengal*, reported in 1976 (33) FLR 14 relied on by Mr. Bhanja Chowdhury do not come to the rescue of the employer. Section 2A of the Act was not in existence at the time *Feroz Din (supra)* and *Sabitri Motor Service (supra)* were decided. Hence, the authorities cited are not material for a decision here.

20. In the present case it is the claim of the workman that the employer has refused to employ him after he returned whereas the employer's stand is different, as noticed above. Between the two which version is correct would require adjudication by the Tribunal upon reception of evidence. At this stage it can safely be concluded that the Government crystallized the dispute and what has been referred is indeed an industrial dispute within the meaning of the Act. The reference is unexceptionable and no interference therewith is warranted.

21. The contentions raised by Mr. Bhanja Chowdhury have not impressed this Court and, for reasons discussed above, the employer is not at all entitled to grant of discretionary relief.

22. The writ petition is dismissed. The workman shall be entitled to costs assessed at Rs.3,400/-.

23. Urgent photostat certified copy of this judgment and order shall be furnished to the applicant as early as possible but positively within four days from putting in requisites therefore.