

(1949) 11 CAL CK 0041

In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction Matter No. 31 of 1949

Judhisthir Chandra Adak and Another

APPELLANT

Vs

P.R. Mukherjee and Another

RESPONDENT

Date of Decision : 04-11-1949

Acts Referred:

Industrial Disputes Act, 1947 — Section 15(4), 19(3), 19(4)

Citation : AIR 1950 Cal 577 : 54 CWN 222

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : B.C. Mitter and P.K. Sanyal, for the Appellant; A.C. Sircar, Jr. Standing Counsel, B. Bose, Niren De and B. Choudhury, for the Respondent

Judgement

Banerjee, J.—This is an application for a writ of certiorari to bring up an award made by an Industrial Tribunal on 20-5-1949, to this Court for having it quashed.

2. There are various prayers in the petition which it is not necessary to state.

3. There was a long standing dispute between respondent 2 and its workman which was referred for adjudication to respondent 1 under the Industrial Disputes Act, who made an award on 15-5-1948. The Government by its order dated 25-5-1948, declared it to be binding on the parties for one year from the date of the order.

4. By the award, the Tribunal directed, inter alia, that the workmen should be paid dearness allowance at a certain rate and that "the new scale of dearness allowance would come into force from January 1947 . . ."

5. By a subsequent order dated 10-10-1848, the local Government in exercise of the powers conferred on it by the proviso of Section 19(3) referred the award to respondent 1 who was constituted a Tribunal, for a decision in respect of matters referred to in the proviso.

6. The order is as follows :

"Government of West Bengal Commerce, Labour & Industries Department
Labour. No. 2762 Lab. dated 10-8-1949. ORDER

Whereas an industrial dispute arose between Messrs. Atlas Works Ltd., of 119-A Ripon St., Calcutta and their workmen represented by the Bengal General Engineering and Metal Factory Workers Union, 14 Motisil St., Calcutta and on a reference of the said dispute to a Tribunal, an award was made thereon by the said Tribunal which was published, in the Calcutta Gazette dated 8-6-1948 under Order No. 1680 Lab dated 25-5-1948.

And whereas on a representation made by the said Messrs. Atlas Works Ltd. of 119-A Ripon Street, Calcutta, the Provincial Government considers that there have been material changes in the circumstances on which the said award was based.

And whereas it is expedient that the said award should be referred to a Tribunal constituted under the Industrial Disputes Act, 1947.

Now, therefore, in exercise of the power conferred by the proviso to Sub-section (3) of 19 of the said Act, the Governor is pleased to appoint Sri P.B. Mukerjee, Additional District Judge, to be the Tribunal for decision in respect of matters referred to in the mid proviso."

7. The Tribunal so constituted framed certain issues.

8. It was contended on behalf of the Union which represented the workmen before the Tribunal that it had no jurisdiction to adjudicate upon the issues. The tribunal did not give effect to this contention, with the result that an application was made to this Court for a writ of certiorari for bringing up the records of the proceedings before the tribunal to this Court and for quashing the same. I dismissed the application on the ground that it was premature. The Tribunal then decided the issues and on 20-5-1949 made an award in these words :

"Terms regarding the amount of dearness allowance and the payment of the same with retrospective effect as per award dated 15-5-1948 shall cease to be in operation and the award is amended and modified accordingly."

This is the award which is sought to be set aside.

9. On behalf of the respondent, it was contended that the award of 15-5-1948 had ceased to be effective after 25-5-1949 and, therefore, the modification of the award made by the award of 20-5-1949 could not affect the interest of the petitioner. Therefore, this Court should not make an order which is of no benefit to the petitioner. This contention, I do not think, is right. It overlooks the fact that though the award of 15-5-1948 had become ineffective by the passing of time, the rights flowing therefrom have not been wiped out. The award directed payment of certain dearness allowance which, if not paid, created a debt in favour of the workmen, and it was a binding debt. The award binds the parties in the same way, as if the terms were agreed between them. In my view, the

payment of this debt can be enforced by a civil suit. It is a fallacy to say that the penalty clause in the Act bars such a suit. See *Couch v. Steel* (1854) 8 El & El. 402 : (23 L.J Q.B. 121), *Simmond's case* : (90 L.J.K.B. 609) and *Standard Vacuum Oil Co. v. Avelino D'Souza*, 1916 Labour Gazette 331). The petitioners, therefore, are entitled to make the application.

10. The next question is whether the tribunal in making the award of 20-5-1949 has acted in excess of its jurisdiction. The tribunal has only a limited jurisdiction u/s 19(3) proviso, viz., to decide whether there has been a material change in the circumstances, in which the award in the said paragraph referred to was made, and to decide whether or not the award should by reason of such change cease to be in operation before the expiry of the period so fixed and to determine the period of operation of the award. That is the only thing the Tribunal can do and nothing else. An award can be modified only u/s 15. Sub-section (4) of that section says :

"Save as provided in the proviso to Sub-section (3) of Section 19 an award declared to be binding under that section shall not be called in question in any manner."

The award in the proviso referred to is the entire award as the presence of the word "the" indicates, the award which was declared to be binding on the parties.

11. Referring to the definition of the award, it was suggested on behalf of the respondent that the award means any part of the award. That submission is wrong, as is clear from the word "the" before "award" in the proviso.

12. In this case the tribunal proposed not only to modify a part of the award but to give it a retrospective nullification, which, I think, is beyond the jurisdiction of the tribunal.

13. I, therefore, set aside the award and direct defendant 2 to pay the cost of this application. The rule is made absolute to that extent,