

(1949) 11 CAL CK 0002
In the Calcutta High Court
Case No : Matter No. 31 of 1949

Judhisthir Chandra Adak

APPELLANT

Vs

P.R. Mukherji

RESPONDENT

Date of Decision : 04-11-1949

Acts Referred:

Citation : (1949) 11 CAL CK 0002

Judgement

Banerjee, J.—This is an application on behalf of the workmen for a writ of certiorari for quashing an order made by an Industrial Tribunal on May 20, 1949, modifying an award.

2. There are various prayers in the petition. It is not necessary to state them.

3. The facts shortly are these.

4. There was a long-standing dispute between Respondent No. 2 and its workmen which was referred to a tribunal for adjudication under the Industrial Disputes Act, 1947, who made an award on May 15, 1948. The Government by its order, dated May 25, 1948, declared the award to be binding on the parties for one year from the date of the order.

5. The award 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...."

6. By an order dated August 10, 1948, made by the Local Government under the proviso to Section 19 of the Act, it referred the award to Respondent No. 1, who was constituted a Tribunal, "for decision in respect of matters referred to in the said "proviso".

The order of the Government is as follows:

Government of West Bengal, Commerce, Labour and Industries Department, No. 2762 Lab., dated August 10, 1948.

ORDER

Whereas an industrial dispute arose between Messrs. Atlas Works, Ltd., of 119-A, Ripon Street, Calcutta and their workmen represented by the Bengal General Engineering and Metal Factory Workers Union, 14, Mati Sil Street, 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 June 3, 1948, under Order No. 1680 Lab., dated May 25, 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 Section 19 of the said Act, the Governor is pleased to appoint Sri P.R. Mukherji, Additional District Judge, to be the Tribunal for decision in respect of matters referred to in the said proviso.

7. The Tribunal so constituted framed certain issues.

8. It was contended on behalf of the workmen, represented by their union, before the Tribunal that he had no jurisdiction to adjudicate upon the issues.

9. The Tribunal rejected this contention. Thereupon, an application was made to this Court for a writ of certiorari for bringing up the records of the proceedings then pending before the Tribunal to this Court and for quashing the same. The application was heard by me.

10. I dismissed it on the ground that it was premature. The Tribunal then proceeded to decide and has decided the issues. On May 20, 1949, the award was modified as follows:

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

11. This is the order which is now sought to be set aside.

12. On behalf of the Respondent No. 2, it has been contended that the award of May 15, 1948, had ceased to be effective after May 25, 1949, and therefore, any modification of the award of May 15, by the order of May 20, 1949, could not affect the interest of the Petitioners. Therefore, this Court should not make an order, because it would be of no use to the workmen. I do not think, this contention is right. Though the award of May 15, 1948, had ceased to be effective by the passing of time, the rights flowing therefrom have not been wiped out. The award directed payment of certain dearness allowance. If it was

not paid, a debt in favour of the workmen was created 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. The penalty clause in the Act does not bar such a suit. See *Couch v. Steel* (1) (1854) 3 E&B. 402 (412) : 118 E.R. 1193 (1197) *Simmonds v. Newport Abercom Black Vein Steam Coal Company, Limited* (1921) 1 K.B. 616 and *Standard Vacuum Oil Company v. Awlino D'Souza* (1945) Lab. Gaz. 332.

13. This contention, therefore, fails.

14. The next question is whether the Tribunal in making the modification of May 20, 1949, has acted in excess of its jurisdiction.

15. The Tribunal has only a very limited jurisdiction under the proviso to Section 19. It can only decide whether there has been a material change in the circumstances on which the award in the said paragraph referred to was based and whether or not the award should, by reason of such change, cease to be in operation before the expiry of the period fixed and to determine the period of operation of the award.

16. The Tribunal cannot act beyond the power given to it by the proviso. An award can be modified only u/s 15, Sub-section (4) which reads as follows:

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.

17. On the basis of the definition of the award, it was suggested on behalf of the Respondents, that the award in the proviso includes any part of the award. That submission is clearly wrong, as appears from the word "the" before "award" in the proviso.

18. The award in the proviso to Section 19 is the whole award as the presence of the word "the" indicates, the award which was declared to be binding on the parties.

19. In the case, Tribunal proposed not only to modify to part of the award but to give it a retrospective nullification. That, I think, he could not do.

20. I, therefore, set aside the order modifying the award and direct Respondent No. 2 to pay the costs of this application.

21. The Rule is made absolute to this extent.