

(2001) 08 CAL CK 0016

In the Calcutta High Court

Case No : Writ Petition No. 11149 (W) of 2001

Kamarhatty Company Ltd. and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-08-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(6), 15(2)

Citation : (2002) 92 FLR 602 : (2002) 4 LLJ 861

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Kumar Seth, J.—Mr. Chakraborty, learned counsel for the petitioner has assailed the order dated August 23, 1999 passed by the learned Judge, 8th Industrial Tribunal in Case No. VIII-158 of 1999, filed u/s 15(2)(b) of the Industrial Disputes Act. According to him, Section 12(6) of the Industrial Disputes Act, as amended in West Bengal, provides certain time limit for making reference by the conciliation officer. In this case, he points out that the reference was made and the report was submitted after the expiry of the said period and thus in terms of Section 12(6) of the Act, as amended in West Bengal, the reference is bad prima facie for finding out a case in order to grant interim relief u/s 15(2)(b) of the said Act. He then contends that even on merit the learned Tribunal has misdirected itself in finding out a prima facie case. He contends that if it is found that the workman earned Rs. 600 per month the said amount shall be taken into consideration for the purpose of grant of ad interim relief and the said factor is to be taken note of. According to him, in view of the decision in *Webel Nicco Electronics Ltd. v. Anima Roy* [2000] 1 CHN 1 and *Sampat B. G. v. State of West Bengal* [1991] 1 CLJ 338 it is only when a prima facie case is made out that the petitioner would be entitled to succeed, then only such relief can be granted. Therefore, in the present case the impugned order cannot be sustained and is liable to be quashed.

2. Learned counsel for the workman, on the other hand, contends that such income cannot be taken note of in view of the decision in the case of Ganges Printing Ink Factory Employees Industrial Co-Operative Society Ltd. and Another Vs. The 7th Industrial Tribunal and Others, which has since been overruled. But such income does not bar the relief u/s 15(2)(b) of the Act. The overruling part is related to the question of finding of prima facie case which was altogether excepted in Ganges Printing's case, (supra), wherein it has been held that it is not necessary to find out as to whether there is a prima facie case or not. That part of the ratio decided in Ganges Printing's case, (supra) was reversed. But the other part with regard to income was not overruled. Therefore, earning of Rs. 600 is immaterial and it cannot be said that he is gainfully employed. The Tribunal had already found that there was a prima facie case. Therefore, this Court in exercise of its jurisdiction should not interfere with the said finding unless it is found perverse. According to him, it is not perverse and are based on sufficient materials. He then contends that the ground relating to Section 12(6) of the Act, as amended in West Bengal, cannot be taken into consideration at this stage. It is a question of validity of reference. On this ground, according to him, the petition should be dismissed. I have heard the respective counsel for the parties at length.

3. So far as the contention of Mr. Chakraborty, learned counsel for the petitioner with regard to Section 12(6) is concerned, this question cannot be decided at this stage. According to him, the reference is bad. But only on such a ground being raised, application of Section 15(2)(b) of the said Act cannot be ruled out. A preliminary objection if raised is to be decided either as a preliminary issue or be tried on merit at the trial with all other issues. If raising of preliminary issue has the effect of preventing application of Section 15(2)(b) then the object of introduction of that Section shall be frustrated. The relief contemplated therein is interim in nature. This can also be decided simply on the ground that a preliminary objection as to the maintainability of the reference has been raised. The question is to be decided having regard to the totality of the prima facie case to be found out by the learned Tribunal.

4. Prima facie case means that a case which has proceeded upon sufficient proof to that stage where it would support finding if evidence to the contrary is disregarded. Such prima facie finding can be interfered with in exercise of the writ jurisdiction only on the ground that the finding is perverse or based on no materials. The impugned order shows that there are some materials on which the learned Tribunal has relied upon. From the order, it does not appear that the said finding is perverse and based on no materials. On the basis of such materials one can come to a conclusion one way or the other. Therefore, I do not find that it is a fit case to be interfered with.

5. It has been pointed out in this case that the workman is gainfully employed. That is dependent on the facts of the case. If it is found that the workman has income from other sources in that event it can be said to be a gainful

employment. However, the interest earned on the amount received has not been held to be an income or gainful employment. The Legislature had used an expression "gainfully employed". It means an employment which is gainful. Both employment and gainful has to go together. It cannot be disjointed. Employment without being gainful or gainful without employment will not satisfy the test. It must be a gainful employment. Earning of interest on savings without being employed will not fulfil the criteria. Engagement in a business would be a gainful employment depending on the facts and circumstances proving or evidencing regular income which is gainful. If someone undertakes some kind of exercise to earn little to keep body and soul together or to make both ends meet may not satisfy the test. Depending on the facts and circumstances of each case such a question is to be examined whether it would amount to gainful employment.

6. Reliance was placed on the case of Vishan Roy Vs. Bayer (India) Ltd., . In the said decision, it was held that applying the rules of interpretation laid down by the Supreme Court it must be held that within the scope of Section 15(2)(b) of the said Act, the Tribunal has no option but to decide the quantum straightaway in case of discharge, retrenchment or termination of service in accordance with provisions laid down. The Legislature had clearly provided that in case of retrenchment also the workman concerned was entitled to get interim relief the quantum of which is clearly indicated. The Legislature while enacting the provision was fully aware that in case of retrenchment, the retrenchment benefits are given but in respect of the same the legislation clearly provided that in case of retrenchment also workman will be entitled to get interim relief. The proviso narrows down the effect of the preceding words or in other words the proviso to Section narrows the effect of the main provision. On a plain reading of the above provision it is clear that it is the duty of the Tribunal to determine the question of quantum of ad interim relief admissible. There are cases where interim relief admissible say for example of the dispute is with regard to terms and conditions of service or a case of transfer and other dispute not relating to discharge, dismissal, retrenchment or termination of service only in such four cases the question of granting of ad interim relief could automatically arise. This decision supports the view which I have taken in this case in case of retrenchment a workman gets retrenchment compensation. Receipt of retrenchment compensation does not disentitle relief u/s 15(2)(b). When the Legislature by express provision entitles a retrenched employee to interim relief despite receipt of retrenchment compensation, then it cannot be denied if the workman earns interest or meagre amount to survive.

7. Earning Re. 600 by supplying milk, as in this case, cannot be considered as gainful employment. In the Indian context such people very often maintain cows, goat or geese or hens at home. If it brings some earning that would not be a gainful employment until it is proved that it is carried on by way of a regular business earning sufficient profit. An attempt to survive somehow would not fulfil the condition of being gainfully employed.

8. Having regard to the proposition laid down, I do not find that this order has violated the principle laid down in the said decision cited above or the observation as made above. Therefore, it has been rightly held on the basis of the material that there was a strong prima facie case which he has found that the termination appears to be illegal. The petitioner was a workman which is not in dispute.

9. For all these reasons, I am not inclined to interfere with this writ application. The writ application fails and is accordingly dismissed.

10. There will be no order as to costs.