
(2006) 11 CAL CK 0041
In the Calcutta High Court
Case No : C.O. No. 15219 (W) of 1996

Karuna Bhattacharjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(4)

Citation : (2007) 2 CALLT 168 : (2007) 1 CHN 541 : (2007) 114 FLR 352 :
(2007) 2 LLJ 424

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Partha Bhanja Chowdhury, Swarup Paul and Shibani Halder, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Sanjib Banerjee, J.—The writ petitioner has challenged an order of the Industrial Tribunal on the ground that such order travelled beyond the reference which was the foundation of the Tribunal's jurisdiction.

2. The workman complained that a letter written by him on August 5, 1987, apparently opting for retirement and seeking settlement of his accounts, was at the dictates of the employer or its agent. Such complaint is found in a letter issued on behalf of the workman on November 11, 1987.

3. What transpired immediately thereafter is irrelevant for the present proceedings. Ultimately a reference was made u/s 10 of the Industrial Disputes Act, 1947 (the said Act) covering the following issues:

Whether termination of services of Shri Karuna Bhattacharjee is justified" ?

To what relief, if any, is he entitled?

4. The Tribunal entered upon such reference and, by the order impugned, held that "the records clearly go to disprove the case of the concerned work-person

that his was the case of forced resignation obtained under duress and coercion." On such finding the reference was held not to be maintainable and liable to be dismissed.

5. Learned Counsel for the petitioner asserts that the terms of reference pre-supposed termination of services and there was no room for the Tribunal to determine as to whether there was any termination of service. It was urged that the Tribunal had strayed beyond permissible limits in a reference to question a fact that was implicit in the reference.

6. A decision of a Division Bench of this Court reported at 1976 (33) FLR 14(Sabitri Motor Service Pvt. Ltd. v. State of West Bengal and Ors.) was cited. The judgement in such case, based on the Supreme Court's pronouncement in Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, was rendered in a reference arising out of identical issues.

7. The reference in that case was on the question as to whether the termination of services of two employees was justified, and, to the relief, if any, such workmen were entitled. In that case the Tribunal posed the question as to whether the employer had terminated the services of the workmen and proceeded to conclude that workmen had left the services on their own accord.

8. Such question as to whether there was any termination, was held to be beyond the scope of the reference. The Division Bench held:

It seems to us that the Tribunal was wrong in posing the question whether the company had terminated services of the workmen. The issue raised by the order of reference was whether the termination of services of the workmen was justified. It was not, therefore, open to the parties on to the Tribunal as to go behind the order of reference and raise the issue as to whether there was in fact termination of service of the two workmen. The question which was referred to the Tribunal for decision was the justifiability of the termination.

In the case of the Delhi Cloth and General Mills Co. Ltd. v. Workmen and Ors., the terms of reference raised the issue whether the strike and lock-out were justified and legal. It was held that on the order of reference it was not competent for the workmen to contend before the Tribunal that there was no strike or for the management to contend that there was no lock-out. It was pointed out by G.K. Mitter, J. delivering the judgement of the Court that it was not open to the parties to contend that the foundation of the dispute mentioned in the order of reference was not-existent and the true dispute was something else. u/s 10(4) of the Industrial Disputes Act it was not competent for the Tribunal to entertain such dispute. In the light of these observations of the Supreme Court it is clear that the learned Tribunal erred in raising the question of termination of service as a fact.

9. The Delhi Cloth and General Mills case (supra) was also cited before me. Two other judgements were also placed, that of Manabendra Kumar Choudhury Vs.

First Labour Court and Others, and State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma, for the same proposition.

10. The Tribunal derives its jurisdiction from the reference. It could not, thus, question the basis of its own authority by doubting the facts implicit in the reference.

11. u/s 10 of the said Act the appropriate Government may, by an order in writing, refer a dispute or any matter appearing to be connected with, or relevant to, the dispute to a Tribunal for adjudication. The expression "or any matter appearing to be connected with or relevant to the dispute" governs, in my view, the act of reference to be made by the Government and does not empower the Tribunal to adjudicate upon any matter which it considers to be incidental to the reference. Clause (d) of Section 10(1) of the said Act permits a dispute to be referred and other matters connected therewith or relevant thereto to be referred along with the dispute. The parties to a dispute may challenge the terms of reference or the facts embodied therein. But it is not open for the Tribunal to question the facts, particularly when the terms are incapable of any ambiguity.

12. In deciding the purport of the word "incidental" appearing in the relevant clause of the said Act, the Supreme Court in Delhi Cloth and General Mills case (supra) laid down as follows:

21. From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word "incidental" means according to Webster's New World Dictionary:

happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:

"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. In the light of the above, it would appear that the third issue was framed on the basis that there was a strike and there was a lockout and it was for the Industrial Tribunal to examine the facts and circumstances leading to the strike and the lockout and to come to a decision as to whether one or the other or both were justified. On the issue as framed it would not be open to the workmen to question the existence of the strike, or, to the Management to deny the declaration of a lockout. The parties were to be allowed to lead evidence to show that the strike was not justified or that the

lockout was improper. The third issue has also a sub-issue, namely, if the lockout was not legal, whether the workmen were entitled to wages for the period of the lockout. Similarly, the fourth issue proceeds on the basis that there was a sit-down-strike in the Swatantra Bharat Mills on 23.2.1966 and the question referred was as to the propriety or legality of the same. It was not for any of the Unions to contend on the issues as framed that there was no sit-down strike. On their success on the plea of justification of the sit-down strike depended their claim to wages for the period of the strike.

13. In the present case, there could have been no debate before the Tribunal as to whether the services of the workman had been terminated. The reference provided that there was termination and the Tribunal was required to proceed on the basis that the workman's services had been terminated. The reference did not empower the Tribunal to embark on an enquiry as to whether there was any termination. In having undertaken such exercise, the Tribunal committed a jurisdictional error that affected not only the decision but also the decision making process.

14. The award is set aside and the matter is sent back to the Tribunal for fresh adjudication in accordance with law and strictly on the terms referred to it.

15. The writ petition is allowed. There will be no order as to costs.

16. Urgent xerox certified copy of this judgement, if applied for, be given to the parties on usual undertakings.