
(1989) 08 CAL CK 0052
In the Calcutta High Court
Case No : C.O. 7236 (W) of 1988

Manabendra Kumar Choudhury APPELLANT
Vs
First Labour Court and Others RESPONDENT

Date of Decision : 25-08-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2

Citation : 94 CWN 743 : (1992) 1 LLJ 455

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharjee, for the Appellant; Sunit Krishna Dutta and S.R. Ghosh, for the Respondent

Judgement

Kalyanmoy Ganguli, J.—In this application under Article 226 of the Constitution of India, an award of the 1st Labour Court, West Bengal, passed on March 25, 1988 which was published in the Gazette of April 20, 1988 is under challenge. The matter was very hotly contested by both the State and the company.

2. The short facts leading to the case are as follows:

The petitioner at the relevant time was employed as a typist under the Respondent No. 3 company. It is the allegation of the petitioner that the Respondent No. 3 company wrongfully and illegally terminated the service of the petitioner on or about July 20, 1979. This termination of service of the petitioner gave rise to an industrial dispute and a reference was made to the 1st Labour Court u/s 10(1) of the Industrial Disputes Act, 1947 hereinafter referred to as the said Act.

3. The issue which was referred to the 1st Labour Court is "Is the termination of service of Manabendra Kumar Choudhury justified? If not what relief, if any, is he entitled?" The order of reference dated February 14, 1980 has been annexed to the petition marked with the letter "A".

4. It is alleged in paragraph 6 of the petition that evidence was closed on or

about February 11, 1982 and March 24, 1982 was fixed for arguments. Subsequently, however, after a few adjournments, June 8, 1982 was fixed for argument.

5. On that date, namely, June 8, 1982 a petition was filed on behalf of the company praying for passing a "no dispute" award on the ground that the respondent company has received a letter dated May 5, 1982 signed by the petitioner workman tendering his resignation from the services of the company and expressing his desire to withdraw the case. A copy of the said petition of the respondent company dated June 8, 1982 has been annexed to the petition marked with the letter "D".

6. Although the evidence regarding the issue referred to the 1st Labour Court was concluded by February 11, 1982, yet the Labour Court permitted the parties to adduce fresh evidence on the basis of the alleged letter of resignation dated May 5, 1982, a copy of which has been annexed marked with the letter "D" to the writ petition.

7. The 1st Labour Court decided that the termination of the services of the petitioner was illegal and wrongful but in the concluding portion of the award the Labour Court was pleased to hold that "from the Ext. 1 it can be understood that the letter dated May 5, 1982 of the concerned workman tendering resignation has been accepted by the management with effect from the date as desired by the concerned workman. As the workman submitted resignation letter which has been accepted by the management, the workman cannot get reinstatement but the workman is entitled to get full back wages upto the date of his resignation letter i.e. May 5, 1982. The company is directed to pay full back wages to the concerned workman upto May 5, 1982 within one month from the date of publication of this award."

8. It is part of the award which has been challenged by the petitioner. The petitioner contends that only one issue was referred to the 1st Labour Court namely, whether the termination of the services of the petitioner was justified or not. No other issue was referred to the 1st Labour Court. The story of resignation was not part of the issue referred to the 1st Labour Court for adjudication. Mr. Sunil Krishna Dutta, appearing for the respondent No. 3 company, sought to establish that as the 2nd part of the order of reference deals with quantum of the relief to which the petitioner workman would be entitled in case the order of termination was found to be unjustified. The 1st Labour Court rightly observed that in computing the quantum of the benefit to be derived therefrom the date of resignation becomes very material as a workman cannot claim any remuneration in the shape of back wages after he voluntarily submitted his resignation. Mr. Dutta further argued, and with some force, that both parties namely, the employer and the employee were given full opportunity to adduce evidence regarding the episode of resignation and on the basis of such evidence the Tribunal came to the conclusion that the factum of resignation was proved and as such the Tribunal look into consideration the date of resignation to be the

terminal point of computing the quantum of back wages and it is because of this fact of resignation that the Tribunal did not order reinstatement of the petitioner as the reinstatement and resignation cannot go hand in hand.

9. It may be gathered from the pleadings that the date of the alleged termination of service was July 20, 1979, the date of the order of reference was February 14, 1980 and the date of the alleged resignation was May 5, 1982. Section 2(k) of the said Act defines Industrial Dispute in the following terms:

" "Industrial Dispute" means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons."

10. Resignation implies a cessation of the relationship of employer and employee and is inextricably connected with non-employment of a person.

So, the dispute relating to the factum of resignation becomes an Industrial Dispute within the meaning of Section 2(k) of the Act.

11. It is the admitted position that no dispute relating to the non-employment arising out of tendering of resignation was ever referred to the said Labour Court for adjudication and as such the Tribunal travelled beyond the scope and ambit of the order of reference and in adjudicating upon the issues referred to it by letter "A" the Tribunal could not have embarked on a voyage of enquiry as to the factum of such resignation even for the purpose of computation of the benefits arising out of the decision on the main portion of the issue referred to it. It is now well settled that an Industrial Tribunal or a Labour Court cannot travel beyond the ambit and scope of the issues referred to it for adjudication. This cannot be done even for any collateral purpose.

12. There is another aspect to be looked into in this connection. The alleged letter of resignation is dated about 2 years posterior to the date of the order of reference and as such, could, by no stretch of imagination, be construed as a part of the consequential relief which may be taken into consideration for the purpose of computation of the same.

13. For the reasons stated hereinabove it is not necessary, in my opinion, to refer to the various decisions cited at the Bar.

14. For the reasons stated hereinbefore there seems to be considerable force behind the submissions made both by the petitioner and the State.

15. The prayer made in the petition asks for a writ in the nature of mandamus, inter alia for quashing and/or not enforcing the award. I do not think that such relief should be given in the interest of the petitioner himself because if that is done the whole thing will have to start de novo and years may pass before a final adjudication becomes possible. 10 years have already passed from the date of the order of reference. The Court may, in appropriate cases, mould the prayer

made in a writ petition and grant appropriate relief in the interest of justice.

16. Considering the above, I remand the case to the 1st Labour Court for answering the consequential part of the issue relating to the relief to which the petitioner would be entitled. The 1st Labour Court is directed to proceed from the stage that the order of termination of the services of the petitioner was bad in law. The 1st Labour Court will be free to quantify the amount of relief to which the petitioner may be entitled without taking into consideration the factum of the alleged resignation. That part of the award relating to consequential relief is set aside. I make it clear that the 1st Labour Court will be absolutely free to grant such consequential relief to the petitioner on the basis of finding that the order of termination of services of the petitioner is bad in law as it thinks just and proper, but the 1st Labour Court will not be influenced by the factum of resignation. The matter should be disposed of as expeditiously as possible.

The application is disposed of as above. There will, however, be no order as to costs. Application disposed of.