
(2003) 02 CAL CK 0010
In the Calcutta High Court
Case No : Writ Petition No. 8473 (W) of 1997

Management of Calcutta Telephones	APPELLANT
Vs	
Presiding Officer	RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2003) 3 LLJ 1060

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : A.P. Lahiri and Swapan Banerjee, for the Appellant; Madhusudan Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This petition originally was made in the year 1997 challenging the order of the Tribunal passed on February 14, 1996, that the order of termination against the casual employees under the management of the petitioners having worked for more than 240 days within 12 months prior to the date of retrenchment is void and illegal. The termination was caused by an order dated January 1, 1989, by the petitioners. The reference was made by the Governmental authority on October, 1991. The order of reference is as follows:

"Whether the action of the management of Calcutta Telephones, Department of Telecommunication, Teher Mansion, 8, Bentick Street, Calcutta-1, in terminating the service of Shri Bijay Kumar Mondal, casual workman, with effect from May 17, 1988, is legal, proper and justified ? If not, to what relief the workman is entitled to ?"

2. It appears to this Court that the petitioners have neither challenged the reference by way of a writ petition before this Court nor have they proposed for the review of the order of reference before the authority concerned with regard to formulation of any other issues in connection thereto. They have submitted to

the jurisdiction of the Tribunal. Thereafter, when the award has gone against them, they have challenged it before this Court. Therefore, two aspects are open for due consideration before this Court as to whether the law of acquiescence will be squarely applicable in the present case or any principle of no estoppel against the statute is yet available.

3. Mr. Lahiri, learned counsel appearing for the management, relied upon a judgment in Sub-Divisional Inspector, Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,, to establish that the employees of the postal department to be covered by the Industrial Disputes Act. I am sorry to say that such judgment is not applicable in the case where question of work of the casual employees for more than 240 days or not is germane for the purpose of due consideration to come to a finding that whether the retrenchment was justifiable or not. I have perused the order passed by the Tribunal and found that the Tribunal proceeded on the basis of the materials on record and within the fixed parameter of the order of reference. When the order of reference is there, it is the duty incumbent upon the Industrial Tribunal to proceed on the basis of such order of reference, which is by now well settled. There cannot be any embargo in hearing industrial dispute u/s 25F of the Act being condition precedent to retrenchment of workman because the termination of service per se is an industrial dispute. There is no scope of any judicial review at this belated stage. As to why this Court is saying belated stage is also to be explained hereunder. The writ petition which was originally filed in the year 1997 was pending even under the category of the "Listed Motion" and the same was dismissed on August 30, 2000. Since none appeared for the petitioners and the same was recalled on January 31, 2003, therefore, whether the effect of the order of the Tribunal has already been given or not, is not known to this Court. Lot of situational changes are there for the purpose of verifying the issue which are deep rooted in the factual aspect of the matter and it can be safely said that this Court is not open for investigation for factual conclusion on which the Tribunal had already come to a definite conclusion. Moreover, the writ Court is not open for judicial review about the factual aspect of the matter even if it might have come to a different conclusion altogether.

4. Therefore, taking into totality of the matter, I am of the view that the writ petition cannot be sustained. Therefore, the writ petition stands dismissed.

5. There will be no order as to costs.

6. Let urgent Xeroxed certified copy of this order, if applied for, be given to the learned counsel for the petitioner within fortnight from the date of putting the requisites.