
(1984) 08 CAL CK 0018
In the Calcutta High Court

Megna Mills Co. Ltd.

APPELLANT

Vs

4th Industrial Tribunal and Others

RESPONDENT

Date of Decision : 21-08-1984

Acts Referred:

Citation : 89 CWN 623

Hon'ble Judges : U.C. Banerjee, J

Bench : Single Bench

Judgement

Umesh Chandra Banerjee, J.—This application is directed against an interlocutory order passed by the 4th Industrial Tribunal in Reference Case No. VIII-117 of 1981 while it is true that writ court ought not, in the normal course of events, interfere with the interlocutory orders as it was laid down in the case of D. P. Maheswari Vs. Delhi Administration reported in (1983) Lab I.C. 1629, but by reason of the complexity of the case, a Rule was issued together with an exparte order of stay of further proceedings for a limited period. The matter was directed to appear after 2 weeks for hearing. On the date of hearing Mr. Probash Chatterjee, the learned Advocate for the concerned workman submitted that by reason of the decision of the Supreme court in the case of Shambhunath Vs. Bank of Baroda, reported in 1983 Lab IC 1697, Tribunal's finding in disallowing the application for amendment of the written statement cannot be assailed. It is necessary at this stage to briefly refer to the relevant facts.

2. The concerned workman, being the respondent No. 3 was in the employment of the petitioner Company. On 5th March, 1974, a charge-sheet was issued against the respondent No. 3 and the latter, was asked to file his explanation in writing which was done by the workman. Since the authority was not satisfied with the explanation, a domestic enquiry was directed, which however culminated in the issuance of a letter of termination on 3rd May 1980. Against the said order of termination, a representation was made to the Authority but to no effect and by reason whereof a dispute was raised and which resulted in the reference under 10 of the Industrial Dispute Act.

3. Before the Tribunal a preliminary issue was raised as to the validity of the domestic enquiry and the Tribunal came to the conclusion that the enquiry was vitiated and was violative of the principles of natural justice. Immediately upon such a finding the company moved an application before the Tribunal for an opportunity to lead evidence. On 20th May, 1983 the Tribunal passed the following order :

Order No. 31 dated 20-5-83.

Petition is filed for the Co. praying for the Co. to prove their case on merits. Order for hearing this case on merit has already been passed on 8-2-83. and as such this petition is redundant-Keep it with the record.

Sd/- N. K. Bhattacharjee.

Judge.

4. On 3rd September, 1983, the management examined one Sunil Kumar Das being P. W. 1. The respondent No. 3 also cross-examined the said P. W. 1 and upon completion of the evidence of the said P. W. 1 on the prayer of the management, the matter was adjourned, and the Tribunal passed the following order :

Order No. 35 dated. 3-9-83.

Parties present. The case is taken up for hearing on merit.

P. W. 1 Sunil Kumar Das is examined and cross-examined and proves Ext. 1. After this a petition is filed for the Co. praying for time to adduce further evidence. Heard both sides.. Prayer is allowed. Adj. to 5-10-83 for further evidence.

Sd/- N. K. Bhattacharjee, Judge.

Subsequently, a formal application of amendment of the written statement filed by the company. In the said application the company inter alia contended :

(a) Consequent upon the said order your petitioner examined the P. W. No. 1 Mr. Das, Department-in-Charge on 3rd September, 1983. He was also cross-examined by the Learned Advocate for the workman. Thereafter the case was fixed for further evidence on 29th February, 1984. When your petitioner was going to examine Mr. Dewakar Singh P. W. No. 2 at that point of time the learned Tribunal was pleased to point put the decision of the Supreme Court in the case of Sambhu Nath Goyal.

(b) In any event by way of abandoned precaution your petitioner craves leave to amend the written statement The schedule of Amendment is also set out hereinbelow for convenience.

Schedule of Amendment

I. After the paragraph No. 21 of the Written Statement the following paragraph be added. 21A the Company be given an opportunity to adduce oral and documentary evidence before this learned Tribunal to justify its action and to prove the charges brought against the concerned workman".

II. After the paragraph No. 28 of the written" statement the following, prayer be added :

The company, therefore, submits that the learned Tribunal may be graciously pleased to decide the issue in favour of the Company holding that the termination of service of the concerned workman Sofi Mohammad is justified both, in law as well as in merits and further holding that the said workman is not entitled to any relief in the above proceeding.

5. The Tribunal while dealing with the application came to a definite finding that in view of the decision of the Supreme Court in Sambhu Nath Goyal Vs. Bank of Baroda (Supra), the application for amendment is not maintainable. The Tribunal relied on paragraph 16" of the Judgment wherein the Supreme Court observed :-

When the question arises in a reference under S. 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it filed its written statement of defence in the enquiry before the labour court or Industrial Tribunal and could make the request for the opportunity in the written, statement itself, if it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the moral of the workman and compel him to surrender which he may not otherwise do.

6. The above finding of the Supreme Court would have to read along with the observation of the Supreme Court.

It was further observed that in such a pleading it raised and an opportunity is sought, it is to be given, but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings, there is no duty cast in law or by the rules of justice, reason and fair play that a quasi judicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights. The statement that if an application is made during the pendency of the proceedings does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claims relief, it must plead for the same. The pleading can be on incorporated in a statement of claim or a written statement of defence. It was not

for a moments suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the original pleading has to be granted: If a separate application is made, it would be open to the Labour Court Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action? Without being specific, it can be said that such an application has to be examined as if it is an application for amendment of original pleadings. Keeping in view all the aforementioned considerations and if it does not appear to be bonafide or has been made after a long unexplained delay or the explanation for the omission of claiming the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same. The observation was not made to lay down a preposition of law that as and when it suits the convenience of the employed stage of the proceedings, it may make an application at any seeking such opportunity and the Labour Court/Industrial Tribunal was obliged to grant the same.

7. The finding and observation of the Supreme Court were made in the light of the following state of facts.

The workman filed his written statement of defence, contending inter alia that the enquiry has been instituted under the pressure of the majority. Union from which he broke away due to acute differences of opinion on matters of policy. At the stage of defence evidence after the management's evidence had been recorded two applications were filed by the workman. One of those applications was for the management being directed to produce three letters dated. 2-8-64, 15-3-65 and 24-5-65 which were stated to be very material for the workman's defence. It was stated in that application that if the documents were not produced by the management, three named persons may be caused to be produced for being examined as his witnesses at the enquiry. The Enquiry Officer who did not allow that application received written arguments from both sides and on the conclusion of the enquiry recorded his findings holding the workman guilty of all the charges. On 29-12-65 he proposed toward the punishment of dismissal to the workman and heard the workman who protested against the punishment and stated that the enquiry was arbitrary, biased and improper. The workman was dismissed on the same day and his appeal was dismissed by the Appellate Authority on 26-11-1966.

8. On a proper consideration of the observation of the Supreme Court in my view it leaves no manner of doubt that it is for the Industrial Tribunal to examine the issue as to whether the application for amendment should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action. If however the Tribunal comes to a finding that the application lacks bonafides or that there exists unexplained delay, the Tribunal would be within its right to reject the application.

9. From the narration of facts in regard to the Supreme Court decision, as above, it appears that the workman was suspended on 20th July 1965-and dismissed from services on 28th September. 1965. It further appears that the management dragged the matter- to High Court at different stages and it is only in the year 1979 that is after a lapse of about 14 years that an application has been made seeking further opportunity before the Tribunal for substantiating the charges framed in 1965. As a matter of facts the Supreme Court found that the management was not keen to have an early, disposal of the matter. In the case under consideration however and as appears from the records the conduct of the petitioner cannot be said to be such where it smacks of malafide intent. The decision in Sambhu Nath's case, cannot be said to have laid down a hard and fast rule of law that no application can ever be made. The decision laid down that the workman ought not be made a pray of the management's dilatory attitude. The Supreme Court decision is in any event clearly distinguishable on facts.

10. In my view, the Tribunal misread the judgment of the Supreme Court in the case of Sambhu Nath Goel Vs. Bank of Baroda and as such the consequent dismissal of the application for amendment of the written statement cannot be sustained.

11. In the view, I have taken, I need not deal with the other contentions raised by Mr. Seth appearing on behalf of the Writ petitioner.

12. By reason of the above, the impugned order is set aside. I remit the matter back to the Tribunal to decide the application afresh in the light of the observations made herein, before and, in accordance with law. It is however, desired that the Tribunal should dispose of the entire matter with utmost expedition. Since Mr. P. K. Chatterjee waived the service of the Rule on behalf of the Respondent No. 3, and Mr. Seth does not want to proceed against the respondent Nos. 1 & 2, the Rule is thus disposed of without however, any order as to costs.