

(2013) 11 CAL CK 0071
In the Calcutta High Court
Case No : C.R. No. 13399 (W) of 1981

Messers. Texmaco Limited (Formerly Known As M/s. Textile Machinery Corporation Ltd.) APPELLANT

Vs

Texmaco Engineering Employees Union and Others RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 LLJ 455

Hon'ble Judges : Asim Kumar Mondal, J

Bench : Single Bench

Advocate : Partha Bhanja Choudhury, Mr. Rishav Dutt and Mr. Jeevan Ballav Panda, for the Appellant;

Judgement

Asim Kumar Mondal, J.—This is an application under Article 226 of the Constitution of India challenging an order of reference No. 4019-I.R./IR/101-81(A)/65 dated September 11th, 1965 made u/s 10 of the Industrial Disputes Act by the Government of West Bengal referring thereto certain disputes for adjudication to the second Industrial Tribunal, West Bengal. In the instant writ application the award dated April 15th, 1981 made by the Second Industrial Tribunal, West Bengal upon the above mentioned order of reference in case No. VIII-242/65 published by order of the Government of West Bengal No. I.R./IR/10L/86/81 dated 19th September, 1981 has also been challenged by the petitioner Messers. Texmaco Limited (formerly known as M/s. Textile Machinery Corporation Ltd.), Belghoria, Kolkata - 700056.

The case of the petitioner in short is that at the material time, the company had a number of different incentives schemes in its factory for various categories of workmen in different departments. At the material times, the said incentives schemes did not apply to about 275 daily rated workmen working in the said three factories of the company and some of them were getting a personal allowances in lieu of the incentive scheme. The employees union, respondent No. 1 used to represent a group of workmen in the factories. The said union raised

certain disputes for modification and/or revision of the existing incentive schemes in respect of certain classes of workmen and for extension of the scheme to all the workmen drawing salary below Rs. 500/- per month and also raised certain other disputes over termination of services of one Sri. Ananta Chakraborty and transfer of a workman Sri. P. Roy whereupon the Government of West Bengal, by the aforesaid order of reference dated 11th September, 1965 referred the matter for adjudication before the Second Industrial Tribunal, West Bengal. In the said reference four issues were framed as follows: -

1. Revision of existing incentive scheme for overhead crane (Boilers) for steel foundry maintenance shop, tool stores (H.E.D.) setters and Mysteries of Machine shop (H.E.D.) for progress section (R.S.) and Forging and Smithy shops (R.S.).
2. Whether the Incentive schemes are to be extended to workman drawing wages upto Rs. 500/- per month but not covered by any existing incentive scheme? If so, in what manner and under what condition?
3. Whether the transfer of Sri. P. Roy from Inspection department to assembly section is justified? What relief, if any is he entitled to?
4. Whether the termination of service of Shri Ananta Chakraborty is justified? What relief, if any, is he entitled to?

2. The Company/petitioner and union entered appearance before the learned Tribunal and union filed its written statement dated 29.11.1965 verified by Sri. Amylya Sas, Secretary and the Company filed its written statement dated 25.04.1966. Both the parties adduced oral as well as documentary evidences in support of their respective written statements before the Tribunal during the proceedings of adjudication of the issues. The evidence was specifically closed on December 6th, 1975 thereafter a local inspection was held by the learned Tribunal at the factory on May 7th, 1977. In course of the hearing the union did not press for adjudication of the issue No. 1 and as such the learned Tribunal has not given any award in respect of the issue No. 1. The learned Tribunal ultimately passed its award dated April 15th, 1981 where under the issue No. 2 and 4 have been decided in favour of the workmen and issue No. 3 has been decided against the workmen. The said award was published by notification dated September 19, 1981 and received by the company on some days later.

3. Being aggrieved by and dissatisfied with the said award so far it relates to the issue No. 2 and 4, the Company has preferred the present application on the grounds that the award of the learned Tribunal in the reference to issue No. 2 granting extension of incentive schemes to the five categories of workmen namely Supervisors, Progress Supervisors, Chargemen, Assistant Foremen and Inspectors is apparently perverse, illegal and based on no materials on record and in granting the said relief the learned tribunal acted as benevolent despot. Further on the ground that the purported reasons given by the learned Tribunal in allowing the extension of the scheme to the said five categories of employees are not valid and cogent reasons and in the facts and circumstances of the case

no reasonable person to have adjudicated the issue in favour of the employees. Further that with reference to the issue No. 4 the findings of the learned Tribunal that the termination of service of Sri. Ananta Chakraborty is not justified is wholly erroneous, illegal and perverse and the said finding is vitiated by errors apparent on the record. And finally the learned Tribunal acted illegally and beyond jurisdiction in granting compensation to the workmen even though admittedly the workman was under employment during the relevant period and the workman himself declined to have relief of reinstatement.

4. Mr. Partha Bhanja Choudhury with Mr. Rishav Dutt and Mr. Jeevan Ballav Panda appeared on behalf of the petitioner company. Mr. Bhanja Choudhury filed the affidavit of service and submits that the copy of the application as served by speed post upon all the opposite parties afresh as the matter relates to year of 1981. It is also submitted that some of the copy as returned back unserved with a postal endorsement left. It is also submitted that from the report of postal department as available in the internet showing the movements and delivery of the matter, it appears that all the items have already been delivered. The copies of the information available from the internet has also filed with affidavit of service.

5. On repeated dates as and when the matter came up in the list for hearing none appears on behalf of the respondents.

6. Under the circumstances the matter was taken up for hearing in presence of learned advocates of the petitioners.

7. Mr. Bhanja Choudhury filed affidavit in reply and submits that at the present period of time, the impugned award dated April 15th, 1981 is impossible to implement inter alia because of the reasons that since the order of reference pertaining to September 11th, 1965 and the award was passed on April 15th, 1981, as the circumstances prevailing in the industry in 2013 has totally changed and hence the award is impossible to implement. It is also submitted by Mr. Bhanja Chowdhury that the award loses its force one year after its publication in the official gazette and as such the award is nullity in the eye of law. The learned Tribunal miserably erred in law in granting 150% of the total back wages since the date of termination of the service of Sri. Ananta Chakraborty till the date of final publication as the same is totally illegal and erroneous in the eye of law. The fact remained that Sri. Ananta Chakraborty has himself admitted that he was in gainful employment under Aluminium Manufacturing Company in June or July 1967 and was still in service. Learned Counsel for the petitioner further submits that the company in his written statement filed with reference to the industrial dispute case before 2nd Industrial Tribunal has categorically denied that the said Amulya Das who has purportedly signed the affidavit on behalf of the respondent was not in its properly constituted working president and as such he was not competent to sign on behalf of the Union. It is also submitted that in the impugned award as well as in the written statement submitted by the employees union, the different departments of the company has been erroneously

mentioned as factory. In fact there are three factories namely Textile Machinery Factory and Steel foundry Factory which are situated at Belghoria another is Heavy Engineering Factory situated at Agarpara, 24 Parganas. All the three factories are three independent units carrying on independent manufacturing activities and having no functional integrity. Learned Counsel further submits that at the relevant period there were about 2000 daily rated workmen who were not covered by any incentive schemes and there were about 1500 monthly paid staff who were directly involved in production but not covered by any incentive schemes as alleged or at all.

8. Such daily rated workmen were not getting any personal allowances in lieu of the incentive schemes at the relevant point of time the company had the number of different incentive schemes in its factories for various categories of its workmen in different departments. The actual number is 275. A large number of company's workmen were piece rated and their earnings depend upon their individual production by virtue of such piece rates. The number of daily rated workmen to whom the incentive scheme did not apply was in the steel foundry (about 130) in the heavy engineering division (about 66) in the textile division (about 196). In the last category out of 196, about 30 were in receipt of a personal allowances which was compensating for the lack of any incentive schemes. Learned counsels appearing on behalf of the petitioner also submits and argued that production of incentive scheme for a particular category of workmen depends upon various factors and if a particular category of workmen is not covered by any incentive schemes the same does not itself tantamount to any discrimination. The schemes which were framed by qualified and competent persons and in most of the cases have been discussed and agreed with the competent persons.

9. Mr. Bhanja Choudhury draws my attention to the paragraph 9 of the affidavit submitted by the employees union and also draws my attention to the paragraph 9 of the companies written statement and submits that in paragraph 9 of the written statement filed by the company the allegation as made out by paragraph 9 of the affidavit has properly dealt with. He also submits that reference to paragraph 10 of the affidavit that deposition of the company's witnesses Sri. Balraj being O.P.W. No. 1 have been given in parts in the main petition so as to give a misleading picture of the whole evidence. With reference to paragraph 13 of the affidavit Learned counsels submits that Company has denied and disputed that the work of all workmen can be measured. It is submitted that the works of supervisors, chargeman, Assistant Foreman, Progress Supervisors and Inspectors had no relation with the increase or decrease of production and their work cannot be measured and that they have special grades to pay. Learned Counsel submits that the findings of the Tribunal that relates to the said categories of workmen are erroneous and not correct. The view of the Tribunal to extend the incentive bonus scheme to other workmen is an arbitrary manner and without any appreciation of the evidences.

10. In conclusion of his submission learned counsel for the petitioner company submits and argued that the Tribunal has not given any directions in what manner and under what conditions the said scheme is to be extended to the aforesaid categories of employees and what would be the basis of calculation of the quantum of the incentive in respect of those employees and whether they would continue to be covered under the scheme even if their salaries exceed Rs. 500/- and no order of reference the learned Tribunal was obtained to give such directions and thus the learned Tribunal has failed to exercise its jurisdiction in adjudicating the said issues and as such the award with reference to the said issue No. 2 is incomplete, unworkable and unenforceable and is likely to create further complication and confusion and as such the award with reference to the said issue is liable to be quashed. The findings of learned Tribunal with reference to issue No. 4 is not justified as is wholly erroneous, illegal and perverse.

11. I have carefully considered the submissions and arguments advanced by Mr. Bhanja Chowdhury appearing on behalf of the petitioner company. I have also carefully perused the references issued by the Government of West Bengal, Labour Department dated September 11th, 1965 after framing four issues which has been dealt with by the learned 2nd Industrial Tribunal, in his award which are challenged in the present application. I have carefully considered the award passed by the Industrial Tribunal after adjudicating the issues. The petitioner company has not agreed with the findings and directions upon issue No. 2 to 4 which relates to extension of schemes to same categories of employees and also which relates to termination of service of an employee and claim of back wages and transfer of the another employee. The submissions and arguments as advanced by Mr. Bhanja Chowdhury clearly points out the case and circumstances of findings in the award is erroneous and sometimes without proper appreciation of evidences adduced by the company. There is scope to hold that the evidences of Mr. Balraj as O.P.W. No. 1 has not been properly appreciated. It is also a fact as pointed out by Mr. Bhanja Choudhury that the learned Tribunal has not given any directions in what manner and under what circumstances the extension of scheme is to be implemented. We are too keep in mind that the Industrial Disputes was referred by the Government long back in the year 1965 and the same was adjudicated finally in the year 1981 and Government notified the same in official gazette vide No. 3054-I.R./IR/10L-86/81. The petitioner company has challenged the said award in the present writ application in the year 1981. Keeping in view the above circumstances I am agreed with the submissions of learned counsels for the petitioner that at the present period of time the impugned award dated April 15th, 1981 is impossible to implement as there is material changes in the rules, regulations and industrial laws prevailing in the industry in 2013. The award losses its force one year after its publication in the official gazette and as such the award is nullity in the eye of law.

12. That the findings of the award of industrial tribunal there are material contradictions in between the materials on record and the written statement

submits by the parties.

13. In the result I am of the view that there should be a direction upon the respondent to cancel, withdraw or rescind the impugned part of the award relating to issue No. 2 to 4 dated April 15th, 1981 made by the Judge, 2nd Industrial Tribunal in case No. VIII-242/65. Thus the writ application under Article 226 of the Constitution of India is allowed with a direction upon the respondents to cancel, withdraw or rescind the impugned part of the award relating to issue No. 2 to 4 dated April 15th, 1981 made by the Judge, 2nd Industrial Tribunal in case No. VIII-242/65. Urgent Photostat Certified Copy of this order if applied for be given to the parties on priority basis.