

(1996) 07 CAL CK 0054
In the Calcutta High Court
Case No : C.O. No. 9764 (W) of 1996

Ms. Anima Roy

APPELLANT

Vs

Fourth Industrial Tribunal and Others

RESPONDENT

Date of Decision : 23-07-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 15(2)
West Bengal Industrial Disputes Rules, 1958 — Rule 208

Citation : (1998) 3 LLJ 1093

Hon'ble Judges : Asok Kumar Chakravorty, J

Bench : Single Bench

Advocate : Sujay Bhattacharya and M.C. Gosh, for the Appellant; Dipak Kumar Ghosh and Ranajoy De, for the Respondent

Judgement

Asok Kumar Chakravorty, J.—By an order No. 10 dated March 29, 1996 the Fourth Industrial Tribunal, West Bengal, rejected the prayer of the writ petitioner workman to hear her application for interim relief u/s 15(2)(b) of the Industrial Disputes Act, 1947, until the workman filed her written statement. The said order passed by the learned Tribunal has been challenged in this writ application as illegal and invalid.

2. Heard the learned advocates for the petitioner and the respondents.

3. It was submitted on behalf of the petitioner that u/s 15(2)(b) since the matter has got to be disposed of within 60 days from the date of order of reference and since such interim order has got nothing to do with adjudication of the reference on merit that the learned Tribunal was not justified in insisting upon filing of the written statement by the petitioner workman before disposal of the prayer for interim relief. It was, however, submitted on behalf of the respondent company that the workman had been intentionally delaying in filing the written statement though under the rules she was bound to do so. He stated that since August 25, 1995 till today number of orders were passed directing the petitioner workman to file written statement which she did not do. The learned counsel also referred to

20-B of the West Bengal Industrial Disputes Rules, 1958, from which it will appear that it was the duty of the petitioner workman to file written statement first.

4. It appears that the learned Tribunal refused to dispose of the application for interim relief first on the ground that such relief being aid of final relief the written statement filed by the parties are required to be considered before disposal of such application. My attention was drawn in the case of Ganges Printing Ink Factory Employees Industrial Co-Operative Society Ltd. and Another Vs. The 7th Industrial Tribunal and Others, wherein it has been held that "Adjudication of an industrial dispute does not follow the procedure of a suit. It is not initiated upon a plaint or an application in which the party is to make out his case, even an application for interim relief is not a condition precedent for grant of interim relief u/s 15(2). Adjudication starts on a reference being made to the tribunal which reference again merely sets out the dispute. Once such a reference is received by the tribunal it fixes a date of appearance and then requires the parties to file their respective cases. Until such time the respective cases are not before the tribunal, yet the provision enjoins that within 60 days from the date of reference the tribunal is required to make the necessary order for interim relief, it is quite clear, therefore, that the legislature was intending that the issue with regard to the interim relief should be adjudicated on irrespective of and even before cases of the parties touching the merit of the dispute go to the tribunal. In such a situation it would be difficult to contemplate that Section 15(2)(b) requires the tribunal to hold a preliminary adjudication with regard to the merit of the dispute and record a strong prima facie case in favour of the applicant before any order for interim relief could be made". Thus for disposal of an application u/s 2(b) it is not necessary for the Tribunal to make preliminary enquiry with regard to the dispute for a strong prima facie case in favour of the applicant. The application u/s 2(b) has accordingly got to be decided on the applications of the party/irrespective of filing of any written statement by the said party.

5. In the aforesaid circumstances, filing of written statement by the workman cannot be said to be sine qua non for disposal of an application for interim relief of the workman. The learned Tribunal therefore, was not justified in rejecting the petitioner's prayer for disposal of the application for interim relief first by insisting upon the prior filing of the written statement before disposal of the matter.

6. The learned Tribunal is accordingly directed to dispose of the application for interim relief first without insisting upon filing of written statement by the workman.

7. The writ application is accordingly disposed of without any order as to costs.