

(2007) 04 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (C) No. 1489 of 1999

Padma Nath Gogoi and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10A(3A), 11(3), 18, 18(3)

Citation : (2008) GLT 210 Supp

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : U.K. Nair, for the Appellant; J. Handique, for the Respondent

Judgement

I.A. Ansari, J.—I have heard Mr. U.K. Nair, learned Counsel for the Petitioners, and Mr. J. Handique, learned Government Advocate, appearing on behalf of the respondent Nos. 1 and 2.

2. Aggrieved by the orders of promotion made in favour of the Petitioners, the respondent Nos. 5,6 and 7 of this writ petition, represented by their Union, namely, Workers Union, Assam Small Industries Development Corporation (in short, "ASIDC"), raised an industrial dispute. By notification, dated 14.08.1996, the State Government made a reference to the Labour Court of Assam, at Guwahati. The reference, so made, read as under:

Whether the management of Assam Small Industries Development Corporation Ltd. Bamunimaidan, Guwahati-21 are justified in promoting juniors namely-- Pradip Ch. Nayak, Padmanath Gogoi, Nakum Ch. Dutta, Munin Baruah, Moral Deka, Dinanath Kalita, Achyut Chandra Sharma and Md. Khalil Ali (All are non members of the union) to higher posts superseding seniors--namely, Md. Ziaur Rahman, Sarat Chandra Das, Ram Charan Haloi and Sudhir Sharma (All are members of the union)? If not, are the workman Md. Ziaur Rahman, Sarat Chandra Das, Ram Charan Haloi and Sudhir Sharma entitled to promotion to the

higher post with due seniority or any other relief in lieu thereof?

Whether the action of the Management of the Assam Small Industries Development Corporation Ltd. amounted to unfair labour practice?

Whether the management of Assam Small Industries Development Corporation Ltd. are justified in transferring Shri Gopal Ch. Das, Ziaur Rahman and Sarat Ch. Das office bearers as well as protected workmen to other places while they are in office.

If not, what action should be taken.

3. The reference abovementioned, which came to be registered as Reference Case No. 15/1996, was disposed of by award, dated 09.09.1998, passed by the Labour Court, Guwahati. The relevant observations and directions given in the award aforementioned read as under:

16. It appears from the written statement of the workmen dt. 24.10.96 and that of management dated 26.12.96 verified by Shri A.C. Bora, General Manager, Assam Small Industries Development Corpn. Ltd., that the seniority among the two groups of workers numbering eight and four should be in the order given below:

- (1) Md. Khalil Ali (date of appointment 13.5.70)
- (2) Sarad Ch. Das (date of appointment 22.10.70)
- (3) Sri Achyut Ch. Sarma (date of appointment 18.6.71)
- (4) Sri Dinanath Kalita (date of appointment 13.8.72)
- (5) Sri Ram Charan Haloi (date of appointment 11.12.72)
- (6) Sri Sudhir Sarma (date of appointment 11.12.72)
- (7) Md. Ziaur Rahman (date of appointment 9.4.73)
- (8) Sri Nakul Ch. Dutta (date of appointment 12.7.73)
- (9) Sri Moral Deka (date of appointment 2.12.74)
- (10) Padmanath Gogoi (date of appointment 4.12.74)
- (11) Sri Munin Barua (date of appointment 6.10.76)
- (12) Sri Pradip Ch. Nayak (date of appointment 1.1.82)

17. The above seniority list should be followed and the promotions already made are to be scrapped to the extent necessary and re arranged according to the above list. In the other words promotion already made which are inconsistent with the above seniority list are scrapped to give effect to the above seniority position. The suggested charge shall take effect from the date of reference. However, the management are at liberty to create new posts to accommodate

the affected employees while giving effect to this order if they so like. In no case junior employee as shown in the above list shown hold a higher post then any senior one of the four workman involved in the reference and as shown above. The schedules A & B of the reference are answered as above. The schedule C calls for no answer.

4. Aggrieved by the award, the Petitioners have impugned the same in this writ application, made under Article 226 of the Constitution of India, on the ground, inter alia, that their interest was inextricably linked with the determination of the dispute, for, the reference warranted the learned Labour Court to determine as to whether the present writ Petitioners' promotion were justified, but neither the writ Petitioners were made parties to the reference by the State Government nor were they made parties to the reference by the learned Court below, while determining the disputes referred to it for decision. In the facts and circumstances of the present case, the Petitioners contend, they ought to have been made parties by, at least, the learned Labour Court by taking recourse to the provision of Section 18(3)(b) of the Industrial Dispute Act, 1947, and as they were not made parties to the reference, and they had not be given the opportunity of presenting their case before the learned Court below, the impugned award suffers from serious infirmity of law and is contrary to all canons of justice.

5. Broadly speaking, the present writ petition raises two important questions, namely, as to whether the present writ Petitioners were necessary parties to the reference and if so, whether the law permitted them or required them to be made parties to the reference by the learned Labour Court.

6. While considering the questions posed above, it is important to bear in mind that a person is a necessary party in a suit or proceeding if any relief is claimed against him and/or when no effective relief can be granted in his absence. In the present case, the workmen, represented by their Union, agitated against the promotion granted to the present writ Petitioners and the reference, which arose on the basis of such a dispute, warranted determination of the question as to whether the promotion granted to the writ Petitioners were legal and justified and if not, what reliefs shall be granted to the workmen, who were aggrieved by the promotions of the writ Petitioners. In the facts of the present case, there can be no escape from the conclusion that the reliefs, sought for, directly and substantially affected the interest of the writ Petitioners. In such circumstances, the writ Petitioners were, undoubtedly, necessary parties to the reference aforementioned. In fact, this position could not be disputed on behalf of the respondents.

7. In the backdrop of the conclusion reached that the present Petitioners were necessary parties to the reference, in question, what needs to be, now, decided is as to whether a Labour Court or an Industrial Tribunal is empowered to implead, as a party, to a reference, a person, who has not been made a party to the reference by the State Government, but transpires to be a necessary party

for determination of the reference. While considering this question, what is pertinent to note is that though Section 11(3) of the Industrial Dispute Act (in short "the said Act") vests in the Labour Courts and Industrial Tribunals the powers of a civil court in respect of (a) enforcing attendance of any person and examining him on oath, (b) compelling the production of documents and material objects, (c) issuing commissions for the examination of witnesses and (d) in respect of such other matters as may be prescribed, there is no specific provision, in the said Act, making the provisions of Order 1 Rule 10 of the CPC applicable to an industrial dispute. It maybe noted that it is Order 1, Rule 10 of the Code of Civil Procedure, which empowers a civil court to implead a person as party to a suit or proceeding. When there is no specific provision, in the said Act, applying the provisions of Order 1, Rule 10 of the CPC to an industrial dispute, the question, which, naturally, arises, is as to whether a Labour Court or an Industrial Tribunal has the power, under the said Act, to implead to the reference a person as party if he has not been made a party to the reference by the Government, while making the reference u/s 10 of the said Act.

8. My quest for answer to the above question brings me to Section 18(3), which is reproduced here in below:

18(3). A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on-

(a) All parties to the industrial dispute;

(b) All other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

9. A close analysis of the provisions of Clauses (a) and (b) of Sub-section (3) of Section 18 shows that while Clause (a) refers to all parties to the industrial dispute, Clause (b) refers to all "other" parties summoned to appear in the proceedings as parties to the dispute. The word "other" indicates that the parties, who may have been summoned to appear, may not be identical with, or may be different from, the parties to the industrial dispute as specified by Clause (a). Section 2(k) of the said Act defines an industrial dispute to mean any

dispute or difference between employers and employees, 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 person. In the light of the definition, so given, of industrial dispute, it becomes clear that parties to an industrial dispute, referred to under Clause (a), would mean persons between whom the dispute has arisen; whereas Clause (b) contemplates persons, other than those, who are actually and directly involved in the dispute, which forms the subject-matter of reference u/s 10. Thus, Section 18(3)(b) clearly empowers the Labour Courts and Industrial Tribunals to summon persons other than parties to the industrial dispute referred to it by the State Government u/s 10.

10. What logically follows from the above discussion is that if a Labour Court or an Industrial Tribunal, while dealing with an industrial dispute, referred to it by the State Government u/s 10, comes to the conclusion that persons, other than those mentioned as parties to the industrial dispute, are necessary for effective determination of the dispute, it has the power to summon such persons and if such persons are summoned to appear in the proceeding, the award, which the Labour Court or Industrial Tribunal, may, ultimately, pronounce, would be binding on them. Since it is likely that a person, who has been added as a party to an industrial dispute by the order of the Labour Court or Industrial Tribunal, may raise the question as to whether the joinder of parties was justified, Section 18(3)(b) clearly empowers the Labour Court or the Industrial Tribunal, as the case may be, to record its opinion as to whether a person, impleaded as a party and summoned, was without any proper cause or not. In fact, setting at rest the question as to whether Section 18(3)(b) empowers a Labour Court or an Industrial Tribunal to implead, as a party, a person, who was not a party to the dispute referred to it, a three Judge Bench of the Supreme Court, in *Hochtlef Gammon v. Industrial Tribunal, Bhubaneshwar Orissa and Ors.* reported in 1964 SC II L.L.J.460, held that Section 18(3)(b) postulates the existence of an implied power in the Tribunal to add parties and summon them. In the face of this authoritative pronouncement by the Apex Court, there can be no escape from the conclusion that in an appropriate case, the Labour Court or the Industrial Tribunal, as the case maybe, has the implied power, u/s 18(b), to summon, as a party, a person, who may not have been made a party to the industrial dispute, while reference was made by the Government u/s 10 of the said Act. However, while exercising power to implead a person as a party u/s 18(3)(b), the Tribunal or Labour Court cannot expand or materially enlarge the scope of the reference made to it.

11. What crystallizes from the above discussion is that a Labour Court or an Industrial Tribunal is empowered to implead, in a given case, a person, who, in the facts of a given case, is a necessary party to the determination of an industrial dispute. In the case at hand, since the writ Petitioners were, as already pointed out above, necessary parties to the dispute, in question, they ought to have been impleaded as parties. To put it a little differently, it was, in the present

case, incumbent, on the part of the learned Labour Court, not to proceed with the reference without making the present Petitioners parties to the reference. As the reference was disposed of without giving any opportunity of hearing to the writ Petitioners, the impugned award cannot be sustained.

12. In the result and for the reasons discussed above, this writ petition partly succeeds. The impugned award, dated 09.09.1988, is hereby set aside and the reference is remanded to the learned Court below with direction to implead the present writ Petitioners as parties to the reference and, then, dispose of the same in accordance with law after giving opportunity of hearing to all the parties concerned.

14. With the above observations and directions, this writ petition shall stand disposed of.

15. No order as to costs.

16. Send back the LCR.