
(1990) 07 CAL CK 0001
In the Calcutta High Court
Case No : C. O. No. 4988 (W) of 1989

Phanindra Chandra Roy

APPELLANT

Vs

Calcutta State Transport Copn. and Others

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Industrial Disputes Act, 1947 — Section 17A, 19, 2(p), 29, 32

Citation : 94 CWN 1124

Hon'ble Judges : Monoj Kumar Mukherjee, J

Bench : Single Bench

Advocate : Moloy Chakraborty, for the Appellant; Thakurdas Roy Chowdhury, for the Respondent

Judgement

Monoj Kumar Mukherjee, J.—The petitioner, who was a driver of the Calcutta State Transport Corporation ("Corporation" for short), was dismissed from his services on September 19, 1973 for having met with an accident while driving a vehicle of the Corporation. Over the dismissal, an industrial dispute was raised which was referred to the Second Industrial Tribunal, West Bengal for adjudication. By its award dated January 31, 1985, the Tribunal set aside the order of dismissal and directed the Corporation to reinstate the petitioner without any delay and to make payment of all his arrears within a month from the date of receipt of the award. By a letter dated March 18, 1985, the petitioner asked the Managing Director of the Corporation to implement the award but the Corporation did not allow him to join nor pay his arrears. The petitioner, thereafter issued two reminders on 8/4/85 and 13/5/85 which went unheeded. Then on 28/5/85, he wrote another letter to the Managing Director of the Corporation with an offer that if he was reinstated by the first week of June, 1985 in the post of Vehicle Inspector, and paid full wages from the date of the award, he was prepared to accept 60% of his wages for the period of his unemployment. He pointed out that his offer was valid till June 7, 1985. In reply thereto, the Managing Director intimated the petitioner, by his letter dated

31/8/85 that the Corporation was willing to reinstate him in service without any prejudice to its rights and contentions in the matter on payment of 40% back wages and if he was agreeable to the offer, he could send his consent letter. The petitioner wrote back on March 4, 1986, stating that as he was helpless and was in an acute financial distress, he had no other alternative but to accept the offer made by the Corporation to save his family from starvation. Thereafter, the Corporation issued an order on May 12, 1986, reinstating him in service as a driver and undertaking to give him 40% of the back wages he was entitled to in terms of the award. Pursuant to the said order, the petitioner joined his duties and thereafter got a promotion to the post of Vehicle Inspector with effect from September 5, 1986. While working in that capacity, he was served with an order dated April 13, 1987, whereby he was informed that he would retire on superannuation on and from December 1, 1937. This was followed by another Memorandum dated May 7, 1987, wherein it was stated that according to his date of birth as appearing in the records, he should have retired on superannuation with effect from 28/2/86 and that necessarily meant that he had rendered excess period of service. He was, therefore, informed that he would retire from services of the Corporation with effect from 8/5/77 and not from 1/12/87 as was mentioned in the earlier Memorandum. Aggrieved by the above Memorandum, the petitioner moved a writ petition which was disposed of by this Court on August 29, 1988 with a direction upon the Corporation to treat the petitioner as on service upto November 30, 1987 and to pay him all benefits accordingly. Thereafter, the petitioner wrote a letter to the Managing Director of the Corporation calling upon him to pay him the balance 60% of his back wages together with the benefits of selection grade and scale of pay and also the new intermediate selection grade under the ROPA Rules, 1981. As the claim of the petitioner was not entertained, he filed this writ petition.

2. In contesting the claim of the petitioner, the Corporation has contended that he was already been paid all his service and retired benefits in terms of the Corporation Ruler, and in terms of his letter by which he agreed to be reinstated with 40% of his back wages. Accordingly, the Corporation has prayed for rejection of the writ petition with exemplary costs.

3. The facts detailed above unmistakably and markedly demonstrate how a Government undertaking, in utter disregard of the law of the land, has unabashedly exploited the plight of a helpless employee. u/s 17A of the Industrial Disputes Act ("Act" for short), the award passed in favour of the petitioner became enforceable on and from 5/4/85 as admittedly it was published in the official gazette on 5/3/85. Consequent thereupon, the Corporation became statutorily obligated to implement the same in pain of prosecution and penalty u/s 29 of the Act. In the fitness of things, it was expected therefore that the Corporation would fulfill its statutory obligations - if it was oblivious of its social and economic obligations as a "State" under Article 12 of the Constitution of India without being told by the petitioner to do so. Regrettably, however, the expectation was belied, and even reminders of the petitioner failed to evoke any

response and the Corporation sat tight over the matter until the petitioner, forced by penury - the inevitable of 12 years' unemployment - agreed to forgo a part of his legal and legitimate claim. Even this genuflexion of the petitioner was not gracefully acknowledged by the Corporation as would be evident from the fact that the offer of the petitioner was farther pruned down and after a lapse of 1 year, he was given an appointment on its dictated terms and on his signing on the dotted lines.

4. In the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , the Supreme Court raised the question as to whether the Courts should sit back and watch supinely while the strong trample under foot the rights of the weak and in answering the question observed :

We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated.

The court must judge each case on its own facts and circumstances.

5. As the above observations dovetail with the facts of the instant case, the stand taken by the Corporation to negate and thwart the award must be held to be unfair, unjust and untenable.

6. The matter can be viewed from another angle. In view of sub-section (3) read with sub-section (6) of section 19 of the Act, an award shall continue to be binding upon the parties, after the initial validity of one year from the date it becomes enforceable u/s 17A of the Act, until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party intimating its intention to terminate it. It is nobody's case that any such notice was given by either of the parties. Then again, the settlement arrived at between the parties in terms of which the petitioner was given employment was not a "settlement" within the meaning of section 2(p) of the Act so as to override or supplant the award. For all intent and purposes, therefore, the award still continues to be valid and binding upon the parties. For the foregoing discussions, I allow this application and direct the respondent-Corporation to give the reliefs the petitioner is entitled to under and in terms of the award within two months from the date of communication of this order. The petitioner will get costs of this application, which is assessed at Rs.2500/-. Let a copy of this judgment be forwarded to the Government of West Bengal to decide upon the question whether prosecution should be launched against the Corporation and its erring officials in accordance with section 29 read with section 32 of the Act.