
(2000) 07 CAL CK 0037
In the Calcutta High Court
Case No : A.P.O. No. 340 of 2000

Ranajit Naskar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 15(2)

Citation : 105 CWN 49 : (2001) 88 FLR 631 : (2000) 2 ILR (Cal) 227 : (2000) 2 LLJ 1534

Hon'ble Judges : Satyabrata Sinha, J;Hrishikesh Banerji, J

Bench : Division Bench

Advocate : Partha Bhanja Choudhury, for the Appellant;Bikash Ranjan Bhattacharjee, for the Respondent

Judgement

1. This appeal is directed against a judgment and order dated August 18, 1999 passed by a learned single Judge of this Court in W.P. No. 1490 of 1999 whereby the writ petition filed by the first respondent herein was disposed of by directing:

"The workman is out of employment since 1988 and he has not been paid any amount till date, although there is such a direction passed against the petitioner in the year 1991. The question has arisen in this case that if once the payment is made and the workman loses his case before the Tribunal then what is the guarantee available to the employer to get back the amount advanced to him. At the same time the Court should not close its eyes to the reality of the situation that a poor workman is out of employment for several years and no payment has been made by the employer. While striking a balance I think it would be appropriate to direct the petitioner to pay Rs. 15,000/- towards the subsistence allowance as interim relief on the basis of an affidavit by giving an undertaking that the workman shall refund the same in case he loses his dispute before the Industrial Tribunal. In so far as the balance amount is concerned, the employer shall furnish a bank guarantee and satisfying the Tribunal about the furnishing of such bank guarantee and the Industrial Tribunal on being satisfied of furnishing

of bank guarantee by the petitioner shall proceed with the hearing of the case and dispose of the same finally within a period of four months from the communication of this order. The petitioner is directed to go on paying the aforesaid sum at Rs. 1,003/- as interim relief month by month before the 10th of every succeeding month till the conclusion of the case before the Industrial Tribunal".

2. The basic fact of the matter is not in dispute. The appellant herein was an employee of the respondent No. 3. His services were terminated in the year 1988 with regard where to an industrial dispute was raised. The State of West Bengal being the appropriate Government by an order dated August 28, 1989 raised the said dispute for adjudication before the respondent No. 2 herein.

3. As far back as in the year 1991 an application was filed in terms of Section 15(2)(b) of the Industrial Disputes Act as amended by the State of West Bengal and the said petition was allowed. However, the respondent company did not appear in the said proceedings despite service of notice.

4. The learned Tribunal directed the respondent company to pay unto the appellant herein 75% of the total emoluments which was assessed at Rs. 1,003/- per month from the date of filing such application. The said order was not questioned. The respondent company however intended to file certain documents at the time of hearing which had not been accepted. An application was filed by the appellant herein for issuing an appropriate direction to the respondent company for compliance of the interim order pursuant where to by an order dated June 14, 1999 the learned Tribunal, the respondent No. 2 herein directed as under:

"Under such circumstances when an employer violates the order of the Tribunal with regard to the payment of interim relief it was certainly open to the Tribunal to enforce compliance by making the interim relief as condition precedent for the employer to participate in adjudication. Now the moot question is that the Tribunal was empowered and or saddled with liability to enforce its order with regard to the interim relief because the same is a beneficial legislation in favour of the employees to enable them to sustain long drawn process of legal discussions. So the company is to pay out the amount as ordered by this Tribunal by its earlier order of interim relief otherwise the defence of the company in the principal issue is liable to be struck down since the interim relief order is condition precedent. I, therefore, find nothing but to allow the petition of the workman in this regard. The company is directed to pay out all the arrears of interim relief within June 24, 1999 positively otherwise the dispute will be taken up ex parte."

5. Feeling aggrieved by and dissatisfied with the said order the respondent company herein filed a writ application which was, as indicated hereinbefore, disposed of by the learned Trial Judge.

6. Mr. Bhanja Choudhury, learned counsel appearing on behalf of the appellant

raised two contentions in support of this appeal. Firstly, that an order passed u/s 15(2)(b) of the said Act as amended by the State of West Bengal cannot be substituted by directing furnishing of a bank guarantee and secondly, that an order passed in the year 1991 which had not been challenged by the respondent company herein could not have been directed to be modified while questioning the aforementioned order dated June 14, 1999.

7. Mr. Bhattacharjee, learned Sr. Counsel appearing on behalf of the respondent company on the other hand submitted that having regard to the fact that Section 15(2)(b) of the Act was inserted by the State of West Bengal with a view to ameliorate the immediate difficulty of the workman, he cannot be permitted to take the benefit of an order passed in the year 1991. According to the learned counsel the impugned order had been passed not for the purpose of giving relief to his client but for the purpose of giving justice to both the parties inasmuch as while directing payment of a sum of Rs. 15,000/- towards arrear subsistence allowance and future subsistence allowance at the rate of 1,003/- per month, the learned Trial Judge safeguarded the interest of the workman by directing the respondent company to furnish a bank guarantee for the balance amount.

8. The interpretation sought to be made by the learned counsel is not borne out from the order passed by the learned Trial Judge. It is now a well settled principle of law that principle of res judicata applies also to industrial disputes. The order passed u/s 15(2)(b) of the said Act in the year 1991 became final and binding. The question as to whether such an order would satisfy the requirement of Section 15(2)(b) or not could have arisen for consideration by the respondent No. 2 herein at that stage. Since the appellant has not taken any such remedy which was available to him for executing the said order for a period of eight years that does not mean that raising any subsequent event the said order becomes liable to be modified directly or indirectly. The learned Trial Judge, with respect, by passing the impugned order has granted relief to the respondent company indirectly which could not have been done directly. As indicated hereinbefore the learned Trial Judge directed furnishing of a bank guarantee for the interest of the appellant keeping in view the fact that the amount which had become payable to the appellant pursuant to the order of the Tribunal passed in the year 1991 would not be recoverable in the event he loses before the said respondent in the said reference.

9. This very fact that the learned Trial Judge directed the appellant/workman to file an affidavit giving an undertaking that he would refund the same in case he loses the disputes before the Industrial Tribunal gives a clear indication as to the mind-set of the learned Trial Judge. Section 15(2)(b) of the said Act was enacted with a salutary purpose. This aspect of the matter has been considered by a Full Bench decision of this Court in Sampat B.G. Vs. State of West Bengal and Others,), wherein it was held that interim relief granted would not be refundable. It was observed as follows at p. 570:

"28. The intention of the Legislature is further clear from the fact that in terms of

the proviso appended to Section 15(2)(b) interim relief in certain categories of cases would be equivalent to the subsistence allowance as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969. The provisions of the said Act have been incorporated by reference with regard to the quantum of allowance only but the said provision leads to a conclusion that in a case where an interim relief is granted, no direction can be issued to refund thereof as subsistence allowance can never be directed to be refunded. The reason why a subsistence allowance is granted has succinctly been stated by the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, ".

10. The Legislature in its wisdom has laid down a law providing for the manner in which such subsistence allowance is to be computed that is, by taking recourse to the provisions of the West Bengal Payment of Subsistence Allowance Act. The Full Bench has also held that like Section 17-B of the Industrial Disputes Act, Section 15(2)(b) thereof being beneficial in nature has to be construed liberally.

11. For the reasons aforementioned we are of the opinion that the learned Trial Judge went wrong in passing the impugned order. For the reasons aforementioned the appeal is allowed subject to the modification that as regards the direction of the learned Tribunal that it would proceed ex parte, may be considered afresh having regard to the facts and circumstances of the case and in the light of the decision of this Court in Raibahadur Bissessurlal Motilal Haluwasiya Trust and Another Vs. Presiding Officer/Judge, First Industrial Tribunal and Others, .

12. So far as the direction for payment of arrear is concerned we direct the second respondent to issue such direction as he may think just and proper. Having regard to the tout that the matter is pending for a long time we would request the learned Tribunal to dispose of the matter as expeditiously as possible.

13. The appeal and all other connected applications are disposed of.

14. In facts and circumstances of the case there will be no order as to costs.

15. This judgment will govern in APO 342 of 2000 (Rabindra Nath Bose v. State of West Bengal and Ors.), APO No. 341 of 2000 (Sri Premankur Roy v. State of West Bengal and Ors.) and APO No. 343 of 2000 (Manas Ranjan Dutta v. State of West Bengal and Ors.).

16. All parties arc to act on a Xeroxed certified copy of this judgment, to be delivered on priority basis, on the usual undertaking.