

(1999) 08 CAL CK 0005
In the Calcutta High Court
Case No : F.M.A. No. 361 of 1997

Tinplate Co. of India Ltd.

APPELLANT

Vs

Ajit Kumar Mukherjee and Others

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 87 FLR 687 : (2000) 2 LLJ 389

Hon'ble Judges : V.K. Gupta, J;P.K. Sen, J

Bench : Division Bench

Advocate : Pradip Ghosh, Arunava Ghosh, Subhramo Kumar Mukherjee and Debasish Roy, for the Appellant; Dipak Roy and Govinda Chowdhury, Avds., for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, J.—A very short question is involved for determination in this appeal. On May 21, 1986 an award was passed by a learned Judge, 1st Industrial Tribunal, Calcutta whereby retrenchment of the writ petitioner (respondent No. 1 herein) was set aside and the writ petitioner-respondent No. 1 was granted benefits of wages up to the period whereby the contract of service between him and the appellant was to terminate.

2. The appellant's case all along was that the respondent No. 1 was serving under the appellant under a contract of service and that the period of such contract service was three years. The contract provided for earlier termination of service also by serving a notice of three months. This notice having been served, the service of respondent No. 1 was terminated by the appellant before the expiry of three years, but he challenged the same on the ground that he being a workman, the termination was by way of retrenchment and, therefore, it being illegal, he was entitled to all benefits flowing from such illegal termination. The respondent No. 3, the Judge, 1st Industrial Tribunal, Calcutta upheld the contention of the respondent No. 1 and declared him to be a workman, It also

upheld the contention that the termination of service was by way of retrenchment set aside the termination by declaring it to be an illegal retrenchment. On the question of contract of service, however, the respondent No. 3 held that the respondent No. 1 was entitled to benefits only coterminous with the determination of the period under the contract of service which was for three years and it therefore rejected the contention of the respondent No. 1 that he was entitled to benefits till he attained the normal age of superannuation and not as per the terms of the contract. It was against this part of the Award that the respondent No. 1 filed a writ application under Article 226 of the Constitution of India in this Court which vide judgment dated July 12, 1996 delivered by a learned single Judge was allowed. The learned single Judge accordingly granted the relief of payment of backwages to the respondent No. 1 herein up till his normal age of superannuation and accordingly set aside that part of the Award passed by the respondent No. 3 whereby the respondent No. 1 was held entitled to the grant of backwages only coterminous with the period of contract.

3. The only point urged before us by Mr. Pradip Ghosh, learned Counsel appearing for the appellant, is that before filing of the above writ application in this Court, the respondent No. 1 had unequivocally accepted the Award passed by the respondent No. 3 and had obtained the entire amount awarded in his favour without any demur, protest, reservation and without any prejudice to his rights and contentions. Once he did so, he was not entitled to challenge the Award in this Court. This contention was raised by the appellant before the learned single Judge also, but since it did not find favour with the learned single Judge, the judgment was pronounced against the appellant on this ground.

4. Reliance in support of this argument was placed upon a Division Bench judgment of this Court in the case of Jayanta Nath Majumdar v. State of West Bengal, reported in 1997 1 CHN 137. Reliance was also placed upon a Division Bench judgment of Punjab and Haryana High Court in the case of Rajinder Parshad v. Labour Court, Rohtak, reported in (1993 III LLJ 808 (P & H)).

5. We have heard the learned Advocates for the parties and have gone through the aforesaid two reported judgments. We find ourselves with complete agreement with the views expressed by the Division Bench of our own High Court and by the Division Bench of Punjab and Haryana High Court in the case of Rajinder Parshad (*supra*). Undoubtedly, if a beneficiary of an Award chooses to cash and obtain the benefits given to him under the Award by a Tribunal without any demur, without any reservation or without recording his "objection" to such benefits, he is not entitled to challenge the Award subsequently that too after a period of almost three years. In the present case on his own showing of the respondent No. 1 the amounts covered by the Award were received by him without any protest and voluntarily in the year 1987 and the writ application was filed in this Court in the year 1990.

6. The matter of grant of relief under Article 226 of the Constitution of India being discretionary in nature, this Court can refuse to grant any such relief if the

party complaining of an illegality in an order passed by the Tribunal, before approaching this Court unequivocally acts upon that order, gets all the benefits due to it from that order and thereafter, after a gap of considerable period of time approaches this Court by challenging that Award. The ratio in both the aforesaid judgments clearly supports our view that allowing such a writ petitioner to challenge the Award by taking recourse to the extraordinary remedy of filing writ application would amount to mockery of exercise of writ jurisdiction of this Court. The conduct of the writ petitioner about having accepted the amount awarded by the Tribunal by itself is enough to discredit the petitioner and do disqualify him from challenging the Award after a gap of three years. The learned single Judge while dealing with the aforesaid contention of the appellant that the respondent No. 1 was not entitled to relief and while being referred to a single Bench judgment of this Court in the case of Jayanta Nath Majumdar v. State of West Bengal (supra) held that this judgment was per incuriam since it did not take into account some judgments of the Supreme Court on the question that the principles of res judicata do not apply to industrial cases, thus implying that even if a beneficiary under an Award has obtained all the benefits before coming to the Court, he is not debarred from challenging the Award despite his having obtained these benefits coming to Court. The judgments of the Supreme Court referred to by the learned single Judge whereby he observed that the aforesaid single Bench judgment of this Court was per incuriam, are reported in the cases of Guest Keen William Pvt. Ltd. v. P.J. Sterling reported in 195 1 LLJ 405 (SC); Workmen of Balmer Lawrie and Co. Vs. Balmer Lawrie and Co., .

7. We have carefully gone through these judgments and found that the ratio in these two judgments has no bearing with the points involved in this case.

8. The learned Counsel, appearing for the respondent No. 1, in reply submitted that there is no estoppel against law. He, however, could not at all offer any explanation as to how the aforesaid two judgments of the Division Bench were not applicable to this case. In so far his argument that there was no estoppel against law, we only have to observe that this argument is not at all relevant in the facts of the case.

9. For the foregoing reasons we allow the appeal and set aside the judgment of the learned single Judge appealed against. If any amount has been deposited by the appellant in this Court pursuant to the order passed by this Court in the present appeal, we direct that such amount shall be returned to the appellants on their making an appropriate application for this purpose.

10. There will be no order as to costs.

P.K. Sen, J.

11. I agree.