
(2011) 11 CAL CK 0070
In the Calcutta High Court
Case No : Writ Petition No. 17515 (W) of 2011

Tipco Industries Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 15, 15(2), 15(2)(b), 2A

Citation : (2012) 132 FLR 761

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : Soumya Majumder, Sunny Nandy and P.K. Chatterjee, for the Appellant; Nirmalendu Bhattacharjee, Ms. Priti Jain, Abhratosh Majumdar and Arindam Mondal, for the Respondent

Judgement

Aniruddha Bose, J.—In this writ petition, the subject of controversy involves an industrial dispute raised under the provisions section 2A of Industrial Disputes Act, 1947 by the respondent No. 3. She also made an application for interim relief in terms of section 15(2)(b) of the Act for interim relief. On behalf of the petitioner, being the employer, learned Counsel has submitted that the learned First Labour Court, before which the matter was being adjudicated upon lacked jurisdiction to try and determine the dispute on territorial grounds. The Second ground of objection of the petitioner is that prayer for interim relief cannot be asked for in a proceeding which is not initiated by way of reference, but originates directly under the provisions of section 2A of the Act. Both these issues of course would have been for the Labour Court to decide under normal circumstances but Mr. Majumder has raised an issue involving the procedure to be followed in such a case. Relying on a judgment of a Division Bench of this Court in the case of Ganges Printing Ink Factory Employees Industrial Co-Operative Society Ltd. and Another Vs. The 7th Industrial Tribunal and Others, , he has argued that before entertaining the prayer for interim relief, it is incumbent upon the Labour Court to adjudicate on the preliminary point first.

2. The complain of the petitioner is that the Labour Court is proceeding to hear the prayer for interim relief first without addressing the preliminary issues which would result in dismissal of the case of the workman.

3. Though under ordinary circumstances I would have avoided adjudication on preliminary issues having regard to the stage of the proceeding the matter is pending before the Labour Court, I am doing so here on the question of the jurisdiction of the Labour Court to grant interim relief in a similar case as this involves adjudication on pure questions of law. I am also deciding this question because I can reasonably anticipate that whichever way the Labour Court adjudicates on this issue, the matter is likely to be brought before this Court for final adjudication.

4. Section 15(2) was introduced to the Industrial Disputes Act by a State amendment under West Bengal Act 33 of 1986. On such amendment, section 15 of the Act reads:

15. Duties of Labour Courts, Tribunals and National Tribunals.--(1) Where an industrial dispute has been referred to a National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2-A) of section 10, submit its award to the appropriate Government.

(2) Where an industrial dispute has been referred to a Labour Court or Tribunal under sub-section (1) of section 10, it shall,--

(a) after the filing of statements and taking of evidence, give day-to-day hearing and pronounce its award, other determination or decision in the manner specified in section 17AA, and

(b) after hearing the parties to the dispute, determine, within a period of sixty days from the date of the order referring such industrial dispute or within such shorter period as may be specified in such order, the quantum of interim relief admissible, if any:

Provided that the quantum of interim relief shall, in the case of discharge, dismissal or retrenchment of a workman from service or termination of service of workman, be equivalent to the subsistence allowance admissible under the West Bengal Payment of Subsistence Allowance Act, 1969 (West Bengal Act 38 of 1969).

5. In sub-section (2) of section 15 it has been specifically stated that where industrial dispute has been referred to a Labour Court under sub-section (1) of section 10 of the Act, then the power of the Labour Court u/s 15(2)(b) can be invoked.

6. Section 2A of the Industrial Disputes Act was amended by the Industrial Disputes (Amendment) Act, 2010 and on such amendment, section 2A reads:

2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.--(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

7. This amendment thus widens the scope of interference of the forums constituted under the aforesaid Act in cases of discharge, dismissal, retrenchment or termination of an individual workman. Thus, the dispute in such a case need not be a sponsored or an espoused dispute by the union. Sub-clause (2) of the aforesaid provision specifies that on receipt of an application, the Labour Court or Tribunal shall have power and jurisdiction to adjudicate upon the dispute as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act.

8. Now the question arises as to whether the provisions of sub-section (2) of section 2A would apply in respect of relief claimed in terms of section 15(2)(b) of the Act and whether the Labour Court should confine exercise of its jurisdiction under the latter provision only in cases that reach the said forum through the procedure of reference u/s 10 of the Act.

9. In my opinion, the Legislature has conferred the right of making a direct application upon workman not sponsored by the union under the provisions of Section 2A, and all the characteristics of the regular fora for adjudicating disputes referred to them u/s 10 of the Act stand vested in them while adjudicating a dispute u/s 2A of the Act. The provisions of section 2A, as amended ought to guide the provisions of section 15(2)(b) of the Act and the first sentence of sub-section (2) of section 15, which lays down the scope and power of the adjudicatory fora under the Act to examine prayer for interim relief

and specifies that such examination can be in respect of an industrial dispute referred to such fora under sub-section (1) of section 10 would include a dispute raised u/s 2A of the Act as well. The clear legislative mandate contained in section 2A (2) that in receipt of an application the adjudicatory forum constituted under the Act shall have powers and jurisdictions to adjudicate upon the dispute as if it were a dispute referred to it by the appropriate Government would thus guide the provisions of section 15(2) of the Act. A restrictive meaning cannot be given to the aforesaid provision to exclude a case u/s 2A of the Act. I am accordingly of the opinion that it will be well within the jurisdiction of the Labour Court or Industrial Tribunal to grant interim relief even in cases brought to it under the provisions of section 2A of the Act.

10. So far as the second preliminary objection raised by Mr. Majumder is concerned, being of territorial jurisdiction, I am of the opinion that the learned First Labour Court should decide this question first, as to whether it has the territorial jurisdiction to adjudicate on the dispute and only after deciding that issue as a preliminary issue, the Labour Court shall examine the prayer of the workman for interim relief and address other issues.

11. I make it clear that in this writ petition I have only decided the question as to whether the provisions of interim relief u/s 15(2) of the Act can apply in a direct dispute raised under the provisions of section 2A of the Act and all other issues involved in the subject dispute are kept open.

12. The writ petition stands disposed of in the above terms.

13. Since this writ petition is being disposed of without calling for any affidavit, the allegations made in the writ petition shall be deemed to have not been admitted.

14. There shall, however be, no order as to costs. Urgent photostat certified copy of this order, if applied for, shall be supplied to the learned Counsel for the parties, as expeditiously as possible.