
(2015) 02 CAL CK 0093
In the Calcutta High Court
Case No : Writ Petition No. 1058 of 2014

Tractor India Limited

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(2)(b), 33(C)(2), 33C(2)

Citation : (2015) 1 CALLT 610 : (2015) 146 FLR 15 : (2015) LabIC 2065 :
(2015) LLR 981 : (2015) 3 WBLR 659

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Soumya Majumdar, for the Appellant; Arindam Mandal and Paritosh Sinha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—The subject matter of challenge in the instant writ petition is a judgment and order dated 26th May, 2014, passed by the learned 2nd Labour Court, West Bengal. A question which arises for consideration is whether the learned 2nd Labour Court, while entertaining and allowing the workman's application under section 33(C)(2) of the Industrial Disputes Act for computation of the workman's back wages, could have done so consequent upon rejection of the writ petitioner's application under section 33(2)(b) of the Industrial Disputes Act, seeking approval for dismissal of the workman, in the absence of a declaration of reinstatement or setting aside of the order of dismissal. According to the learned advocate representing the writ petitioner, being the industrial establishment, the decision rendered by the learned 4th Industrial Tribunal in not approving the dismissal of the workman, could not have given rise to an action under section 33C(2) of the Industrial Disputes Act by the workman seeking computation of his back wages and other monetary benefits. According to him, the order of dismissal or discharge remains incomplete and inchoate in the absence of its approval or in the absence of a declaration of

reinstatement or setting aside of the order of dismissal. As such, on the basis of the order passed under section 33(2)(b) of the Industrial Disputes Act, rejecting the writ petitioner's application seeking approval for dismissal of the workman, he was not entitled to maintain an application for computation of his wages under section 33(C)(2) of the Industrial Disputes Act.

2. On the other hand, the learned advocate representing the private respondent No. 4, being the workman, relies on a judgment rendered by a five Judges Bench of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, AIR 2002 SC 643 : (2002) 92 FLR 667 : (2002) 1 JT 182 : (2002) LabIC 513 : (2002) 1 LLJ 834 : (2002) 1 SCALE 190 : (2002) 2 SCC 244 : (2002) 1 SCR 284 : (2002) 1 SCT 966 : (2002) 2 SLJ 410 : (2002) 1 UJ 576 : (2002) AIRSCW 249 : (2002) 1 Supreme 181 and submits that the very contention of the petitioner is based upon an earlier judgment of the Supreme Court, rendered in Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, AIR 1978 SC 995 : (1978) 36 FLR 383 : (1978) LabIC 693 : (1978) 2 LLJ 1 : (1978) 2 SCC 144 : (1978) 3 SCR 370 which has been overruled by the Supreme Court in the case referred (supra). According to him, the dismissal of the industrial establishment's application under section 33(2)(b) of the Industrial Disputes Act would mean that the employee continues to be in service as if the order of discharge or dismissal had never been passed. As such, an application under section 33(C)(2) of the Industrial Disputes Act, for the purpose of computation of wages and other monetary benefits, was maintainable by the workman before the learned 2nd Labour Court, West Bengal. He, thus, submits that there is no reason as to why this Court should entertain the writ petition since the impugned judgment and order has been passed by a competent forum supported with cogent reasons.

3. After considering the submissions made by the learned advocates for the parties, it appears that the crux of the submission made by the learned advocate representing the writ petitioner is based on the reasoning which appears in the Supreme Court in Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, AIR 1978 SC 995 : (1978) 36 FLR 383 : (1978) LabIC 693 : (1978) 2 LLJ 1 : (1978) 2 SCC 144 : (1978) 3 SCR 370, that has since been overruled by the Supreme Court in the five Judges Bench decision rendered in Jaipur Zila Sahakari Bhoomi Vikash Bank Limited case (supra). There is no scope for any ambiguity with regard to whether an application under section 33(C)(2) of the Industrial Disputes Act can be maintained by a workman for the purpose of seeking computation of back wages and other monetary reliefs upon dismissal of the Industrial establishment's application under section 33(2)(b) of the Industrial Disputes Act. The observations made by the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Limited makes it clear that if approval under section 33(2)(b) of the Industrial Disputes Act is not given, it follows that the employee continues to be in service as if the order of discharge or dismissal had never been passed. In other words, if approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order

of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This, being the position, there is no need of separate or specific order for his reinstatement or for setting aside of the order of his dismissal. Therefore, as a natural corollary, it must be held that the workman was entitled to maintain an application under section 33(C)(2) of the Industrial Disputes Act for the purpose of seeking computation of back wages and other monetary reliefs, the moment the industrial establishment's application seeking approval for dismissal of the workman under section 33(2)(b) of the Industrial Disputes Act, stood dismissed. For reasons stated above, the impugned judgment and order dated 26th May, 2014 passed by the learned 2nd Labour Court, West Bengal does not warrant any interference under Article 226 of the Constitution of India and the instant application is liable to be dismissed and is, accordingly, dismissed.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formality.