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Court : Kolkata

Decided On : May-21-2009

Judge : Surinder Singh Nijjar, C.J. and ;Biswanath Somadder, J.

Acts : Companies Act, 1956; ;Industrial Disputes Act, 1947 - Sections 2, 7, 10 and 18(3); ;Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Sections 2 and 47

Appeal No. : M.A.T. No. 730 of 2008 and CAN 9101 of 2008

Appellant : Eastern Coalfields Ltd.

Respondent : Shri Niranjan Chatterjee and ors.

Advocate for Def. : Kalyan Kumar Bandopadhyay, Sr. Adv. and ;Swapan Banerjee, Adv.

Advocate for Pet/Ap. : R.N. Majumder, ;Susanta Pal and ;P. Basu, Advs.

Disposition : Application dismissed

Judgement :

Biswanath Somadder, J.

1. The appeal has been preferred along with an application for stay by Eastern Coalfields Limited, a Government Company within the meaning of Companies Act,

1956, (hereinafter referred to as the Coal Company) against an order dated 02nd May, 2008 passed by the learned Single Judge in a writ petition, being W.P. No. 16980(W) of 2005, filed by the appellant against Shri Niranjan Chatterjee and others.

2. By the order impugned, the learned Single Judge was pleased to dismiss the Coal Company's writ petition, which was filed challenging an order dated 24/29th December, 1998 of the Government of India, through the Ministry of Labour, referring a dispute for adjudication to the Central Government Industrial Tribunal-cum- Labour Court, Asansol and the award dated 21st December, 2004 passed by the said Tribunal in Reference No. 5 of 1999, consequently.

3. The brief facts of the case, culled out from the award dated 21st December, 2004, passed by the learned Tribunal, are as follows:

4. Shri Niranjan Chatterjee (hereinafter referred to as, Niranjan) was a permanent employee of the appellant-Coal Company, being posted at Kumardih 'A' Colliery, in the capacity of a clerk. As per entry in the service book, his date of birth was 08th April, 1942 and he was to attain the age of superannuation on 08th April, 2002. Niranjan applied under the provision of National Coal Wage Agreement-IV (hereinafter referred to as the NCWA) for assessment of his physical fitness, which was assessed by the competent medical authority on 20th February, 1994, whereinafter he was declared medically unfit by the said authority on 07th March, 1994 and his duty was stopped by the management of the Coal Company with effect from 08th March, 1994.

5. According to Niranjan, as per provision of Clause 9.4.3 of the NCWA, employment to one of the dependents of the unfit workman was to be provided by the Coal Company. Accordingly, one of the dependant sons of Niranjan applied for service under the said clause and was also duly nominated by Niranjan to that effect.

6. Niranjan stated before the learned Tribunal that no employment was given to his son on various flimsy grounds, although verbal assurance had been given by the management of the Coal Company. In his written statement filed before the

learned Tribunal he also stated that the act of the management in not providing employment to his dependant son, who possessed all requisite qualifications, was harassing, malafide and against the provisions of the NCWA. As such, Niranjan prayed before the learned Tribunal that the management of the Coal Company be directed to offer employment to his dependant son and to pay him the amount that he would have earned otherwise, had he been given employment in due time, with all other incidental benefits.

7. On behalf of the Coal Company it was contended before the learned Tribunal that the reference made by the Government of India through the Ministry of Labour was bad in the eyes of law and the dispute, as raised by the trade union, was entirely a misconceived one and there could not be any industrial dispute in terms of the reference referred for adjudication before the learned Tribunal.

8. The further case of the management of the Coal Company before the learned Tribunal was that Niranjan had applied for voluntary retirement under Clause 9.4.3 of the NCWA and his case was referred to before the medical board for assessment of his disability and the said board had declared him medically unfit on 20th February, 1994 and accordingly his service was terminated on and from 26th February, 1994. It was also a case of the management of the Coal Company that though the service of the employee (Niranjan) was terminated on the ground of his disability, as per finding of the medical board, but such termination had no-way affected the financial position of the dependant family members of the employee and as such the question of providing employment to the dependant son of the employee (Niranjan) did not arise at all and the claim of the trade union for providing employment to the dependant son of Niranjan was altogether an unsustainable claim.

9. A further point was also taken by the management of the Coal Company before the learned Tribunal that the management was under the scheme of BIFR and the company had been declared as a sick industry by the competent board and the Coal Company was surviving for its existence and revival. There was no suitable vacancy in the Coal Company and the Company was already staff burdened with its existing man-power and further that five years from date of raising the dispute,

the management could not be compelled to provide employment under Clause 9.4.3. of the NCWA and such provisions of agreement were purely for consideration of the management on compassionate ground and the delay in raising the dispute had made the said ground automatically lose its force.

10. Another point taken by the Coal Company was to the effect that after termination of service of Niranjan there was a complaint before the management about the efficiency of the medical board and as such it was decided to get Niranjan and others examined by a fresh medical board. However, Niranjan did not appear for re-examination by the fresh medical board with some ulterior motive. The Coal Company therefore contended that the workman concerned was not at all entitled for any relief and prayed that a 'No Dispute' Award be passed by the learned tribunal.

11. The learned Tribunal, after considering the facts and circumstances of the case in detail, went on to observe, inter alia, to the effect that Niranjan was declared medically unfit and in that event the dependant son of Niranjan was found eligible and his case was to be considered for employment in a suitable post, as provided in the given clause of the NCWA and accordingly the learned Tribunal held that the action of the management of the Coal Company in not providing employment to the dependant son of Niranjan was not legal, just a proper and therefore the learned Tribunal ordered the management of the Coal Company to give employment to the dependant son of Niranjan in a suitable post within a period of three months from the date of passing of the order.

12. Against this order, a writ application was filed by the appellant- Coal Company before the learned Single Judge. The learned Single Judge while proceeding to dismiss the writ application considered various cases cited by the parities and held, inter alia, that although Niranjan could not raise an industrial dispute, it was open for the Ukhra Colliery Majdur Union, being a trade union, to raise the dispute under reference, taking into consideration the meaning of the expression, 'any person', as defined in Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947; that dispute having a direct bearing on the substantial interest of the workman of the Coal company. The learned Single Judge while dealing with the

question of non-availability of a suitable post to give employment to the dependant son of Niranjan, was not inclined to interfere with the decision of the learned Tribunal and observed that after fulfillment of all requisite criteria for applicability of the relevant clause of the NCWA, it was not open to the Coal Company not to offer employment to the dependant son of Niranjan.

13. The learned Single Judge, upon taking into consideration the provision of Clause (6) of the second schedule of Section 7 of the Industrial Disputes Act, 1947 , also held that it could not be said that the provision of Clause 9.4.3 of the NCWA had no binding effect. With regard to the submissions made on behalf of the Coal Company that Niranjan was bound to appear before the apex medical board once again, the learned Single Judge found no substance in such submission in view of the admitted facts of the case which was to the effect that Niranjan had not been asked to reappear before the apex medical board for reassessment, prior to termination of his service. The learned Single Judge also took notice of the admitted facts of the case that no material was placed before the learned Tribunal with regard to financial solvency of the family of Niranjan and therefore found no substance in the submission made on behalf of the Coal Company that financial condition of the family of Niranjan had not been affected adversely due to termination of Niranjan from his service. Under such circumstances, the learned Single Judge was pleased to dismiss the Coal Company's writ petition.

14. Appearing on behalf of the appellant-Coal Company, Mr. R.N. Majumder learned advocate, submitted that the provisions of Sections 2(i) and 2(p) read with Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provided specific relief in such a case as the present one and therefore Clause 9.4.3. of the NCWA could not be attracted. He further submitted that the learned Single Judge failed to take in to account the fact that the order of reference and the award passed by the learned Tribunal were products of total non-application of mind. He further submitted that the management of the Coal Company had the right to have Niranjan reassessed by the apex medical board, if doubt arose as to the genuinity of the earlier assessment of disability by the earlier constituted medical board and it was incumbent upon Niranjan to have appeared before the reconstituted apex medical

board for the purpose of medical re-examination in justification as to whether Niranjan was actually disabled or not. It was also contended by the learned advocate that the dispute referred to the learned Tribunal by the Government of India through the Ministry of Labour was not an 'industrial dispute' within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. He further submitted that a trade union cannot espouse the cause of a retired employee since the said employee cannot be termed as a 'workman'.

15. On the other hand, Mr. Kalyan Kumar Bandopadhyay, learned Senior Advocate appearing on behalf of Niranjan, being respondent No. 1 herein, referred to the decision of the Supreme Court rendered in the case of Mohan Mahto v. Central Coal Field Ltd. and Ors. reported in : (2008)ILLJ496SC . Relying on paragraph No. 10 of the said judgment he submitted that a settlement within the meaning of Sub-section (3) of Section 18 the Industrial Disputes Act, 1997, was binding on both parties and continues to remain in force unless and until the same is altered, modified or substituted by another settlement. He further submitted that the expanding definition of a 'workman' as contained under Section 2(s) of the Industrial Disputes Act, 1947 confers a right upon the respondent No. 1 to obtain appointment for his dependant son on compassionate ground.

16. He also relied on the judgment of the Supreme Court rendered in the case of Karan Singh v. Executive Engineer, Haryana State Marketing Board reported in 2008 (116) FLR 237. Relying on paragraph 8 of the said judgment he submitted that High Court has jurisdiction to entertain a writ petition only when there is an allegation that there was no industrial dispute which could be the subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the said Act. This is because existence of the industrial dispute is a jurisdictional fact. In the instant case, he submitted that from the admitted facts it could be easily ascertained that the subject matter of reference before the learned Industrial Tribunal was the existence of a valid industrial dispute and therefore since such jurisdictional fact itself being undisputed, the writ petition was, in the first place, not maintainable. To buttress his point he also submitted that in the facts of the instant case it was not in dispute that Niranjan was a workman of the Coal Company who had been rendered unfit upon medical assessment of the apex medical board of

the Coal Company. He submitted that it was not in dispute that the unfit workman had applied for job for his dependant son invoking the provisions of Clause 9.4.3 of the NCWA, which was a 'settlement', which bound the concerned parties. He, therefore, submitted that the Coal Company's writ petition was not maintainable before the learned Single Judge and it was rightly dismissed.

17. Mr. Bandopadhyay further relied on a five Judge Bench decision of the Supreme Court rendered in the case of Syed Yakoob v. K.S.Radhakrishnan and Ors. reported in : [1964]5SCR64 . Relying specifically on paragraph No. 8 of the said judgment he submitted that where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. He submitted that in the facts of the instant case however, the conclusion reached by the learned Tribunal was consistent with the applicable provisions of law and the discretionary relief of the writ court was not warranted and was therefore rightly refused by the learned Single Judge.

18. Mr. Bandopadhyay relied on another five Judge Bench decision rendered by the Federal Court of India in the case of Western India Automobile Association v. The Industrial Tribunal, Bombay and Ors. reported in 1942 II LLJ 245 and submitted that the law is well-settled with regard to the question of determination as to whether the definition of the expression, 'industrial dispute', provided in the Industrial Disputes Act, 1947 includes within its ambit, a dispute with regard to reinstatement of a dismissed employee.

19. After considering the submissions made by the learned advocates appearing on behalf of the respective parties, it appears to us that in the facts of the instant case the learned Tribunal had rightly exercised its jurisdiction by going into all the points raised by the Coal Company before it, which included the question as to whether any 'industrial dispute' existed between the Coal Company and Niranjan. A bare perusal of the Award goes to show that the learned Tribunal had specifically looked into the allegation of the management of the Coal Company to

the effect that though the service of Niranjan was terminated on the ground of medical disability but he was asked by the management to appear again for re-examination by the apex medical board. The learned Tribunal, after taking note of all the admitted facts, observed that Niranjan had applied for voluntary retirement under Clause 9.4.3 of the NCWA and his case was referred to before the medical board for assessment of disability and the board declared him medically unfit on 29th February, 1994. Accordingly, his service was terminated and duty was stopped with effect from 8th March, 1994. The learned Tribunal has also taken note of the admitted position that as per Clause 9.4.3 of the NCWA, employment to one of the dependents of an unfit workman was to be provided and accordingly one of the dependant sons of Niranjan had applied for service under the said clause and was also duly nominated by the workman to that effect. The Tribunal also took note of the allegation of the Coal Company with regard to non-appearance of Niranjan for reexamination before the apex medical board due to ulterior motive. The learned Tribunal in the award held that there was not even a chit of paper produced by the Coal Company to show the ground of re-examination by the apex medical board. The learned Tribunal further held that there was not even an iota of evidence to prove that Niranjan was asked to appear afresh before the apex medical board. The learned Tribunal even went on to wonder that if it was accepted for a moment that the first medical report was tainted, then why was the workman (Niranjan) terminated on the basis of the first medical board's report, instead of re-examination by the apex medical board. The learned Tribunal went on to observe that the action of the management to order for reexamination of the workman, after termination of his service by the apex medical board, was itself doubtful and spoke volumes of the motive and malafide intention on the part of the management of the Coal Company. The learned Tribunal also held that there was no provision of law or rules of the NCWA where the delinquent workman could be asked to undergo a second medical examination and not even a chit of paper in support of the said ground, taken by the management, had been filed by them. The learned Tribunal, in such circumstances, held that it was of the considered view that there never had been any such provision in the applicable rules to ask the employee for appearing before the second medical board, after termination of his service and this act of the management of the Coal Company

appeared to the Tribunal to be an afterthought.

20. With regard to the submission made by the learned advocate appearing on behalf of the appellant-Coal Company in respect of the applicability of provisions of Sections 2(i) and 2(p) read with Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995, we are of the view that in the facts and circumstances of the instant case, the said provisions of law are required to be reproduced hereinbelow to understand their true scope, purport, effect and meaning:

Section 2(i):

(i) 'disability' means-

(i) blindness;

(ii) low vision;

(iii) leprosy-cured;

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;'

Section 2(p):

'(p) 'medical authority' means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government;Section 47:

47. Non-discrimination in Government employment.-(1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits.

Provided further that it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

21. We are of the considered opinion that in the facts of the instant case the above-quoted provisions of the Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 are wholly inapplicable since the relationship between the disabled workman and the Coal Company is squarely governed under the binding settlement of the NCWA. Neither of the parties could deviate therefrom, unless the settlement was altered, modified and/or substituted by another settlement. The NCWA is a binding settlement within the meaning of Sub-section (p) of Section 2 read with Section 18 of the Industrial Disputes Act, 1947. The Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 has been enacted by the parliament to give effect to the 'Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region'. Therefore, by no stretch of imagination, the right of a workman taking sustenance under a binding settlement arrived at by the concerned parties, can be taken away by the said Act of 1995, which operates on an altogether different domain.

22. We are of the opinion that the jurisdiction of the High Court to issue a writ of certiorari is essentially a supervisory jurisdiction and it is not entitled to act as an appellate Court. In this regard the observations made by the Supreme Court in Syed Yakoob's case (supra) are of some relevance and are, therefore, reproduced

hereinbelow:

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court.

23. We are of the opinion that the above observations of the Supreme Court are squarely applicable in the facts of the instant case. The learned Single Judge had taken note of all the contentions raised before it by the Coal Company and refused to exercise its discretionary power to issue high prerogative writ of certiorari in respect of the award passed by a Tribunal of competent jurisdiction. For reasons enunciated above, we are of the opinion that the order of the learned Single Judge does not warrant any interference and the appeal and the application for stay are, thus, liable to be dismissed and are hereby dismissed.

24. There will be no order as to costs.

I agree.

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