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Court : Kolkata

Decided On : Nov-17-1995

Reported in : (1997)IIILLJ1256Cal

Judge : A.K. Chakraborty, J.

Acts : Industrial Disputes Act, 1947 - Section 15(2)

Appeal No. : C.O. No. 19891(W)/1995

Appellant : Durgapur Projects Ltd.

Respondent : State of West Bengal and ors.

Advocate for Def. : Manik Ch. Das, ;Madhusudan Dutta and ;Subrato Banerjee, Advs.

Advocate for Pet/Ap. : A.P. Sarcar and ;Subir Sanyal, Advs.

Disposition : Petition dismissed

Judgement :

A.K. Chakraborty, J.

1. The short point involved in this writ application is whether the learned 7th Industrial Tribunal by order No. 13 dated March 29, 1995 was justified in granting interim relief under Section 15(2)(b) of the Industrial Disputes Act, 1947 from the

date of dismissal of service of the workman.

2. The facts giving rise to this writ application are as follows :--

On December 15, 1977 a charge-sheet cum-suspension order was issued against the respondent workman for theft of Company's property and for leaving place of work during working hours without permission. The Respondent No. 4 having denied the said charges the domestic enquiry was held in terms of the rules of the company in which the said workman was chargesheeted. He was found guilty of the charges in the said enquiry and he was accordingly dismissed from service on April 10, 1978. The Respondent No. 4 thereafter referred the matter to the Assistant Labour Commissioner for reconciliation and the said proceeding having failed a reference was made by the Government to the Ninth Industrial Tribunal for adjudication of the issue 'whether the termination of service of Sri Tushar Kanti Ghosh is justified? And what relief, if, any, is he entitled to?'. The matter was subsequently transferred to the 7th Industrial Tribunal. The workman in the meantime filed an application under Section 15(2)(b) of the Industrial Disputes Act, 1947 which was disposed of by the learned Tribunal after hearing both sides in favour of the workman by which subsistence Allowance in terms of the said Section 15(2)(b) was allowed to the workman from the date of dismissal from service.

3. Being aggrieved by the aforesaid order of the learned Tribunal the petitioner Company has preferred this application challenging the said order on the ground that the learned Tribunal had no jurisdiction to take up the application for interim relief as the statutory period of 60 days after reference for hearing the matter had expired when the matter was taken up for hearing and that the petitioner was under no obligation to pay subsistance allowance from the date of dismissal when there was no reference before the Tribunal and that the learned Tribunal did not consider the fact that the dispute was raised before the Conciliation Officer after 12 years from the dismissal of the workman from service.

4. Heard the submissions of Mr. A.P. Sircar, learned Advocate for the petitioner, Mr. Madhusudan Dutt learned Advocate appearing for the Respondent No. 4 and Mr. Manick Ch. Das, learned Advocate for the State.

5. Mr. A.P. Sircar, learned Advocate for the petitioner submitted that he is not challenging the order on the ground that it has not been disposed of within 60 days from the date of reference. As a matter of fact I do not find any reason for raising any objection in this matter because the directions for disposal of the application within a time limit must be, by its nature directory and not mandatory.

6. Mr. Sircar, frankly conceded that he is not disputing the right of the learned Tribunal in disposing of an application under Section 17(2)(b) to fix the quantum of the interim relief as such quantum has been laid down in the law itself. What, however, is challenged is that since the petitioner raised dispute for first time before the Conciliation Officer more than 12 years after the termination of service that he shall not be entitled to interim relief from the date of his dismissal. Since no time limit is prescribed for the workman to raise his dispute after his termination from service and since the workman might have his own reasons not to go to the Conciliation Officer immediately after his termination, the delay in raising the industrial dispute shall be of no consequence for fixing of the interim relief. The learned Advocate for the petitioner drew my attention to the case of Ganges Printing Ink Factory Employees Industrial Corpn. Society Ltd. and Ors., v. Seventh Industrial Tribunal and Ors., reported in FLR 1986 (53) 617, where it was held.

'In our opinion, rules governing similar adjudication in a suit cannot be invoked but matters to be considered by the Tribunal should be (1) admissibility, (2) any objection as to the suitability of the reference and (3) effect of the grant or its refusal on the employer or the workman'.

7. In the instant case there is no dispute as to the sustainability of the reference regarding the admissibility of the application. There cannot be any dispute in view of the fact that the interim relief is granted by the Courts in aid of the main relief. If, therefore, the Tribunal has the jurisdiction and authority to ultimately hold that the dismissal is unjustified and to grant the workman relief with effect from the date of his dismissal, it can ligitimately grant interim relief from that date. Then again there is nothing in the Act itself as to the date from which such interim relief shall be available to the workman. That being so, as it was held in the case of Jindol Limited v. Appellate Authority, reported in AIR 1994 SC 42, 'that in construing a

social welfare legislation the Court will adopt beneficial rule of construction, and when the section is capable of two constructions, that construction should be preferred to fulfil the policy of the Act and will be more beneficial to the person in whose interest the Act has been passed'

8. The objection raised by Mr. Sircar that the learned Tribunal had no jurisdiction to allow the interim relief from the date of dismissal of the workman, therefore has no leg to stand upon and the learned Tribunal only having passed the order upon consideration of the prima facie case of the petitioner, the order cannot be challenged.

9. The learned advocate for the respondent workman drew the attention of the Court to the evidence adduced by the petitioner in this matter. It will appear from the evidence that since his dismissal from service the workman had not been employed elsewhere and he was running with his family by begging money from others. In the said circumstances the granting of interim relief under Section 15(2)(b) was justified and in accordance with law. In a Single Bench decision of this Court in the case of General Electric Company of India Ltd. v. Fifth Industrial Tribunal and Ors., reported in 1990(1) CHN 453 it was held that the interim relief can be granted from the date of dismissal of the workman.

10. In the above view of the matter the writ application having no merit must fail.

11. The writ application is accordingly dismissed but without any order as to costs.

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