

A.B. Enterprises and anr. Vs. State of West Bengal and ors.

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SooperKanoon Citation : sooperkanoon.com/866443

Court : Kolkata

Decided On : Mar-24-2003

Reported in : (2003)IIILLJ695Cal

Judge : Amitava Lala, J.

Acts : [Industrial Disputes Act, 1947](#) - Section 15(2); ;[Constitution of India](#) - Article 226; ;West Bengal (Amendment) Act, 1947

Appeal No. : W.P. No. 2047 (w)/2003

Appellant : A.B. Enterprises and anr.

Respondent : State of West Bengal and ors.

Advocate for Def. : Asish Kr. Das, Adv. for Respondent No. 1 and ;Sukla Kabir Sinha, Adv. for Respondent No. 3

Advocate for Pet/Ap. : Arup Kr. Labiri, Adv.

Disposition : Writ petition dismissed

Judgement :

Amitava Lala, J.

1. It appears to this Court that by making this writ petition the order passed by the judge, Third Industrial Tribunal on September 20, 2002, has been challenged.

Such order was passed under Section 15(2)(b) of the West Bengal (Amendment) [Industrial Disputes Act, 1947](#). The grievance of the management by making this writ petition is that the sufficiency of the income after termination or in a case where the workman was disallowed to work is upon the workman and not upon the management. Therefore, when in an earlier writ petition being W.P. No. 3606 (W) of 2002, such question was decided by this Court and the order of the Tribunal passed by the predecessor-in-interest in the office of the Tribunal was quashed and the Tribunal was directed to proceed afresh granting the parties necessary opportunities to produce evidence, the concerned judge sitting in the Third Industrial Tribunal should have proceeded within the scope and ambit of the order passed by the High Court. For an example, it is stated that when it has been recorded in the order of the High Court passed in the earlier occasion that 'the workman worked under another employer for his livelihood.....', then there was no scope for the workman to give evidence that he was not in service under another employer. According to me, the submission of the petitioner/management suffers from misconception of law. Once the order of the Tribunal has been set aside, the same or under which circumstances such order was passed, it cannot have any face value whatsoever. It is to be remembered that this Court was pleased to direct the Tribunal to decide the matter afresh granting the parties necessary opportunities to produce evidence. Therefore, it is the domain of the Tribunal to decide such issue. It is for the management to raise the issue whether the workman is gainfully employed elsewhere or not. On the other hand, it is for the workman to give evidence as to whether he has any sufficient income or not. But, if the Tribunal comes to a conclusion on the basis of the sufficiency of the evidence, on that score, the writ Court cannot substitute its own view as regards sufficiency of the evidence even if such sufficiency may or may not go in favour of the person who becomes successful in the Tribunal. The writ Court cannot behave like a fact finding Court and an appeal Court to verify the factual dispute in between the management and the workman. It was sincere desire of the High Court that the sufficiency of the income has to be proved by the workman and the same has been proved according to the Tribunal. Therefore, it is irrelevant whether any incidental fact has been recorded somewhere in the earlier proceeding correctly or not. Moreover, it was the case of the management itself

that the workman had joined in an International Advertising Agency and no denial was put by the workman. Possibly such fact was brought to the notice of the writ Court in the earlier occasion to come to a conclusion as to whether the workman is under gainful employment or not. Such part of gainful employment will come out from the sufficiency of the income and if the earlier order is quashed and new evidence was directed to be taken afresh and the workman denied his service in any of such organisation known as International Advertising Agency, the same cannot be ignored by the writ Court. Probe is the mental process which is made for the Tribunal in this case. It is a case of sufficiency of materials. Had it been the case that there was no material and in spite of the same, the learned judge occupying the chair of the Third Industrial Tribunal passed such order, it would have been a different scenario altogether. The element of perversity would have arisen but when sufficiency or insufficiency is a question, the Tribunal is the best judge of the facts. Therefore, when the same has been done by the Tribunal, the writ Court should not interfere with the same. Accordingly, I do not find any merit in this writ petition. The writ petition stands dismissed. However, there will be no order as to costs. As a consequential effect, the private-respondent will be entitled to get the relief granted by the Tribunal.