

GAHC010009302021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/38/2021

PRAKASH CHANDRA SAIKIA
S/O- LATE SARBESWAR SAIKIA, R/O- LUKHURAKHANIA, P.O.
PHUKONORHAT, DIKOM, DIST.- DIBRUGARH, ASSAM, PIN- 786101.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, LABOUR AND
EMPLOYMENT DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE MANAGEMENT OF MAIJAN TEA ESTATE
PRESENTLY KNOWN AS GRRENWOOD TEA ESTATE
P.O.
P.S. AND DIST.- DIBRUGARH
ASSAM
PIN- 786001.

3:THE RESOLUTION PROFESSIONAL
ASSAM COMPANY INDIA LIMITED
NETAJI SUBHASH VILLA
18 KARUNAMOYEE GHAT ROAD
FLAT 3C
3RD FLOOR
KOLKATA- 700082
WEST BENGAL

Advocate for the Petitioner : PETITIONER IN PERSON, MS. D. SAIKIA, *Amicus Curiae*

Advocate for the Respondent : GA, ASSAM, MR. A SARMAH, MR. P. SARMAH

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 23-02-2023

This writ appeal is directed against the judgment and final order dated 17.12.2020, passed by the learned Single Bench in WP(C) 3295/2019, whereby the writ petition preferred by the appellant/writ petitioner assailing the award dated 28.02.2019, passed by the Labour Court, Dibrugarh, in Misc. Case No. 3/2018, dismissing the case filed by the petitioner for a claim of Rs. 6,72,67,714.66, was rejected.

2. We have heard and considered the submissions advanced by the petitioner appearing in person, Ms. D. Saikia, learned *amicus curiae* and the learned counsels for the respondents and have carefully analysed the materials available on record. The petitioner vehemently and fervently contended that he was reinstated in service pursuant to the earlier round of litigation wherein, Hon'ble the Supreme Court passed an order in his favour in the following terms:

“*ORDER*

Leave granted.

Heard appellant who appeared in person and also learned counsel for the respondents.

Having regard to the facts and circumstances of the case, we are of the view that the appellant ought to be paid by Respondent No. 1 a sum of Rs. 5,00,000/- (Rupees five lakhs) only in full and final settlement of his claim. Ordered accordingly.

The said amount be paid within a period of three months from today.

The appeals are disposed of accordingly.

Pending application(s), if any, shall also stand disposed of.”

It was submitted that pursuant to being reinstated in service by the employer he is entitled to receive the wages and ancillary financial benefits for the period during

which he was illegally kept out of service.

3. *E-converso*, learned counsel representing the respondent Nos. 2 and 3 submitted that the petitioner acted unscrupulously as the writ petition was filed with concealment of material fact inasmuch as the petitioner did not indicate in the pleadings that the employer company had gone into liquidation and that proceedings under the Insolvency and Bankruptcy Code, 2016 were taken wherein, the petitioner himself filed a claim for a sum of Rs. 61,15,247.66, which was rejected in the finally approved Resolution Plan. On these submissions, learned counsel for the respondents implored the Court to dismiss the appeal with exemplary cost.

4. On a consideration of the pleading made by the petitioner in WP(C)3295/2019, it is manifest that the petitioner intentionally omitted to mention the fact regarding the proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016 pursuant to the company going into liquidation. The petitioner filed the self-same claim as in the writ petition before the Resolution Professional which was rejected. Thus, to the learned Single Bench was perfectly justified in observing that the petitioner did not approach the Court with clean hands. However, during course of arguments, the petitioner feebly tried to explain this aspect of the matter by pointing out that this fact was mentioned in the additional affidavit dated 03.02.2020 submitted during the pendency of the writ petition.

5. Be that as it may. We are of the firm opinion that as the proceedings under the Insolvency and Bankruptcy Code, 2016 were undertaken *qua* the employer company and as the Resolution Proceedings have received the approval of the National Company Law Tribunal (NCLT), and since of the petitioner/appellant's claim for the self-same amount, which was the subject-matter of the writ petition was rejected in the Resolution Plan, the only remedy for the petitioner/appellant would have been to avail the remedy provided under Section 16 of the Insolvency and Bankruptcy Code, 2016. The position of law in this regard is no longer *res integra* in view of the

judgment rendered by the Hon'ble Supreme Court in the case of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Others***, reported in ***(2020) 8 SCC 531***.

6. As consequence, we are of the opinion that the appellant/writ petitioner is not entitled to the relief claimed for in this appeal. The impugned order dated 17.12.2020, passed by the learned Single Bench in WP(C) 3295/2019, does not suffer from any infirmity warranting interference. Hence, the appeal fails and the same is dismissed as being devoid of merit.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant