

GAHC010048602017



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

Case No. : WP(C)/6848/2017

MANAGEMENT OF PERTABGHUR TEA ESTATE
REP. BY ITS GENERAL MANAGER, BISWANATH CHARIALI, P.O.
BISWANATH CHARIALI, DIST. BISWANATH, ASSAM, PIN-784176.

VERSUS

THE SECRETARY, AKHIL BHARATIYA CHAH MAZDOOR SANGHA and ANR.
HAVING ITS REGISTERED OFFICE AT RANGAPARA, P.O. RANGAPARA, PIN-
784505, DIST. SONITPUR, ASSAM.

2:THE PRESIDING OFFICER
LABOUR COURT
ASSAM AT GUWAHATI

M.G. ROAD
DEPUTY COMMISSIONER'S OFFICE COMPLEX
2ND FLOOR
GUWAHATI-781001

Advocate for the Petitioner : Mr. A. Sarma, Advocate

Advocate for the Respondents : Mr. M. Chetia, Govt. Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 16.07.2024

Date of Judgment : 16.07.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. Sarma, the learned counsel appearing on behalf of the petitioner. None appears on behalf of the respondent No.1 on call.

2. Mr. M. Chetia, the learned Government Advocate submits that the petitioner ought not to have impleaded the Presiding Officer of the learned Labour Court. He submitted that the Supreme Court in various judgments had deprecated the conduct of arraying the Presiding Officers of the Court when writ petitions are filed challenging judicial orders.

3. This Court has also duly taken note of that it is no longer res-integra that the Presiding Officer of the Labour Court who has passed a judicial order ought not to have been made a party, and as such, while reprimanding the petitioner, this Court strikes out the Respondent No.2 from the array of parties.

4. The instant writ petition has been filed challenging the Award dated 17.08.2017 passed by the learned Labour Court, Assam in Reference Case No.13/2003 whereby the learned Labour Court vide its Award held that the domestic enquiry which was conducted was perverse and was not based on proper appreciation of the materials on record. In doing so, the learned Labour Court had also held that the workmen was dismissed without reasonable ground and as such directed that the workmen be reinstated with full back wages.

5. This Court has duly taken note of the limited ground on which the instant writ petition has been filed.

6. Mr. A. Sarma, the learned counsel appearing on behalf of the petitioner

submits that the matter which was pending before the learned Labour Court was a decision as regards the fairness of the domestic enquiry which was framed as a preliminary issue and not for the decision on merits. Referring to the written statement filed by the Management and more particularly at paragraph No.26, the learned counsel submitted that it was the specific stand of the Management that the fairness of the domestic enquiry be taken up as a preliminary issue and in the circumstance the preliminary issue is decided against the Management, the Management may be granted an opportunity to contest the Reference Case.

7. This Court has also perused the entire order sheets and from the order sheets and more particularly the order dated 26.07.2017, it reveals that the case was fixed for hearing on the preliminary issue and on 03.08.2017, the judgment was reserved. Under such circumstances, the learned Labour Court could have at best decided on the fairness of the domestic enquiry and thereafter ought to have granted an opportunity to the Management/the petitioner herein to contest the Reference Case which however was not done vide the impugned Award dated 17.08.2017.

8. Accordingly, this Court interferes with the Award dated 17.08.2017 to the extent of deciding the entire Reference Case being Reference Case No.13/2003. This Court however, does not interfere with the decision of the learned Labour Court in deciding that the domestic enquiry was not fair, more particular the Issue No1. However, interferes with the Issue No.2 and directs the learned Labour Court to decide the Reference Case on merit by giving due opportunity to both the parties to adduce evidence, if so desired.

9. With the above observations and directions, this Court directs the Registry to forthwith transmit the records of Reference Case No.13/2003 to

the learned Presiding Officer, Labour Court at Guwahati so that the said Court is in a position to take up the matter at the earliest. In that regard, the Registry shall also employ the service of a Special Messenger.

10. It is further observed that taking into account that on a technical aspect this Court has interfered, the Management shall continue to pay the last drawn wages which the Management has been paying during the pendency of the instant proceedings till the disposal of the instant writ petition.

11. Taking into account that the Management side has appeared before this Court, the Management/petitioner is directed to appear before the learned Labour Court on 19.07.2024. The learned Labour Court shall issue due notice to the Respondent No.1/workman herein before proceeding with the reference.

JUDGE

Comparing Assistant