

GAHC010225292023



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

Case No. : WP(C)/6048/2023

ASSAM CHEMICAL AND PHARMACEUTICAL PVT. LTD
HAVING ITS REGISTERED OFFICE AT A.K. AZAD ROAD, GOPINATH
NAGAR, GUWAHATI-781016, KAMRUP (M), ASSAM, REPRESENTED BY ITS
MANAGING DIRECTOR, SRI BIMAL SARMA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
LABOUR WELFARE DEPARTMENT, DISPUR, GUWAHATI, ASSAM

2:THE ASSAM CHEMICALS AND PHARMACEUTICAL SHRAMIK SANGHA
REPRESENTED BY THE GENERAL SECRETARY HAVING ITS OFFICE AT
A.K. AZAD ROAD
GOPINATH NAGAR
GUWAHATI-781016
KAMRUP (M)
ASSA

Advocate for the petitioner(s) : Mr. S Chakraborty

Advocate for the respondent(s) : Mr. KM Haloi,
For respondent No.2.
Mr. M Chetia
Government Advocate, Assam

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

19.07.2024

JUDGMENT & ORDER(ORAL)

Heard Mr. S Chakraborty, the learned counsel appearing on behalf of the petitioner. Also heard Mr. KM Haloi, the learned counsel appearing on behalf of the respondent No.2 and Mr. M Chetia, the learned Government Advocate, Assam.

2. The instant writ petition has been filed challenging the award dated 30.06.2023 passed by the Presiding Officer of the Labour Court, Guwahati in Reference Case No.01/2021. It is relevant to take note of that the two workmen namely, Sri Rajib Baishya and Sri Jitumoni Das were workers in the petitioner's establishment and they were the Secretary and the Assistant Secretary respectively of the Assam Chemicals and Pharmaceuticals Shramik Sangha. Both the workmen were suspended by the petitioner management and there were certain delay in disposal of the domestic enquiry process. It is under such circumstances, a reference was made by the Labour Welfare Department of the Government of Assam vide Notification No.GLR.13/2021/24 dated 23.02.2021, thereby referring the following questions to the learned Labour Court for a decision. The said questions read as under:

1. Whether, the management is justified in suspending to the protected workman, Secretary and Assistant Secretary of the recognized Union of the Company?

2. Whether, the management of M/s. Assam Chemical and Petro-

Chemical Private Limited is justified in delaying the domestic enquiry process against suspended worker for prolonged time?

3. If not, what other relief are the employees entitled?

3. It has been brought to the notice of this Court that even prior to the reference proceedings being initiated, the domestic enquiry proceedings had culminated and the report of the domestic enquiry was duly submitted by the Enquiry Officer on 09.02.2021. In the said domestic enquiry report, it was held that both the workmen were guilty as charged.

4. Be that as it may, the learned Labour Court vide the impugned award dated 30.06.2023 answered the reference by holding that the suspension order dated 07.01.2020 issued against both the workmen Sri Rajib Baishya and Sri Jitumoni Das were not in accordance with law and accordingly observed that the same stands cancelled. It was also observed that the said workmen shall be treated as if they were on duty since 07.01.2020 and there was a direction for payment of the backwages and allowances as per the Rules, minus the subsistence allowance paid to them during the suspension period.

5. This Court also takes note of the fact that during the pendency of the said reference proceedings on the basis of the domestic enquiry report, the petitioner management dismissed both the workmen. Consequently, two proceedings under Sections 33A of the Industrial Dispute Act, 1947 (for short, the Act of 1947) were initiated before the learned Labour Court which was registered and numbered as Misc. Case No.1/2021 and Misc.Case No.2/2021.

6. The learned Labour Court vide separate orders dated 05.08.2022 had set aside the dismissal of the workmen on the ground that the said dismissal order was contrary to the provisions of the Act of 1947, taking into account that

during the pendency of the reference proceedings, the petitioner management could not have dismissed the workmen.

7. This Court has also perused the impugned award and the findings so arrived at to the effect of holding that the suspension order dated 07.01.2020 to be illegal, this Court would not like to interfere in exercise of this Court's certiorari jurisdiction.

8. Be that as it may, this Court however takes note of that the learned Labour Court in the impugned award has also dealt with the charges upon which the workmen were charged and had rendered certain observations. This Court is of opinion that the observations made in the impugned award dated 30.06.2023 in respect of the charges which had been leveled against the two workmen should only be confined as regards the legality and validity of the suspension order and should not in any manner affect the right of the petitioner Management to take action pursuant to the domestic enquiry report.

9. This Court also takes note of that the orders dated 05.08.2022 passed in Misc.Case No.1/2021 and Misc.Case No.2/2021 had not been put to challenge. Under such circumstances, the interference of the dismissal orders in the proceedings under Section 33A of the Act of 1947 shall only be limited to interference to the dismissal orders on the ground that the said dismissal orders were passed during the period when the Reference was pending. The above, under no circumstances, would curtail the rights of the petitioner Management to take actions now on the basis of the domestic enquiry report subject to following the applicable settled principles.

10. Accordingly, this Court disposes of the instant writ petition with the above observations and grants liberty to the petitioner Management to take action, if

so advised, on the basis of the domestic enquiry report upon the workmen and the observations so made by the learned Labour Court in its award dated 30.06.2023 as regards the charges should not come in the way.

11. However, while taking such steps, it is further observed that the petitioner Management shall follow the due process in terms with the settled principles of law and its standing order(s).

12. The instant writ petition stands disposed of.

13. This Court further directs that the payment of the backwages as directed by the learned Labour Court is not interfered with and shall be duly paid to the workmen.

14. Registry to send back the LCR.

JUDGE

Comparing Assistant