

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

WPA 137 of 2020

Prabartak Jute Mills Ltd.

-Versus-

The Assistant Labour Commissioner & Ors.

For the petitioners : **Mr. S. K. Banerjee,
Mr. Triptimoy Talukder**

For the State : **Mr. Gobinda Chandra Baidya**

For the Respondent No. 4 : **Mr. N. Rakshit**

Heard on : **17.12.2020, 04.01.2021
& 05.01.2021**

Judgment on : **29.06.2021**

Abhijit Gangopadhyay, J .:

1. This writ application has been filed by the employer Prabartak Jute Mills Ltd. against award of the First Industrial Tribunal, Kolkata dated 28.05.2019 in case No. 04/2015 under Section 10(1B) (d) of the Industrial Disputes Act, 1947.

2. The employee's case before the tribunal was, he was retrenched from his service in the Jute Mill by the employer as he was not allowed to enter into the place of his work i.e. the Jute Mill despite direction given by this High Court in a writ application and the effort made by the Police authority to comply with the direction had failed. There was no disciplinary proceeding also against the employer.
3. After hearing the parties and on the basis of evidence, both oral and documentary, the tribunal held that the retrenchment/termination of service of the employee is absolutely unjustified and illegal and directed the employer to reinstate the employee with full back wages.
4. The main contention of the employer was, first, the employee was a 'Badli' worker and not a permanent worker and therefore he cannot raise such a dispute and secondly, he did not report for his duty with effect from 24th May, 2011 and there is no question of any retrenchment or termination of his service as he was merely a Badli worker.
5. The employee initially wrote letters to his employer for allowing him to enter into the Mill premises for his duty where he was working continuously from November 1988 and when the employer did not take any steps he approached the Police authority and subsequently filed one writ application in this court being W.P. No. 21423 (W) of 2013 along with two other similarly placed employees wherein the court directed the Police authority to take the workman to the Mill premises so that he can be allowed to join duty by the employer. It has come into evidence before the tribunal that (which has been recorded by the

Tribunal) that the Police authority being Officer-in-Charge of Belghoria Police Station filed a report before the writ court stating that “for the non-cooperation of the managing authority of the Jute Mill the three petitioners could not join their work”.

6. After such failure to join the duty due to non-cooperation of the employer the petitioner raised an Industrial Dispute and conciliation proceeding was to be initiated but within 60 days from the date of request for such conciliation proceeding no notice was received by the workman from the office of the concerned Labour Commissioner about the conciliation meeting and therefore, an application was filed by the employee being case No. 04/2015 under Section 10 (1B) ID Act, 1947, award passed wherein is the subject matter of challenge of this writ application.
7. The employee and the employer both adduced evidence before the tribunal and after considering the evidence and hearing the parties the tribunal, inter alia, held that it was not denied by the employer in the written statement that the petitioner was working in the Mill since 1988 without any break till 24.05.2011.

The Tribunal further held that the witnesses of the employer could not prove that the employee was a Badli worker and no register of employment was produced before the tribunal to show that in fact the employee was a Badli worker . In fact there is no iota of documentary evidence wherefrom it could be gathered by the tribunal that the employee was a Badli worker in the Jute Mill.

The content of the Police report, as already stated above, was an exhibit before the tribunal which remained unchallenged and it is not the case of the employer/writ petitioner that the report was a false and fabricated report.

8. I have noted that a suggestion was put on the part of the employer/writ petitioner to the employee being the respondent No. 4 herein that he had been a Badli worker. This suggestion was denied by the employee. But the employer completely failed to show from any documents whatsoever in support of the case made out by themselves that the employee was a Badli worker.
9. This court has failed to understand when there is no denial of the fact that the employee was working in the Jute Mill for almost 23 years (from November 1988 to May 2011) and that too without any break how such an employee can be termed as a Badli worker? And if that be so why there was no endeavour to prove the same on the part of the employer by producing documents before the tribunal?
10. I have noted that the observation of the tribunal, as to no denial of the statement of the employer in its written statement (that the employee was working in the Jute Mill without any break from November 1988 to May 2011) has not been challenged in the writ application by taking any ground contending that the observation of the tribunal is perverse or otherwise bad, by the employer/writ petitioner.

I have also noted that the observation of the tribunal as to the Police report which was produced before the tribunal under a list of documents which has direct connection with Exhibit 2/2

(having a reference of the said report) marked by the tribunal, has also not been challenged in the writ application either contending the said observation of the tribunal (as to the said Police report) as perverse or otherwise bad.

I have also noted that as the writ petitioner/employer has taken the point of Badli worker the burden was upon it to prove the same which the employer has failed to discharge.

Therefore, I find that the observation of the tribunal that the employee was not a Badli worker, that the employee was not allowed to join duty by the employer and such act of the employer was retrenchment/termination from service of the employee cannot be interfered with.

11. The writ petitioner/employer has filed written notes of submissions before this court emphasising the point of 'right of a Badli worker' relying upon two judgments enclosed therein, one reported in **(2005) 3 SCC 406** and the other reported in **(2013) 4 CHN 488** (a single bench judgment of this court) which are clearly not applicable in this case because those judgments can be made applicable only when it could be established that the employee was a Badli worker. Here in this case the employee has failed to prove it. The employer could have easily produced employment register or any other documents to show that the employee being the respondent No. 4 was a Badli worker which has not been done. Therefore, the respondent cannot be hold to be a Badli worker. Failure to prove it shows that the employee had been working in the Jute Mill continuously for nearly 23 years.

The contention that the employee was a Badli worker is wholly unacceptable to this court.

- 12.** In such circumstances I dismiss the writ application and I uphold the award of the tribunal directing reinstatement of the employee with full back wages.
- 13.** The writ application is dismissed with cost of Rs. 20,000/- to be paid by the petitioner to the employee/ respondent No. 4 by 31st July, 2021.

(Abhijit Gangopadhyay, J)