

**Form No. J(2).
Item No.1**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 19.12.2022

DELIVERED ON: 19.12.2022

**CORAM:
THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SIDDHARTHA ROY CHOWDHURY**

**M.A.T. 389 of 2020
With
IA No.CAN 1 of 2022
With
IA No.CAN 2 of 2022**

**Gopal Gupta
Vs.
M/s. Hooghly Mills Company Limited & Ors.**

Appearance:-

Mr. Balai Paul
Ms. Ruma Sarkar.....for the appellant

Mr. S.K. Singh
Mr. Ravi Kumar Dubey For the respondents

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

Re : IA NO.CAN 2 of 2022

1. This is an application for condonation of delay in filing the appeal.

Having heard the learned counsel for the appellant and having also perused the affidavit filed in support of the application, being satisfied with the reasons given, we condone the delay in filing the appeal.

Accordingly, the application being IA No.CAN 2 of 2022 is disposed of.

In Re : MAT 389 of 2020

With

IA No.CAN 1 of 2022

2. This intra-Court appeal is directed against the order dated 6th September, 2019 passed in WP No.23759 (W) of 2016 with WP No.23763 (W) of 2019. By the said writ petitions the respondent/management challenged the industrial award dated 29th February, 2016 passed by the Second Labour Court, West Bengal at Kolkata. The workman raised a dispute before the Labour Court contending that he was denied employment and illegally terminated from service and not allowed to join. The Labour Court framed three issues for consideration, namely,

(i) Is the application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (West Bengal Amendment)

filed by the applicant is maintainable in law and facts?

(ii) Whether the termination of service of the applicant w.e.f 26.02.2005 tantamount to refusal of employment within the meaning of Section 2A of the Act?

(iii) Is the applicant entitled to get any relief as prayed in his application:

3. All these three issues have been decided in favour of the workman and the Labour Court had passed an award directing reinstatement of the workman with full back wages.

4. Before the learned Writ Court the shit anchor of the respondent/management contended that the so-called gate notice was never issued by the management. During examination-in-chief OPW-1, an officer of the respondent/management had made an offer that the workman will be permitted to join and he was requested to report for duty. This contention was considered by the learned Writ Court and it was held that the offer of employment made by the OPW-1 in his evidence recorded before the Labour Court cannot be treated as an offer and in respect of which judicial notice can be taken and, thus, this issue was decided in favour of the appellant. The second issue whether the appellant/workman was a badli worker and whether he had completed 240 days of continuous service in a calendar year, this issue was threadbare analyzed by the learned Writ

Court and it concluded that the workman was in continuous employment since 2000 till his disputed absence from duty beginning 2005. Thus, this issue was also answered in favour of the workman. The learned Writ Court also noted that if the workman is a permanent employee and if termination had been made without following the stipulation under Section 25F of the Act, then the order of termination itself is a nullity and the workman is entitled to reinstatement with back wages. The third issue was with regard to gate notice which, according to the OPW-1, was never issued by the management/respondent. This issue was also considered by the learned Writ Court and after taking note of the evidence which were led before the Labour Court, the issue was concluded in favour of the appellant workman. Thus, on all the three grounds the learned Writ Court held in favour of the appellant/workman and against the respondent/management.

5. Surprisingly in the final paragraph of the order passed in the writ petition the award has been set aside.

6. We have gone through the said paragraph and we find that the learned Writ Court has not assigned any specific reason as to how the award was bad in law especially when all the three issues, which were raised by the management/respondent, were also decided in favour of the appellant.

7. It is a settled legal principle of law that while exercising jurisdiction under Article 226 of the Constitution of India when an award of the Labour Court is tested, the grounds of challenge are limited in the sense that unless there is an error apparent on the face of the award or the award is utterly perverse, the learned Writ Court will not act as an Appellate Court over the award passed by the Labour Court, which was rendered after considering the oral and documentary evidence.

8. We have also gone through the award passed by the Labour Court and we find that adequate reasons have been given by the Labour Court to come to the conclusion that the termination of the workman was illegal. Thus, we find that there was absolutely no ground for the learned Writ Court to interfere with such an award.

9. As pointed out earlier, in page 10 of the order passed in the writ petition the learned Writ Court has concluded against the workman and we find no adequate reason given by the learned Writ Court to hold the award to be bad in law or perverse. Thus, we are of the considered view that the order passed in the writ petition calls for interference.

10. In the result, the appeal is **allowed** and order passed by the learned writ Court is set aside insofar as the concluding portion of the order is concerned and the award of the Labour

Court is confirmed and the appellant/workman is directed to be reinstated with full back wages within a period of two months from the date of receipt of the server copy of this order. Consequently, CAN 1 of 2022 is disposed of.

11. There shall be no order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J.)

I agree,

(SIDDHARTHA ROY CHOWDHURY, J.)

RAJA/Pallab, AR(Ct.)