

Form No. J.(2)

Item No. 3

**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. No. 470 of 2018

**Shri Ashim Daw
Vs.
The State of West Bengal & Ors.**

Appearance:-

Mr. Nayan Rakshit for the appellant

**Mr. Soumya Majumder
Mr. Victor Chatterjee for the respondent no. 3**

**Mr. Susanta Pal
Mr. Ananda Dulal Sarkar..... for the State**

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 14th February, 2018 in W.P. No. 11258(W) of 2011. The appellant, who is the workman in the third respondent/ management was aggrieved by the award passed by the Second Labour Court, West Bengal at Calcutta in Case No. 29 of

2000 dated 11th May, 2011 in a dispute raised under section 10 (1B)(d) of the Industrial Disputes Act, 1947 ('the Act' for brevity) only to the extent that the Labour Court awarded compensation of only Rs. 50,000/-, which was ridiculously low. The appellant raised the dispute alleging wrongful termination.

2. The Labour Court raised three issues viz. 1). Whether the case was maintainable as per the provisions of section 10(1B)(d) of the Act ; 2) Is the termination from service in question is valid and justified and; 3) what relief the applicant is entitled to. So far as the first and second issues are concerned, they were decided in favour of the workman and the respondent/management is not on appeal and with regard to the third issue the Labour Court took note of the evidence on record to the effect that the establishment, where the workman was employed, was no longer carrying on business and it was closed down. Therefore, the Labour Court thought it fit to exercise discretion and awarded a compensation of Rs. 50,000/-. Challenging that portion of the order, the workman filed the writ petition and the learned writ Court added a sum of Rs. 15,000/- to the said sum of Rs. 50,000/- and in all directed compensation of Rs. 65,000/- to the workman. Aggrieved by such order, the workman is before us by way of this appeal.

3. We have heard Mr. Nayan Rakshit, learned advocate for the appellant, Mr. Soumya Majumder, learned advocate for the third respondent/management and Mr. Susanta Pal, learned Government counsel. Considering the fact that the Labour Court on evidence found that the termination of the workman from service was illegal, ought to have taken note of the various attending circumstances while arriving at the compensation payable to the workman. We

find from the award, the Labour Court has not assigned any reason as to why it was of the opinion that Rs. 50,000/- would be adequate compensation in lieu of reinstatement with full back wages. Had the establishment continued its business activities, in all probabilities the award would have been one of reinstatement with back wages because the Labour Court found the termination of service of the workman was illegal. The Labour Court ought to have endeavoured to make a calculation as to how the compensation can be determined such as the last drawn wages, the wages which the workman would have drawn at the time of his termination, the other financial benefits, which were payable to the workman such as increments, bonus etc. and based on such facts, the determination ought to have been done. In the absence of any such procedure being followed by the Labour Court, we could term the award perverse to that extent.

4. This aspect was noticed by the learned writ Court. However, the learned writ Court while awarding compensation granted an additional sum of Rs. 15,000/- only. Considering the fact that the appellant/workman had functioned in the establishment for more than 11 years, we feel that a compensation of Rs. 65,000/- is inadequate. Therefore, we enhance the total compensation to be payable to Rs. 1,50,000/- less the amount already paid to the appellant/workman.

5. The third respondent/management is directed to pay the amount to the appellant/workman within a period of 2 weeks from the date of receipt of server copy of this judgement and order.

6. The appeal stands allowed to the extent indicated above.

7. There shall be no order as to costs.

8. 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.)