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RP
AN

05.01.2022
Ct. No. 16

MAT 526 of 2021
with
IA No. CAN 1 of 2021

M/s. Birla Building Limited
vs.
State of West Bengal & ors.

Mr. Subir Sanyal
Mr. Nayan Rakshit
Mr. Sagnik Roy

... for the appellant

Mr. Suvadip Bhattacharjee
Mr. Bularam Patra

... for the respondent No.3

This intra-Court mandamus appeal by the management/writ petitioner is directed against the order dated 13.4.2021 in WPA 8531 of 2021. The said writ petition was filed by the appellant/management challenging the order dated 23.4.2019 passed by the 2nd Industrial Tribunal, Kolkata. The said order is purported to be a decision as regards the validity of the domestic enquiry conducted against the respondent employee, who was dismissed from service thereafter. The management had filed a writ petition contending that the Industrial Tribunal committed gross error by overstepping its jurisdiction and deciding on the validity of the punishment itself.

It is submitted that the Industrial Tribunal was well within its jurisdiction to decide the preliminary issue as to whether the domestic enquiry conducted was fair and proper but it could not have gone into the merits of the matter and virtually set at naught the order of dismissal. In this regard Mr. Sanyal, learned counsel appearing for the appellant has drawn our attention to various observations and reasons assigned by the Industrial Tribunal and submitted that the decision impugned in

the writ petition was liable to be set aside on the ground that it is in excess of jurisdiction of the Industrial Tribunal at the preliminary stage.

He further submits, the writ petition was dismissed at the admission stage on two grounds. Firstly, on the ground that there is a belated challenge by the management to the order passed by the labour Court and the appellant management cannot take the plea of pandemic situation due to Covid-19 to state that the writ petition was not belatedly filed. Further, it is submitted that the learned writ Court had rejected the submissions made by the management stating that it does not have any merit at the relevant stage without assigning any reasons as to why the submissions are without any merit. Further, it is submitted that the learned writ Court had erroneously rendered a finding that the writ petition is a ploy to delay the matter and erred in dismissing the writ petition with a cost of Rs.10,000/-.

Thus, it is submitted that the appellant is entitled to question the correctness of the order passed by the Industrial Tribunal as it suffers from error of jurisdiction and the appellant management is not precluded from raising such contention in a writ proceeding and they need not wait till the final award is passed.

The learned counsel for the respondent workman would vehemently contend that the conduct of the appellant management should be taken note of. The order of dismissal was passed against the workman, who was a office bearer of a trade union and face to face discussed with the management projecting genuine demands of the workmen and seeking for implementation of the charter of demands. Thereafter, the

management passed the arbitrary order of dismissal of the workman. The reference to the labour Court was made in the year 2013 and the preliminary issue was decided on 23.4.2019 and thereafter a review application was filed by the management on 24.7.2019 which was dismissed by the labour Court on 13.11.2019 and the writ petition was filed in March 2021. Therefore, it is the submission of the learned Counsel for the respondent workman that the learned writ Court rightly dismissed the writ petition on the ground of delay and that it has been a ploy to delay and defeat the interest of the workman.

Learned counsel for the respondent workman also submitted that the writ petition is not maintainable as it is against an interim order passed by the Industrial Tribunal on a preliminary issue regarding the validity of the domestic enquiry. In support of his contention, he placed reliance on the decision in the cases of The ***Cooper Engineering Limited vs. Shri P.P. Mundhe*** reported in ***(1975) 2 SCC 661*** and ***Sonodyne Television Co. Ltd. vs. Sonodyne Television Co-Employees' Union & Ors.*** reported in ***1995 SCC Online Cal 87 (Division Bench)***.

We have elaborately heard the learned counsels for the parties and perused the materials placed. Before we go into the aspect as to whether the learned writ Court was right in dismissing the writ petition at the admission stage primarily on the ground that it was belatedly filed. We deem it appropriate to examine whether the order passed by the Industrial Tribunal dated 23.4.2019 impugned in the writ petition was just and proper. If we are to decide that the order of the Industrial Tribunal calls for interference then there would not be any necessity for us to decide as to whether the writ petition was

rightly dismissed or otherwise.

Therefore, we proceed to decide the correctness of the order passed by the Industrial Tribunal dated 23.4.2019. Before proceeding further we take note of the settled legal principle which has been laid by the Hon'ble Supreme Court in ***Cooper Engineering*** (supra) and other subsequent decisions as well holding that there will be no justification for the Court or any party to stall the final adjudication of the dispute by the labour Court, by questioning the decision of the labour Court on a preliminary issue as the same can always be agitated after the final award. In fact, such objection was raised by the learned counsel for the respondent workman regarding the maintainability of the writ petition. However, what is required to be seen is whether the Industrial Tribunal in the instant case traveled beyond the preliminary issue. The dispute which was referred for adjudication by the government under Section 10(2A) of the Industrial Disputes Act, 1947 was whether the order of dismissal from service of the respondent workman with effect from 11.7.2011 is justified and, if not, to what relief he is entitled to. While taking up the reference what is required to be decided by the tribunal is with regard to the validity of the domestic enquiry which, according to the workman, is vitiated. Therefore, the Industrial Tribunal rightly framed the point for consideration as appearing from page 11 of the impugned order. The decision and reasons commence from page 11 and concludes at page 34. We fail to understand as to why such a lengthy order is required to be penned by the Industrial Tribunal. Be that as it may, on a careful reading of the order dated 23.04.2019, we find that the Industrial Tribunal did not limit itself to decide the validity of the domestic enquiry but went several steps ahead and commented

upon the findings of the enquiry officer to be perverse as no reasonable person could have arrived at such a finding. Faulted the decision taken by the management in dismissing the employee, took note of the factors which took place after the enquiry report as submitted by the enquiry officer etc. These are all issues which are not germane to decide the preliminary issue regarding the validity of the domestic enquiry.

Thus, we have no hesitation to hold that the Industrial Tribunal has exceeded its jurisdiction while deciding the validity of the domestic enquiry. Therefore the order passed by the Industrial Tribunal suffers from vice of the lack of jurisdiction. Had the Industrial Tribunal confined itself to examine as to whether the respondent workman had adequate opportunity in the domestic enquiry and whether the enquiry officer had followed the principles of natural justice or adhered to do the rules of the company or the standing order, no error could have been attributed to the order of the tribunal. However the tribunal has transgressed its jurisdiction and gone well beyond what is required by it to be done at the preliminary stage. Therefore we are of clear view that the order dated 23.4.2019 passed by the Industrial Tribunal calls for interference. We are conscious of the fact that the order of dismissal was of 2011. The matter was referred by the government to the Industrial Tribunal and the reference was taken in the year 2013 and the impugned order was passed on 23.4.2019. However, since we are satisfied that there is error of jurisdiction committed by the Industrial Tribunal we are left with no option except to set aside the order and remand the matter back to the Industrial Tribunal to decide the issue regarding the validity of the domestic enquiry alone and in this regard the Industrial Tribunal shall taken note of various

decisions of the Hon'ble Supreme Court and this Court which have clearly laid down the principles which have to be borne in mind by the Industrial Tribunal/ labour Court while deciding a preliminary issue.

In the light of the aforesaid we are not required to examine as to whether the order passed by the learned Single Judge dismissing the writ petition with costs was justified or not as we are allowing the appeal filed by the management on the above mentioned ground. In the result, the appeal is **allowed**. The order passed in the writ petition as well as the order passed by the Industrial Tribunal dated 23.4.2019 are set aside and the matter is remanded back to the Industrial Tribunal to decide preliminary issue regarding the validity of the domestic enquiry strictly in accordance with parameters laid down by the Hon'ble Supreme Court while deciding the preliminary issue.

Since the learned counsel for the respondent workman informed us that the workman is suffering since the workman was dismissed in the year 2011 we request the Industrial Tribunal to decide the preliminary issue at the earliest, preferably within a period of 30 days from the date on which server copy of this order is placed before the Industrial Tribunal. We make it clear that the management shall cooperate in the expeditious disposal of the matter and shall not adopt any dilatory tactics and seek for unnecessary adjournments, consequently all issues touching upon the merits of the matter are left open.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

