

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 11401 of 2001

In the matter of : M/S. Britannia Industries Ltd.

Mr. Ranjan De

Mr. B. Banerjee

.....For the Petitioner

Heard on : 25.08.2022

Judgment on : 29.09.2022

Krishna Rao, J.: Counsel for the petitioner is present. None appears on behalf of the respondents in spite of service of notice. Counsel for the petitioner has filed affidavit in service, let the same be kept in the record.

The petitioner has challenged the Order no. 38 dt. 04.05.2001 passed by the Ld. 1st Industrial Tribunal, West Bengal in case No. VIII-59/1999. The respondent no. 3 was pharmacist-cum-dresser of the petitioner company since 16.10.1989. The respondent no. 3 had submitted hospitalization and domiciliary hospitalization benefit policy claim on 20.09.1996 for a sum of Rs. 3,477.13/- for his treatment in Janakalyan Nursing Home from 19.08.1996 to

27.08.1996. The said claim was forwarded by the petitioner company to the National Insurance Company but the said claim was return to the petitioner company on the ground that the bills submitted by the respondent no. 3 found to be fake and fabricated as per the investigation carried out by the NICL. On receipt of the same, the petitioner company had requested the NICL to provide the certified copy of the claims, vouchers and other documents on the basis of which the NICL claiming that the respondent no. 3 has filed false certificate. The NICL has provided the document issued by the proprietor of Janakalyan Nursing Home dt. 05.11.1996 wherein it is mentioned that the respondent no. 3 had used local influence and compelled the proprietor of the said nursing home for providing certificate with bills though actually the respondent no. 3 was not admitted in the said nursing home. On the basis of the said documents, a domestic enquiry was initiated against the respondent no. 3. On completion of the enquiry, the respondent no. 3 was found guilty for the charged levelled against him and accordingly the punishment of dismissal was imposed upon the respondent no. 3 on 22.06.1998.

Being aggrieved with the order of the dismissal, the respondent no. 3 had initiated industrial dispute and the Government of West Bengal had sent reference to the 1st Industrial Tribunal, West Bengal for adjudication.

The Judge, 1st Industrial Tribunal had passed the following vide order no. 38 dt. 04.05.2001 :-

“However, from the materials on record though I find that the enquiry officer adopted the normal practices before holding the enquiry, but yet he failed to comply with such important formalities before enquiry proceedings. It ultimately resulted in departure from the principles of natural justice.

Thus, in the glow of what has been discussed above it can be shown that the finding of the enquiry officer is not supported by any evidence on material points as stated above, or is entirely opposed to the main body of the evidence before it. Moreover, due to non-compliance or the principles of natural justice the report of the enquiry officer stands vitiated. The said enquiry report is, therefore, held by me to be invalid, unfair and bad.

From the evidences on record it can be concluded that the motive of the management behind the action is victimisation, unfair labour practice and malafide intention. Hence , it is

Ordered

That the domestic enquiry proceeding is bad, unfair and invalid. To 28.5.2001 for hearing on merit.”

In the enquiry conducted against the respondent no. 3, the petitioner company had passed an order on the basis of the evidence brought on record during the inquiry. The Disciplinary Authority came to the finding against the respondent no. 3 on the basis of the certificate issued by the nursing home. During the proceeding before the Ld. Judge, 1st Industrial Tribunal, neither the petitioner company nor the respondent no. 3 have taken any steps for examination of the authority of the nursing home to prove the claim of the respondent no. 3 with regard to the bill submitted by him or to prove the subsequent certificate issued by the nursing home stating that the said certificate is false and fabricated.

In view of the above, this Court finds that the Ld. Judge 1st Industrial Court failed to appreciate the documents which both the parties are relied

upon and thus the finding of the Ld. Judge cannot be sustained and accordingly the order no. 38 dt. 04.05.2001 is set aside and remanded the matter back to the Ld. 1st Industrial Tribunal with the direction to allow the parties to adduce further evidence and to dispose of the proceeding of case No. VIII-59/1999 within a period of six (6) months from the date of receipt of the copy of this order.

WPA 11401 of 2001 is disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)