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W.P.A. 18933 of 2018

The Braithwaite Burn and Jessop Construction Company Ltd.
vs.
State of West Bengal & Ors.

Mr. Arunabha Ghosh
Mr. Kamal Kr. Chattopadhyay
... For the Petitioner

Mr. Narayan Ch. Bhattacharyya
Ms. Sujata Ghosh
... For the State

Mr. Suvadip Bhattacharjee
Mr. Balaram Patra
... For the Respondent No. 3

The order impugned passed by the learned First Industrial Tribunal in case No. VIII-241/2001 on 20th April, 2018 rejecting the prayer of the writ petitioner for cross-examining the employee/WWI further is under challenge in the present writ petition.

It is submitted on behalf of the petitioner that the employee has been enjoying interim relief in terms of Section 15(2) (b) of the Industrial Disputes Act on the ground that he is not gainfully employed and is leading a life of starvation. After

conclusion of evidence, it was detected by the Company that the employee is engaged in gainful employment and has a steady income. The petitioner-Company filed an application before the learned Tribunal praying for cross-examining the employee further on such subsequent event, which was considered and rejected by the Tribunal.

Referring to Rule 15 of the West Bengal Industrial Disputes Rules, 1958 learned counsel for the petitioner submits that the Tribunal has the authority to accept, admit or call for evidence at any stage of the proceedings before it.

Per contra, learned counsel for the employee/3rd respondent submits that the fact of gainful employment of the employee was sought to be brought before the Tribunal by examining C.W. 3 on behalf of the Company but the Company failed to produce any document in support of such allegation. The present application has been filed by the Company only to fill up the lacuna and such application filed at a belated stage after conclusion of the evidence, if allowed, shall affect the employee prejudicially.

Rule 15 of the 1958 Rules clearly enumerates that the Tribunal may accept,

admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit. The employee has been enjoying interim relief under Section 15(2)(b) of the Industrial Disputes Act on the ground that he is not gainfully employed.

It is a fact that evidence of both the parties was concluded and the matter is awaiting argument before the Tribunal. The petitioner submits that after completion of cross-examination of the employee as WWI on 3rd September, 2014, the Company could lay hands upon some documents which reveal that the employee is working for gain and cannot be said to be leading his life in starvation. The Company intends to bring such documents before the Tribunal by cross-examining the employee further.

In view of the same, this Court is inclined to hold that as the fact sought to be placed before the Tribunal by the Company has been discovered after completion of the evidence of the employee as WWI, further cross-examination of the employee is necessary in order to unravel the truth and for proper adjudication of the case before the Tribunal, more so, as the employee has been enjoying interim relief on the ground of

his financial distress and non-employment. Allowing the petition of the Company shall not make out a new case before the Tribunal, nor shall prejudicially affect the interest of the employee. The delay in filing the application is well explained by the fact that the fact sought to be introduced was discovered by the petitioner-Company much after completion of evidence of the parties.

The authority relied upon by the respondent in ***Pannayar vs. State of Tamil Nadu*** reported in ***(2009) 9 Supreme Court Cases 152*** deals with a case wherein re-examination of the witness was not permitted by the Hon'ble Supreme Court for supplementing the examination-in-chief. The ratio of the said authority can be distinguished from the facts and circumstances of the present case.

Accordingly, W.P.A. 18933 of 2018 is allowed.

The order impugned dated 20th April, 2018 passed by the learned Judge, 1st Industrial Tribunal in case No. VIII/241/2001 is set aside.

The writ petitioner is permitted to cross-examine the employee/WWI further strictly in terms of the list of questions and documents for cross-examination annexed

to the petition dated 15th February, 2018 and such cross-examination should be concluded on one single day. No adjournment should be granted to either of the parties for such cross-examination, by the learned Tribunal.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)