

Item no. 05

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 1327 of 2017

with

IA No. CAN 1 of 2017 (Old No. CAN 7530 of 2017)

IA No. CAN 2 of 2017 (Old No. CAN 7531 of 2017)

Swapan Das

vs.

State of West Bengal & ors.

Appearance:

For the Appellant : Mr. Phatick Chandra Das
Ms. Rima Guria

For the Respondent No.2 : Mr. Ranajoy De
Mr. Soumya Majumdar
Mr. Aniket Agarwal
Ms. Rusha Mitra
Mr. Zulfiqur Ali Aliquaderi

For State : Ms. Debasree Dhamali

Heard on : 15.11.2021, 10.12.2021, 17.01.2022,
02.02.2022, 14.02.2022, 21.02.2022,
16.03.2022, 30.03.2022, 25.04.2022

Judgment on : 25.04.2022

T.S. Sivagnanam J.:

This intra court appeal at the instance of workman is directed against the order dated 8th May, 2017 passed in WP 223 (W) of 2017 by which the challenge made by the appellant to the award passed by the 1st Labour Court in Case No.3 of 2011 was dismissed. We note that the writ petition was dismissed at the admission stage though the appearance of the learned advocate for the respondent management have been noted in the matter. This fact was not disputed before us.

After hearing the learned advocates for the parties as well as learned senior counsel for the second respondent management and after noting the prayers sought for in the writ petition and the findings/observations made by the learned Single Bench for dismissal of the writ petition, we find that serious error has been committed by the learned Writ Court in non suiting the appellant in his challenge to the order of the 1st Labour Court, Kolkata on a technical ground. The learned Single Bench in more than two places observed that the challenge made by the appellant is only with regard to the order of the Labour Court refusing to exercise its jurisdiction under Section 11A of Industrial Disputes Act and the order upholding the domestic enquiry which was a separate order dated 23.12.2015 was not the subject matter of challenge and therefore the appellant writ petitioner cannot at this stage question the award on those aspects. The learned Single Bench has thereafter opined that the Labour Court has very limited

scope of interference with regard to sentence (punishment) imposed and if the proceeding does not contain any procedural or legal error the issue of sentence (punishment) is generally not interfered with. The learned Writ Court has not touched upon the merits of the award passed by the Labour Court which undoubtedly culminated in the order dated 31st May, 2016.

We have gone through the prayers sought for in the writ petition and we find that though the appellant has challenged the order dated 31.05.2016 the prayer has not been restricted insofar as the exercise of jurisdiction by the Labour Court under Section 11A of the Act but he has also questioned the punishment imposed, the validity of the domestic enquiry, alleged bias in the enquiry proceeding and other contentions as may be available under law. Therefore the subject matter of challenge before the Writ Court was the proceedings in its entirety. Therefore we have no hesitation to hold that the learned Writ Court misconstrued the scope of the writ petition. It is argued by the learned counsel for the management that the Labour Court has got power to grant interim relief and if an order has been passed and the same remains unchallenged, the workman cannot after final award is passed, question the same.

In the instant case the duty of the Labour Court is to first decide the validity of the domestic enquiry. More so, when the appellant workman has alleged bias and argues that the domestic enquiry was vitiated. If the Labour Court finds that the domestic enquiry was just

and proper, the matter can proceed further to decide as to the correctness of the action initiated by the management against the workman. If the Labour Court holds otherwise it shall have to grant liberty to the parties to lead oral and documentary evidence. Therefore, the proceedings and orders passed by the Labour Court upholding the validity of the domestic enquiry cannot be treated to be an order in the nature of an interim relief. The said order merges with the findings rendered by the Labour Court on the validity of the punishment and further merges with the order passed by the Labour Court under Section 11A of the Act. Therefore the challenge to the proceeding has to be considered in its entirety and the Writ Court being the only remedy available to the workman to challenge the award of the Labour Court, the workman is entitled to be heard on all aspects after the management is directed to file their affidavits.

As observed earlier, certain findings have been rendered by the learned Writ Court with regard to submission made by the learned Senior Counsel for the management as to the conduct of the appellant workman. However, this oral submission cannot deter the Court from considering the matter afresh as we are inclined to set aside the order passed in the writ petition and restore the same to the original file and number of the learned Single Bench to be heard and decided after affidavits are filed by the concerned contesting respondents.

Learned counsel for the management submits that the order passed by the Labour Court dated 23.12.2015 has attained finality as

the same was not challenged at the appropriate time. However, the law on the subject is that a cumulative challenge to the award of the Labour Court is the proper method and seldom Writ Courts interfere with any interlocutory orders passed by the Labour Court bearing in mind that the industrial dispute has to come to its logical end at the earliest.

For the above reasons, the appeal and the connected application stand **allowed** and the order passed in the writ petition is set aside and the writ petition is restored to the original file and number of the learned Single Bench of this Court. The respondent management is granted four weeks time from date to file their affidavit-in-opposition to the writ petition upon serving of advance copy on the learned advocate appearing for the writ petitioner. Reply, if any, be filed within two weeks thereafter. The Registry is directed to list the writ petition before the appropriate Bench with the request to the Learned Single Bench to assign early hearing for the writ petition as the case before the Labour Court is of the year 2011.

We make it clear that the observations made by us in this judgment is to support our ultimate conclusion. The Learned Single Bench may proceed to hear and decide the matter without being influenced by the observations made.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)