

Item No.5.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 05.12.2022

DELIVERED ON:05.12.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.1203 of 2018

Suresh Thakur @ Bin & Ors.

Vs.

**National Central Government Industrial Tribunal-cum-Labour Court,
Kolkata & anr.**

Appearance:-

Mr. Suresh Thakur ... **Appellant no.1-in-person.**

**Mr. Shiv Shankar Banerjee,
Ms. Sanchita Barman Roy** **for the respondents.**

JUDGMENT

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

1. In the order dated 30th November, 2022, the date of the award shall be read as "19th March, 1996" instead of "19th March, 1998" wherever it appears.

2. This intra Court appeal by the writ petitioners, namely, Mr. Suresh Thakur @ Bin and 148 others is directed against the order dated 11th September, 2018 passed in W.P.A. No.9916(W) of 2005. The said writ petition was filed by the appellants for issuance of a writ of certiorari to quash the award passed by the Central Government Industrial Tribunal-cum-Labour Court (for short, "the Tribunal") dated 19th March, 1996 and the subsequent order passed by the Tribunal dated 2nd February, 2005 in and by which the miscellaneous application filed by the appellants to set aside the award and to re-hear the matter on merits was rejected on the ground that the Tribunal had no jurisdiction to entertain such an application.

3. The learned Writ Court had passed the order on 11th September, 2018 impugned in this appeal and from the said order, we find that the writ petition was listed before the Court on 3rd September, 2018 and an order was passed on the said date. The learned Writ Court has referred to the said order and records the submission of the petitioners that the Tribunal ought not to have rejected the miscellaneous application in the light of the decision of the Hon'ble Supreme Court in **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal** reported at **1980 (Supp.) SCC 420**. Further, Rule 28 of the Rules was referred to, which

empowers the Tribunal to correct mistakes. The learned Single Bench, came to the conclusion that what the appellants seek is to review the order of the Tribunal, which is impermissible. Ultimately, the writ petition was dismissed. Challenging the correctness of the said order, the appellants have filed the present appeal.

4. We have elaborately heard Mr. Suresh Thakur @ Bin, appellant no.1-in-person and on behalf of the other appellants and Mr. Shiv Shankar Banerjee, learned Advocate appearing for the respondents.

5. The issues which fall for consideration in this appeal are as follows:-

A) Whether the learned Tribunal committed procedural irregularity in not considering the merits of the dispute, which was referred for a decision before it?

B) Whether the appellants / workmen had been afforded adequate opportunity to lead oral and documentary evidence before the Tribunal?

C) Whether the decision of the Tribunal was confined only to the preliminary point raised by the management or does the award deals with the merits as well?

D) Whether the learned Writ Court had adjudicated the correctness of the award, i.e. on the preliminary issue as well as on the merits or otherwise?

E) Whether the preliminary issue raised by the management contending that the remedy for the workmen is not before the Tribunal but before the appropriate authority under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 is sustainable ?

6. After we have elaborately heard the first appellant appearing in person and the learned Advocate appearing for the respondent / management, we propose to answer above five questions conjointly as the facts cannot be spilt up to deal each one of the questions in an independent fashion.

7. The first issue is whether the preliminary objection raised by the respondent / management was justified or not. The contention of the respondent / management is that earlier the workmen had moved writ petitions before this Court and in the light of the orders passed therein, the reference before the Industrial Tribunal is not sustainable any longer as in those writ petitions, an observation has been made that the reference before the industrial Tribunal would be of no effect since the

Court had directed the workmen to approach the appropriate authority for their permanent absorption and the workmen cannot file writ petitions.

8. We have perused the order passed in the earlier writ petitions dated 4th October, 1991 in Civil Order No.13592(W) of 1990. The law on the subject has been clearly explained in several decisions of the Hon'ble Supreme Court and one of such decisions being in the case of **Steel Authority of India Vs. National Workers' Association** reported at (2001) 7 SCC 1. In paragraph 125 and 126 of the decision, the Court has culled out the legal principles and interpreted Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The ratio laid down in the said decision is that even assuming the contract labour is to be abolished by passing an order in terms of Section 10 that would not enure the benefit of automatic regularisation of such employees. On a reading of the order passed in the earlier decision dated 4th October, 1991, which also refers to another order passed earlier by this Court, what weighed in the mind of the learned Writ Court was that earlier there was a direction upon the workmen / union to approach the appropriate authority and the reference before the Tribunal would have no effect.

9. However, the Court has not recorded any finding to the effect that the order of reference ceased to exist and the Tribunal cannot adjudicate the same. If we read the order passed in the writ petition dated 4th October, 1991 in its entirety, it is clear that the learned Writ Court held that the remedy of the workmen is not before the Writ Court but elsewhere. In any event, whether a workman is entitled to be absorbed as a permanent workman or not, is a matter, which is to be concluded after industrial adjudication. Therefore, we are clear in our mind to hold that the preliminary objection raised by the management based on the orders passed in the earlier writ petitions is devoid of merits. Accordingly, we hold that the order of reference is sustainable and the Tribunal would have enough jurisdiction to adjudicate the matter and pass an award. Thus the preliminary issue raised by the Management is answered against them and in favour of the workman.

10. Having held so, the next issue, which we have to consider is as to whether the submission of Mr. Suresh Thakur that there was gross violation of principles of natural justice and no opportunity was granted to the appellants to laid evidence or to mark documents or cross-examine the witnesses is justified or not. On this aspect, Mr. Banerjee has made elaborate submissions

and has drawn our attention to the copies of the order sheets of the Tribunal. From the said order sheets, it is seen that on 14th September, 1982, the Tribunal directed the parties to come ready for hearing of the case on the preliminary point as well as on merits. Subsequently, the Court has permitted filing of the documents and it appears that the management has led oral evidence and also marked documents as exhibits M-1 to M-12(f). From the order dated 1st February, 1989, it is seen that one of witness on the side of the workmen, namely, W.W.1 Baijnath Mahato was present before the Tribunal. The order does not indicate as to whether he was examined-in-chief or whether he was cross-examined by the management's counsel. The order further records that the submission of the union leader that other witnesses are to be examined could not come on the said date (01.02.1989) and an adjournment was sought for.

11. It may not be necessary for us to refer to the orders passed by the Tribunal on a day-to-day basis but suffice it to note that initially the Tribunal was of the view that it will hear the parties on the preliminary issue as well as on merits by order dated 27th September, 1994. The earlier order dated 8th September, 1983 was modified. The effect being that the matter will be heard only on the preliminary point. It is the submission

of Mr. Thakur that by virtue of this order dated 27th September, 1994, the entire proceedings which were done by the Tribunal are deemed to be set aside.

12. We are not convinced with the said submission because the management has marked as many as 12 documents and one witness has been examined. However, there has been no sufficient opportunity granted to cross-examine the management's witness. That apart, the order sheet does not indicate that the witnesses on the side of the workmen were examined-in-chief. We find that no opportunity was granted to mark documents as exhibit numbers have not been recorded in the order sheet.

13. Be that as it may, the orders, which have been passed after 22nd November, 1994 clearly show that the tribunal was adjourning the matter from time to time to hear the parties on the preliminary issue. Ultimately, the Tribunal had passed the award dated 19th March, 1996 in Reference No.57 of 1982. The workmen had filed a miscellaneous application to set aside the said award and the matter could be reheard on merits. This application was rejected by the Tribunal on the ground that the Tribunal has got no jurisdiction as the award was published on 4th May, 1996. The Tribunal may be right in coming to such a conclusion as it would become functus officio after the said

date of publication of the award. Nevertheless, the writ petition, which was filed by the workmen not only challenged the order dated 2nd February, 2005 rejecting the application for setting aside the award but also challenged the award dated 19th March, 1996.

14. Thus, the duty enjoined upon the learned writ Court was not only to examine the correctness of the order dated 2nd February, 2005 but also the award dated 19th March, 1996.

15. Before we examine as to whether such an exercise was done by the learned Writ Court, we need to consider as to whether the Tribunal had rendered a finding on merits of the matter or the award was passed only on preliminary issue. The award is a brief award consisting of 10 paragraphs. The first six paragraphs deals with the facts of the matter and Court has referred to a decision in the case of R. K. Panda & Ors. Vs. Steel Authority of India & Ors. reported at (1994) 5 SCC 304. Thereafter, in paragraphs 7 to 9, it has recorded the submissions wherein the Tribunal held that the management witness was examined, no steps were taken by the workmen to cross-examine him and ultimately, in paragraph 10, the Tribunal has come to the conclusion that number of documents have been filed both by the management and the workmen and about 16

documents have been marked on behalf of the management whereas the workmen have exhibited no documents on their behalf.

16. Further, the Tribunal holds that most of the documents are not necessary for a decision of the case and no reliance is placed on any of the documents at the time of argument and that they are merely vouchers showing payment. Accordingly, the tribunal came to the conclusion that there was no evidence on the side of the workmen to establish their case and the reference was rejected. To say the least, the award of the Tribunal is utterly perverse. From the order sheets, we have seen that though the management had marked the documents as M-1 to M-12(f), the evidence of the said witness is said to have been closed on the same date and it is not clear as to when the cross-examination was permitted to be done of the management witness.

17. On the next date of hearing, the Tribunal records the submissions of the union leader that time has to be granted to produce the witnesses. The Tribunal on the subsequent dates records the submissions of the union leader that the WW-1 has to be recalled. Thus, the finding rendered by the Tribunal is contrary to the record and the Tribunal has dealt with the matter in a slipshod fashion forgetting the duty enjoined upon

it and as to how the matter has to be adjudicated. Thus, the award passed by the Tribunal would definitely calls for interference.

18. When we consider the order passed in the writ petition, it appears that the learned Writ Court was more concerned about the power of the Tribunal to set aside its orders by referring to Rule 22 of the Industrial Disputes (Central) Rules, 1957 and the decision in Grindlays Bank Ltd. (supra) and in the last paragraph of the order dated 11th September, 2018, the learned Writ Court has observed that on perusal of the award dated 19th March, 1996, it does not appear that the said award was made ex parte, the workmen had laid evidence, which however was found "as did not establish their right or entitlement". We are not clear about the ultimate conclusion of the learned Writ Court but all that we can say is that the order does not give a clear finding as to whether it approves the award of the Tribunal on the preliminary point or on the jurisdiction to entertain a miscellaneous application after publication of the award or on the merits of the claim of the workmen.

19. On perusal of the order passed by the learned writ Court earlier that is on 3rd September, 2019 also does not show that the Court was hearing the parties on the preliminary issue with

regard to power of the Tribunal to set aside its award. Therefore, the learned writ Court had not gone into the merits of the matter, did not consider any of the grounds which have been raised by the writ petitioners, more particularly that the Tribunal did not hear the parties on merits, did not permit the workmen to cross-examine the management witness, evidence of the workmen witnesses were not recorded, no documents were exhibited by the workmen and the entire proceedings stood concluded.

20. Thus, when perversity is writ large on the face of the award, this Court exercising jurisdiction under Article 226 of the Constitution is entitled to interfere with such award as we have come to the clear finding that the award suffers from perversity.

21. As pointed out, the learned writ Court also appears to have not noticed these factors and it is not clear as to whether the order sheets were placed before the learned writ Court. In any event we find the order passed in the writ petition to be a non-speaking order and, therefore, it would also call for interference.

22. For all the above reasons, the appeal is allowed. The order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the award dated 19th March, 1996

in Reference Case No.57 of 1982 is set aside and the matter is restored to the file of the Industrial Tribunal for fresh adjudication. So far as the preliminary point is concerned, we have taken a decision that the reference is maintainable and therefore the management cannot raise the said issue and the Tribunal shall permit the parties to lead oral and documentary evidence after which the parties shall be given sufficient opportunity to make their submission and a reasoned award be passed on merits and in accordance with law.

23. Considering the fact that the issue is lingering for several decades, the Tribunal is requested to assign an early date for conclusion of the proceeding.

24. There shall be no order as to costs.

25. 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,

(HIRANMAY BHATTACHARYYA, J.)