

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE

W.P.O.1017 of 2022

THE CALCUTTA TRAM MAZDOOR SABHA

Vs.

THE STATE OF WEST BENGAL AND OTHERS

For the Petitioner	:	Mr. Arunava Ghosh, Sr. Adv. Mr. Shibnath Bhattacharya, Advocates
For the Respondents		Mr. Niladri Bhattacharya Ms. Deblina Chattaraj Advocates
Heard on	:	07.03.2022, 14.03.2022 30.03.2022 and 20.04.2022
Judgment on	:	18th May, 2022

Arindam Mukherjee, J:

1. The Calcutta Tram Mazdoor Sabha, a registered trade union, has filed the instant writ petition seeking mandatory orders on the State of West Bengal (hereinafter referred to as respondent no.1) and the West Bengal Transport Corporation (in short "WBTC") (hereinafter referred to as respondent no.2) to pay the interest on account of arrears of Revised Pay and Allowance 1998 (in short "ROPA 1998") to

its additional members from the date such money was required to be paid till actual payment thereof.

2. On behalf of WBTC the maintainability of the writ petition has been objected to on three counts. It is contended by WBTC that the members of the petitioner union as employees of WBTC has individual claims arising out of individual contract of employment between the employer and employee concerned. The relief claimed in the writ petition does not relate to any trade union's right but relates to individual rights of the members. The petitioner, therefore, cannot espouse individual cause of its members and as such, the writ petition is not maintainable. WBTC further says that the individual representations brought on record by way of supplementary affidavit are post-filing of the writ petition and as such, they cannot be looked into.
3. The petitioner says that by a Government Resolution bearing no.1183-F dated 27th November, 1995 read with the Resolution no.11833-F dated 27th November, 1995, a Pay Commission was constituted for examining the structure of emoluments and other conditions of service of the members of State Government Undertakings, statutory bodies, corporations etc., and for making suitable recommendation. The Pay Commission submitted its recommendation which was accepted by a notification bearing No.7306-F dated 16th October, 1998 published by the Government of West Bengal, Finance Department with a retrospective effect from 1st January, 1996. The Government of West Bengal, Transport

Department, by a memorandum dated 23rd June, 2000 also accepted the proposals and agreed to pay the arrears with interest in instalments. This was followed by a memorandum dated 21st July, 2000, issued by CTC now known as WBTC accepting the proposals. Under the two memoranda respectively dated 23rd June, 2000 and 21st July, 2000, the State Government as also CTC had agreed to pay the arrears for the period from 1st April, 1997 to 31st March, 2000 in five annual instalments, the first of which being payable not before 1st November, 2002 along with interest to be calculated from 1st April, 2000. The employees/workmen of CTC now known as WBTC, therefor, were to get the arrears from 1st April, 1997 to 31st March, 2000 with interest up to April, 2000 in five annual instalments. The principal sum along with the interest up to April, 2000 as per the two memoranda had been paid to the employees/workmen of CTC but much after the schedule date. The petitioner as a registered trade union is claiming interest on behalf of its additional members for the delayed payment between the scheduled date and the actual date of payment.

4. After hearing the parties and considering the materials on record, the following questions fall for consideration:-

1. Whether the writ petition at the instance of the petitioner, a registered and recognised Trade Union claiming benefits available to employees/workmen of CTC now known as WBTC being its additional members, is maintainable?

2. To what reliefs can the petitioner claim on behalf of its additional members being employees/workmen of CTC now known as WBTC?
5. With regard to the first question as aforesaid, it is an admitted position that petitioner is a registered trade union under the provisions of the Trade Union Act, 1926. It is also a recognised Union of CTC now known as WBTC. As a recognised union it always has and had a significant role in the collective bargaining process for finalising the benefits of the employees/workmen including these under ROPA and in the instant case ROPA 1998. The petitioner was allowed to deliberate at the wage revision stage which after several rounds culminated into the benefits under ROPA 1998.
6. The payment by annual instalments with agreed interest was made by 2008 but beyond the scheduled dates as per the notification dated 23rd June, 2000. The individual employees therefor, became entitled to claim interest due to delayed payment of the instalments beyond scheduled date. The petitioner representing the workers had knocked the doors of this Court in two earlier writ petitions, wherein in the first writ petition being W.P No.910 of 2006 on 16th April, 2008 an order was passed for considering the claims of the workers who were members of the petitioner while in the second writ petition being W.P. No.888 of 2008 on 20th March, 2009 an order was passed for providing the details of the payments as assured under the notification dated 23rd June, 2000 and to consider the individual claims of the members of petitioner. In neither of these two writ

petitions the maintainability of the same at the instance of petitioner, a trade union was, however, raised.

7. Petitioner claims that several workers of CTC now known as WBTC have joined the petitioner post-2013. These members have been described as additional members. The petitioner is seeking an order on behalf of such additional members for payment of interest due to belated payment of the instalments assured under the notification dated 23rd June, 2000.
8. The role of a recognised trade union and its consequential rights were considered in the judgment reported in **(1999) 2 SCC 687 [Karnataka State Road Transport Corporation vs. KSRTC Staff & Workers' Federation and Anr.]**. The role and authority of a trade union again fell for consideration in the judgment reported in **(2019) 11 SCC 332 [JK Jute Mill Mazdoor Morcha vs. Juggilal Kamlapat Jute Mills Company Limited.]**. The judgment in **Karnataka SRTC (supra)** is in reference to a writ petition while that in **Mazdoor Morcha (supra)** was in the context of maintaining a petition under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the IBC).
9. While considering the role and authority of a trade union the Hon'ble Supreme Court in the judgment **Mazdoor Morcha (supra)** has laid down the following:

“...Further a registered trade union recognised by Section 8 of the Trade Unions Act, makes it clear that it can sue and be sued as a body corporate under Section 13 of that Act. Equally, the general fund of the trade union which inter

alia is from collections from workmen who are its members, can certainly be spent on the conduct of disputes involving a member or members thereof or for the prosecution of a legal proceeding to which the trade union is a party, and which is undertaken for the purpose of protecting the rights arising out of the relation of its members with their employer, which would include wages and other sums due from the employer to workmen.”

10. Relying upon the findings as quoted hereinabove, the Hon’ble Supreme Court held that a trade union falls within the definition of “person” under Section 3 (23) of the IBC and as such “an operational debt” meaning a claim in respect of an employment could certainly be made by a person being authorised to make the same on behalf of a workman. A registered and recognised trade union is, therefore, entitled to make such a claim. This judgement which has been cited by the petitioner, however, does not automatically makes a writ petition maintainable as it relates to a petition under IBC. In order to maintain a writ petition it is now well-settled that one has to establish that he has an enforceable right which has been infringed. This view, has, however been expanded in recent days by incorporating the concept of a “person aggrieved” and by further holding that a “person aggrieved” can maintain a writ petition. It has been contended by the respondents that the petitioner no.1 does not have any right with regard to the claim on individual employees as made in the writ petition and as such a writ petition with regard to a claim of a workman in respect of an employment cannot be

maintained by the petitioner even though it is a registered and recognised trade union.

11. The role of trade union as accepted by **Mazdoor Morcha** (supra) can be correlated to a writ petition in view of ratio laid down in **Karnataka SRTC** (supra) wherein a recognised trade union having been allowed to participate in a bipartite agreement has been held to be a “person aggrieved” to maintain a writ petition on behalf of the workmen. This position was also elucidated in a judgement reported in **1972 (2) All ER 589 (R vs. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operator Association)**. In the said judgement, an association has been held to be entitled to maintain a petition for prohibition, certiorari and mandamus i.e., for issuance of writs. It has been held in **Karnataka SRTC (supra)** and **2014 (3) CLT 407 [D.N. De Homoeopathic Medical College & Hospital Employees’ vs. The State of West Bengal & Others]** that a trade union is a person aggrieved and can maintain a writ petition. In **(2006) 11 SCC 731 (I) [Retd. Armed Forces Medical Association and Others VS. Union of India]** it has been held that a trade union can maintain a writ petition depending on the facts of the case. In the instant case, the writ petition has been filed in connection with employment claiming the employees’ benefit under pay revision. The writ petition, therefor, being at the instance of a registered and recognised trade union and for claims of the employees/workmen maturing after collective bargaining as in the instant case, is maintainable.

12. The judgements cited by the respondents being **AIR 1951 SC 41** (*Chiranjit Lal Chowdhuri vs. Union of India and Ors.*), **AIR 1962 SC 1044** (*Calcutta Gas Company (Proprietary) Ltd. vs. State of West Bengal and Ors.*) and **(2019) SCC On Line Mad 29584** (*N.R. Trade Union Congress, Represented by its President, Mohandass vs. Union Territory of Puducherry, Represented by the Chief Secretary & Ors.*) are clearly distinguishable in the facts of the instant case. In **Mohandass** (supra) the Court was considering a claim on account of gratuity due to a workman by a trade union. The claim for gratuity is admittedly an individual claim wherein the trade union has no role to deliberate or receives an assurance from the employer for payment of the same after collective bargaining. Gratuity is available to an employee under the statute that is Payment of Gratuity Act, 1972. The modalities for computing the same is also specified in the said statute eliminating the scope of collective action. There is also no doubt that the legal relationship between the employer and employee is essentially contractual though in the context of employment under the “State”, the relationship is regulated by statutory provisions or subordinate legislation which restricts the freedom of the employer that is “State” in certain respect. Each workman therefor, has an individual contract with his employer. The individual rights flowing under the said contract with regard to which the trade union has no power to deliberate or bargain, a proceeding at the instance of the trade union is clearly not maintainable. This is, however, different from the issues relating to

employment like that in the instant case wherein the trade union plays a vital role to negotiate the terms as part of collective action and bargaining. As in the instant case, in the fixation of benefits under ROPA-1998, the petitioner as a trade union had a negotiating authority. It can, therefor, maintain a writ petition with regard thereto unlike an individual claim wherein it had no role to play in the process of bargaining. The judgements in **Chiranjit Lal** (*supra*) and **Calcutta Gas Company** (*supra*) consider the individual rights of an employee/workman and not a collective action wherein the benefits have culminated on the trade union being given a right to negotiate and as such clearly distinguishable from the case in hand. Thus, the instant writ petition at the instance of the petitioner, a registered trade union is maintainable.

13. So far as the second question is concerned, it is true that the additional members for whom the petitioner has claimed the relief are not identically placed in the same platform though their rights considered in the broader spectrum are one and the same i.e., claim for interest on account of delayed payment. The scale of pay of each individual member, the date of their appointment, the length of service as also the date of superannuation may be different which requires the employer to consider the claim of each workman separately in the light of these parameters. The petitioner as a trade union is, therefor, not entitled to any mandatory order in this writ petition for payment of the benefits under ROPA-1998 to each of its additional members. The additional members on whose behalf, the

petitioner has ventilated the grievances will have to make individual representations. The writ petitioner has filed a supplementary affidavit including therein the representation made by its additional members with regard to which the respondents have raised objection. The petitioner therefor, is only entitled to an order that the claims of each of its additional members shall be considered by CTC now known as WBTC as the employer by applying the applicable legal provisions. Since the respondent no.2 CTC now known as WBTC has referred to several discrepancies in the representations made by the individual members being the additional members of the petitioner as disclosed in the supplementary affidavit, I direct each of the additional members to make individual representations providing the necessary particulars within a period of four weeks from the date of this order. In the event, such applications/representations are made to the employer that is CTC now known as WBTC shall consider each of such applications/representations on their merit through the respondent no.3 i.e., Managing Director, West Bengal Transport Corporation Ltd. or any senior officer designated for this purpose and pass on the benefits to such members who are found entitled to. In case of rejection of any claim, CTC now known as WBTC shall give proper reasons for the rejection of the claim and communicate the same to the concerned employee. The petitioner shall within two weeks from date furnish to CTC now known as WBTC a list of its additional members so that it will be convenient for CTC now known as WBTC to process and adjudicate the claim of the

additional members of the petitioner on the same being made. The entire exercise for adjudicating the claim and passing of the benefit to those who are entitled to receive the same shall be completed within six months from expiry of one month period from the date this order. Since there is an assurance from the side of the State i.e., respondent no.1, the said respondent shall provide funds to respondent no.2, if necessary to pay the benefits to the additional members of the petitioner.

Nothing further remains to be adjudicated in this instant case the writ petition is disposed of accordingly without any order as to costs. All parties shall act on the basis of a server copy of this order without insisting for production of a certified copy of this judgment and order.

ARINDAM MUKHERJEE. J.