

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 499 of 2023

The Assembly of God Church
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Jayanta Dasgupta Mr. Balaram Patra Mr. Ritesh Kumar Maity
For the respondent No.3	:	Mr. Suvodip Bhattacharjee
Heard on	:	22 nd June, 2023.
Judgment on	:	22nd June, 2023.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, challenging the order dated 22nd November, 2022 passed by the learned Judge, Fourth Industrial Tribunal, West Bengal, in Case No. VIII-27 of 2015, under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to the "said Act").

2. The petitioner claims to be registered under the West Bengal Societies Registration Act, 1961 and is represented by its Chief Administrative Officer. It is the petitioner's case that 'the petitioner has set up a church for non-commercial purpose and is engaged in religious, charitable and philanthropic activities for the welfare of the humanity. It is also the case of the petitioner that the employees of the church are not given Variable Dearness Allowance (VDA) separately and the amount of VDA is merged with Fixed Dearness Allowance (FDA) in terms of its notice issued on 20th November, 2000.

3. Records reveal that on the basis of a reference made by the respondent no.3 under Section 10 of the said Act, the appropriate Government by an order dated 1st July, 2015 was, *inter alia*, pleased to refer the dispute between the parties to the Fourth Industrial Tribunal, West Bengal, for adjudication by identifying the following issues:-

1. Whether the non-payment of V.D.A. to the non-school workmen of the Management with effect from 01-01-1997 & violation of Section 9A of the Industrial Disputes Act, 1947 are justified;

2. What relief, the workmen thus affected are entitled to?

4. Subsequently, however, the appropriate Government by a communication dated 12th February, 2021, had issued a

corrigendum where under the first and the second line of the issue no.1 of the order dated 1st July, 2015 was modified to the following effect:

“Please read “April, 1998” instead of “01-01-1997” in the first and second line of the ISSUE(S) No.1 of the last para of this Department’s order quoted above”.

5. The petitioner had challenged the said corrigendum by filing a writ petition which was registered as WPA 7392 of 2021. By an order dated 22nd March, 2021, a coordinate Bench of this Court was inter alia pleased to dismiss the said writ petition.

6. In the interregnum, since the written statement had already been filed, the respondent no.3 had filed an application for amendment. By an order dated 13th April, 2021, the amendment application was allowed by the Tribunal.

7. Since, according to the petitioner, the amendment sought for and allowed by the Tribunal was beyond the scope of the corrigendum, challenging the aforesaid order, the petitioner had filed a writ petition which was registered as WPA 18956 of 2021.

8. By an order dated 7th March, 2022, a coordinate Bench of this Hon’ble Court by taking note of the submissions made by the parties and further taking note of clause 4(ii) of the amendment petition by which the respondent no.3 had sought to incorporate new facts, not

in conformity with the corrigendum was, *inter alia*, pleased to observe that allowing the said amendment at such belated stage of the proceeding before the Tribunal shall prejudicially affect the petitioner before the Tribunal, and accordingly set aside the order impugned dated 13th April, 2021 insofar as point No.4(ii) of the amendment petition is concerned.

9. Since then, the respondent no.3 had filed an additional written statement incorporating the other amendments. Following the filing of such additional written statement, the respondent no.3 filed an application for Special Leave for the purpose of relying on certain documents at the time of adducing evidence.

10. By an order dated 22nd November, 2022 the Tribunal was, *inter alia*, pleased to allow the said application to the extent indicated therein. Challenging the said order, the present writ petition has been filed.

11. Mr. Dasgupta, learned advocate representing the petitioner submits that ordinarily, after filing of the written statement in terms of the West Bengal Industrial Disputes Rules 1958 (hereinafter referred to as the “said Rules”), the parties are required to file list of relevant documents which are in their possession and rely on the same on a date fixed by the Tribunal. He says, in the instant case, such a list had already been furnished by the parties. The

proceedings had thereafter continued. Witness action had already been concluded sometimes in August, 2019. Argument has already started. He says at this stage there is no justification on the part of the Tribunal to allow the special leave petition. The respondent no.3 cannot be permitted to fill in the lacunae by introducing additional documents. In any event, it is submitted that although the Tribunal has the discretion to admit any document, such discretion cannot be exercised mechanically as has been done in the present case.

12. *Per contra*, Mr. Bhattacharjee, learned advocate representing the respondent no.3, submits that the corrigendum had been issued on 12th February, 2021. Issuance of the corrigendum necessitated the respondent no.3 to introduce the consequential amendment. Admittedly, the said amendment to the extent permitted by the Hon'ble High Court has already been allowed. He says that once the corrigendum dated 12th February, 2021 surfaced, the parties in ordinary course are entitled to pray for necessary amendment and bring on record the documents to substantiate their case in terms of the corrigendum. He submits that the issues involved before the Tribunal relates to non-payment of VDA and violation of Section 9A of the said Act. According to Mr. Bhattacharjee, such an issue can only be agitated through the Union, unlike an order of dismissal which also can be agitated individually. He says that in the present proceedings, the petitioner has challenged the authority of the

respondent no.3. Since a further issue has come up as to whether the respondent no.3 is a registered union or not, the respondent no.3 thought it fit and necessary to bring on record certain documents to establish their case and the Tribunal taking into consideration the aforesaid and in exercise of its discretionary power has also permitted them to rely on documents in relation to VDA, for the Tribunal to appropriately address the issues in the case. He says that the Tribunal cannot be faulted for having allowed the aforesaid special leave petition to the extent indicated hereinabove.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that in this case the trial has not only commenced but also proceeded upto the stage of argument. At the same time, the factum of issuance of the corrigendum dated 12th February, 2021 cannot be lost sight of. Admittedly, such corrigendum had been issued at a point of time when the argument had already proceeded. Obviously, therefore, a right has accrued in favour of the parties to lead evidence in support of the corrigendum. I find that the respondent no.3 had already filed an additional written statement to the extent permitted by this Hon'ble Court. In any event as rightly pointed out by Mr. Bhattacharjee, the Tribunal has the power and jurisdiction to admit or call for evidence at any stage of proceedings in such manner as it

thinks fit. Such power has been conferred to the Tribunal in terms of Rule 15 of the West Bengal Industrial Disputes Rules, 1958.

14. Having regard to the aforesaid, it cannot be said that the Tribunal had committed any error in permitting the special leave petition, since the parties had already filed the list of documents in terms of Section 20(B) of the said Rules. I find that the Tribunal by the order impugned while taking note of the challenge thrown by the petitioner as regards the authority of the respondent no.3 to represent itself as also having regard to the issues involved in deciding payment of Variable Dearness Allowance, had while declining to permit the documents by which the respondent no.3 was attempting to introduce a new case, had allowed the documents filed at the running pages 11 to 39 and 49 to 76 of the special leave petition, the document at pages 4 to 8 which are salary slip of some of the workmen of the petitioner, the document at pages 9 and 10 of the said application which is a letter dated 10th September, 2014, addressed to the Deputy Labour Commissioner to be relied on and admitted. Similarly, the documents at pages 43 and 44 which are copies of the documents at pages 9 and 10 which had been previously admitted were also permitted to be relied on and taken on record.

15. I have carefully scanned the aforesaid documents. I am of the view that if the Tribunal had permitted the documents, which could throw light on the authority of the respondent no.3 to represent the workmen, such documents cannot be questioned by the petitioner. Similarly, the documents which throw light on the issue of VDA also should be permitted to be considered by the Tribunal as the same goes to the very root of the matter especially when the same have been allowed by the Tribunal by exercising its discretionary powers.

16. It would be, however, relevant to note, that insofar as serial no. (VI) of the Special Leave Petition, being the Annexure F series is concerned, a major part thereof is the union's resolution book which is an internal document of the respondent no.3. In my view, the same cannot be permitted to be taken on record. It is, thus, made clear that the documents forming part of Annexure-F which starts from page 133 and continues upto 153 of this application cannot be relied on by the respondent no.3 at this stage. Permitting the respondent no.3 to rely on the aforesaid internal documents at this stage in my view, would tantamount permitting the respondent no.3 to fill up lacuna in its case, which would result in failure of justice.

17. It is further made clear that the Tribunal shall only permit the respondent no.3 to rely on the documents which have been admitted

by the Tribunal vide its order dated 22nd November, 2022 save to the extent refused hereinabove.

18. Since the Tribunal has exercised its discretion in the matter, I am of the view that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India ought not to interfere with the same unless it can be demonstrated that there had been failure of justice or the discretion has been exercised arbitrarily. In view thereof, and having regard to the aforesaid, no interference is called for save to the extent as indicated hereinabove.

19. The Tribunal shall, however, afford the petitioner with the right of cross-examination when the aforesaid documents are formally introduced. Cross-examination shall, however, be limited to the aforesaid documents. It is made clear that the Tribunal shall be entitled to consider the issue of *locus standi* of the respondent no.3.

20. With the above observations and/or directions, the writ petition, being WPA 499 of 2023 is disposed of.

21. There shall be no order as to cost.

22. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)