

06.12.2023
Court No.13
Item No. 171
pk

WPA 642 of 2023

**Rajesh @ Rajesh Yadav @ Rajesh Yadab
Vs.
State of West Bengal and others**

Mr. Rananeesh Guha Thakurta

... for the petitioner.

Ms. Senjuti Sengupta

... for the respondent no. 4.

1. The petitioner seeks mandamus on the certificate officer under the Bengal Public Demand Recovery Act to execute certificate dated 11.03.2020 issued by the Deputy Secretary, Government of West Bengal for a sum of Rs.3,58,468.11/-. The certificate was issued pursuant to an order of the Assistant Labour Commissioner/Enquiry Officer, Howrah, under the West Bengal Payment of Subsistence Allowance Act of 1969 by the A.L.C., Howrah and Enquiry Officer.

2. It appears that the writ petitioner was an employee of the 4th respondent/ Tepcon International (India) Ltd., unit of Shree Hanuman Jute Mills.

3. For acts and omissions committed in course of employment, inter alia, assaulting his superior, a charge sheet along with an order of suspension was issued against the petitioner on 01.03.2015.

4. An enquiry was conducted and the Enquiry Officer found that the petitioner was guilty of charges. The

petitioner participated in the enquiry through his representative. The petitioner was found guilty of the charges. The said enquiry report was stated to have been received by the petitioner by hand under cover of the order of dismissal passed by the General Manager dated 04.10.2015.

5. The petitioner, however, submits that he never received the said order of dismissal. There is some inconsistency in the stand of the management as regards delivery of the order of dismissal. Across the bar, it is stated that the petitioner received it by hand but did not acknowledge such receipt in writing. In another proceeding filed by the petitioner, it was submitted by the Management that the order was received under the signature of the petitioner. Petitioner has filed reply stating that the signature is forged.

6. Be that as it may, it is clear before this Court that the petitioner participated in the enquiry conducted by the employer. The enquiry report was sent along with a copy of the dismissal order. It is difficult for this Court to believe that the petitioner did not receive the order of dismissal either himself or through his ex-coworkmen.

7. The employer's conduct in the proceeding before the A.L.C./Enquiry Officer under the 1969 Act is equally deplorable. No documents have been filed before the Enquiry Officer. The employer has not challenged the order or findings of the A.L.C. under the 1969 Act till date.

The question of interference with the notice dated 11.03.2020 at this stage should not arise. The feeble pleadings before the certificate officer under the Bengal Public Demand Recovery Act that the employee was dismissed from service in August, 2015 cannot be given any credence. The certificate officer cannot go behind the Enquiry Officer's views under the 1969 Act.

8. In those circumstances, the writ petition is disposed of directing the respondent no. 4 to deposit, with the Registrar General of this Court, the aforesaid sum of Rs.3,58,468.11/- together with interest at the rate of 8% per cent per annum from 11.03.2020 till the date of actual deposit within a period of seven days from date.

9. Upon such deposit being made, the certificate and the warrant of arrest issued pursuant thereto shall remain stayed for a period of two months to enable the respondent no. 4 to take steps.

10. In default of either making the deposit as aforesaid the certificate dated 11th March 2020 and the warrant of arrest dated 22.12.2022 shall become executable forthwith. In the absence of any stay of the certificate proceedings after deposit, the sums lying with the Registrar General of this Court as indicated herein above, shall be made over together with accrued interest to the petitioner.

11. Upon the warrant becoming executable the certificate proceeding shall be completed expeditiously within a period of two months thereafter.
12. The writ petition is disposed of.
13. There will be no order as to costs.
14. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)