

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 2868 of 2023

**Gora Chand Adhikary & Anr.
Versus
The State of West Bengal & Ors.**

For the petitioners : Mr. Subhas Chandra Sarkar.

For the respondent no.4 : Mr. Debashis Kundu
Mr. A. Bose

Heard on : 27.02.2023

Judgment on : 28.04.2023

Raja Basu Chowdhury, J:

1. The petitioners claim to have been appointed by the company namely M/s Eastern Paper Mills Ltd. The petitioners claim that they were refused employment. Challenging refusal of employment, a conciliation proceeding was initiated. Subsequently, the appropriate Government by powers conferred under Section 10 read with Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act") was, *inter alia*, pleased to frame the following issues and had referred the same to the Fifth Industrial Tribunal:

“1. Whether refusal of employment of Sarbashri Ashis Kumar Bose, Dipak Kumar Sen, Gora Chand Adhikari, Sankar Das, Joydeb Bhattacharjee, Haridas Malo and Debasish Banerjee by the management of M/s. Eastern Paper Mill Limited w.e.f. 27.12.2006 is justified?”

2. What relief, if any, are the workmen entitled to?”

2. Subsequently by order of the Labour Department the case was transferred to the Second Industrial Tribunal.
3. In connection with the above reference case the petitioners had filed an application under Section 15(2)(b) of the said Act. The same was, however, rejected on the ground that the same was filed belatedly.
4. Being aggrieved a writ application was filed before this Hon’ble Court which was registered as WP No. 15561 of 2012. By an order dated 7th May, 2014, this Hon’ble Court was, *inter alia*, pleased to set aside the order of rejection and directed the Tribunal to decide the matter on the basis of evidence on record after giving an opportunity to the parties to argue the matter and also directed the Tribunal to revisit the application under Section 15(2)(b) of the said Act, and pass a reasoned order. By the aforesaid order this Hon’ble Court also directed the Tribunal to decide the main matter on merits as expeditiously as possible, preferably within a period of 6 (Six) months from the date of conclusion of evidence.

5. Since then by an order dated 20th March, 2019, the Tribunal was, *inter alia*, pleased to allow the application under Section 15(2)(b) of the said Act, on contest thereby holding that the petitioners shall be entitled to get interim relief equivalent to subsistence allowance admissible under the West Bengal Payment of Subsistence Allowance Act, 1969, with effect from the date of the order of reference under Section 10(2A) of the said Act. By the aforesaid order the Tribunal also fixed a date for further cross-examination of the opposite party's witness no. 3. Since then, the matter had been kept pending.
6. In the interregnum, the learned Second Industrial Tribunal, West Bengal, by an order dated 26th May, 2022 was, *inter alia*, pleased to record that since both parties are not willing to proceed, the case should be dismissed and following such observation, he held since the proceedings under Section 10(2A) of the said Act is dismissed, as the industrial dispute between the parties is no longer in existence. The aforesaid order was directed to be treated as an award.
7. The petitioners were unaware of the aforesaid order and had no notice of such order until the time mentioned hereinafter. Immediately upon ascertaining the factum of passing of the aforesaid award, the petitioners had filed an application before the Tribunal, *inter alia*, praying for review of the aforesaid order on the ground that the petitioners were unaware of the order of

dismissal. During the Covid period the petitioners could not contact their advocates and could not take steps in the matter. In the aforesaid facts the petitioners prayed for review of the order dated 26th May, 2022. The said application was, however, rejected by the Tribunal by order dated 6th September, 2022, *inter alia*, on the ground that the review petition had not been filed within 15 days from the date of the award, the same was barred by limitation and cannot be considered legally.

8. Mr. Sarkar, learned advocate appearing on behalf of the petitioners, submits that the petitioners were completely in the dark and unaware with regard to the factum of passing of the aforesaid order dated 26th May, 2022. In fact, subsequent to the passing of the order for interim relief, a writ application was filed before this Hon'ble Court challenging the same. Such application was registered as WPA 15561 of 2021. The respondent/ employer did not comply with the order of interim relief and due to paucity of funds/ financial hardship, the petitioners also could not keep regular contact with their lawyer. In the interregnum, pandemic intervened. On repeated occasions the respondent no.4 took adjournments. On one hand the petitioners were denied the benefit of the order for interim relief passed by the learned Tribunal by reasons of pendency of the writ application and on the other hand the present proceedings were dismissed. It is submitted that since the matter was pending before this Hon'ble

Court, no further steps were taken in connection with the main application pending before the Tribunal. It is submitted that it was expected that final hearing before the Tribunal would take place after disposal of the application pending before this Hon'ble Court. He says that is only on 5th July, 2022 that the respondent no. 4 made a disclosure before the Hon'ble Court that the Industrial dispute is no longer in existence. According to the petitioners they were unaware of the order of dismissal till 5th July, 2022. Only thereafter the review was filed.

9. The Tribunal also did not take into consideration that the petitioners were interested in the matter. He says that the Tribunal had overlooked the fact that the respondent no.4 had denied the petitioners, the benefits of the interim relief which coupled with the pandemic, prevented the petitioners from taking effective steps in the matter. Financial stress also prevented the petitioners from effectively perusing the matter before the Tribunal.

10. Mr. Sarkar, learned advocate representing the petitioners, submits that the application for review was dismissed on a technical ground. He says that technicality should not stand in any way of the petitioners getting relief. In support of his contention, he has placed reliance on a judgment delivered by this Hon'ble Court in the case of **Ganesh Chandra Guha v.**

***State of West Bengal & Ors.*, reported in 2023 SCC OnLine Cal 241.**

11. Mr. Kundu, learned advocate enters appearance on behalf of the respondent no.4. He submits that the Tribunal has rightly dismissed the application for review. He says that no review is permissible beyond 15 days in terms of Rule 27 of the West Bengal Industrial Disputes Rules, 1958. He prays for dismissal of this application.
12. Heard the learned advocates appearing for the respective parties and considered the materials on record.
13. It also appears from the record that the application for interim relief was allowed by order dated 29th March, 2019. The employer/ respondent no. 4 did not comply with the direction for interim relief. Challenging the order for interim relief, a writ application was filed on 27th September, 2021, which was registered as WPA 15561 of 2021. The petitioners claim that the aforesaid writ application was called on 11 occasions and on each and every occasion the respondent no.4 took adjournments. It is only on 5th July, 2022 the respondent no. 4 made a disclosure before the Hon'ble Court that the Industrial dispute is no longer in existence. As such according to the petitioners they were unaware of the order of dismissal till 5th July, 2022. Only thereafter the review was filed. This apparently was not considered.

14. Even otherwise the petitioners are without any service for a more than a decade. Although the petitioners had been able to secure bare minimum relief to sustain themselves in the form of subsistence allowance, the employer chose not to make payment of the same. Being unable to sustain themselves the petitioners could not get the assistance of a lawyer. It is at this stage when the main application was pending for hearing of arguments on merits that the same was dismissed. It is, therefore, apparent that when the reference case was dismissed, witness action was already completed. Simply because the parties did not submit their arguments, the same could not be a ground for the Tribunal not to adjudicate upon the issue, especially when the witness action was otherwise complete. In the instant case, records would reveal that challenging the order for interim relief, a writ application was filed, and the respondents did not make payment of such interim relief. In my view, in the facts of the case the Tribunal ought not to have rejected the petitioners' application solely on the ground of non-filing of arguments. I find that the petitioners have also relied on a judgment delivered by this Hon'ble Court in the case of **Ganesh Chandra Guha v. State of West Bengal & Ors.**, (supra). From a perusal of the aforesaid judgment, it would appear that this Court while placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Grindlays Bank Ltd. v. Central Govt. Industrial**

Tribunal, reported in **1980 Supp SCC 420**, had quoted paragraph 18 of such judgment, wherein it has been, *inter alia*, observed as follows:

“18. It was, therefore, submitted before us, relying upon Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980 Supp SCC 420 : 1981 SCC (L&S) 309] that even in the absence of an express power of review, the Tribunal had the power to review its order if some illegality was pointed out. The submission must be rejected as misconceived. The submission does not take notice of the difference between a procedural review and a review on merits. This Court in Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980 Supp SCC 420 : 1981 SCC (L&S) 309] clearly highlighted this distinction when it observed: (SCC p. 425, para 13)

“Furthermore, different considerations arise on review. The expression ‘review’ is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Patel Narshi Thakershi case [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.”

15. From the aforesaid it would appear that when a party is not heard or when the matter was heard and decided on a date other than the date fixed for hearing, or under a mistaken impression that the party had notice, although it had no notice or the party could not attend, for no fault of his or any other similar cases, the matter has to be reheard in accordance with law without going into the merits of the order passed. In the present case, the Tribunal did not take into consideration the fact that the petitioners were otherwise prevented by sufficient cause for not appearing before the Tribunal when the matter was dismissed. This aspect was not taken into consideration by the Tribunal at all while passing the order dated 6th September, 2022. The Tribunal proceeded on the basis of technicality to deny relief to the petitioners. In a case of this nature the Tribunal ought to have reviewed its order and ought to have restored the matter to its file, especially when the petitioners had been sincere and *bona fide* in pursuing the case.

16. In the facts stated hereinabove, the order passed by the Tribunal on 26th May, 2022 cannot be sustained. The same is, accordingly, set aside. The case no VIII-18 of 2008 is restored to original file and location with a direction upon the learned Tribunal to conclude the hearing by giving opportunity to the parties to place their respective arguments. In the event the

parties do not place their arguments, an award must be passed on merits taking into consideration the case made out by the parties in their pleadings and the evidence already on record.

17. With the aforesaid observations, and directions the present application being WPA 2868 of 2023 is disposed of.

18. There shall be no order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)