

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 7963 of 2021

**Bipad Bhanjan Sarkar & Ors.
-vs-
Union of India & Ors.**

For the petitioners	:	Mr. Anirban Kar Mr. Munshi Ashiq Elahi
For the respondent no.2	:	Mr. Alok Kumar Banerjee Mr. Arunabha Sarkar Mr. Saptarshi Mukherjee
Heard on	:	06.04.2023.
Judgment on	:	12.09.2023.

Raja Basu Chowdhury, J:

1. The writ petition concerns a challenge to the award dated 30th September, 2019 passed by the Learned Central Government Industrial Tribunal –cum– Labour Court (in short, CGIT), Kolkata. The petitioners claim to be the employees of the Canteen run in the office of the Reserve Bank of India, Kolkata. It is the petitioners' case that the said Canteen was run by the respondent no.3. The petitioner nos.1 and 2 claim that they were appointed on 20th June, 1983, whereas the petitioner no.3 was appointed on 2nd May, 1975 and petitioner no.4 was appointed on 2nd November, 1998. The petitioners claim to be members of the Reserve Bank Employees

Co-operative Canteen Ltd., Workmens' Union (hereinafter referred to as the "Workmens' Union"). The petitioner nos. 3 and 4 are, however, the members of the Reserve Bank Employees Co-operative Canteen Employees' Union (hereinafter referred to as the "Employees' Union"). Both the trade unions are registered under the Trade Unions Act, 1926. The petitioners claim that the respondent no.1 is the appropriate Government. It is also the case of the petitioners that the petitioner no.1 was the Secretary and the petitioner no.2 was the President of the "Workmens' Union", while the respondent no.4 was the Secretary and the respondent no.3 was the Vice President of the "Employees' Union". The petitioners claim that the Workmens' Union and the Employees' Union, had for long been agitating before the respondent nos. 2 and 3 for proper service conditions, pay scales, *inter alia*, including equal pay for equal work and for regularisation of their service, as employees of the respondent no.2 on the basis of the representations made by the petitioners. Since, the demands made by the Canteen employees, *inter alia*, including petitioners were not adhered to, the Workmens' Union had raised a dispute before the Learned Assistant Labour Commissioner (Central) – II, Kolkata, Government of India on 17th November, 2000. In conciliation proceeding that followed, the Employees' Union was also joined as a party to such dispute. During the pendency of the aforesaid conciliation proceeding before the Office of the Regional Labour Commissioner

(C), Ministry of Labour, Government of India, the respondent no.3 issued suspension letters with similar contentions, all dated 8th May, 2004 thereby, suspending the following petitioners:

- (i) Bipad Bhanjan Sarkar, Assistant Cook;
- (ii) Arun Kumar Das, Tea-boy;
- (iii) Amal Kumar Dey, Tea-boy; and
- (iv) Nipu Das, Tea-boy.

2. On 11th May, 2004 four separate charge-sheets were issued by the respondent no.3 against the aforementioned persons. Since, the disciplinary proceeding had been initiated during pendency of the conciliation proceeding on 21st July, 2004, the Assistant Labour Commissioner (Central), had, *inter alia*, instructed the respondent nos. 2 and 3 not to continue with the disciplinary proceeding till disposal of the dispute before the A.L.C. (Central). Since, the concerned respondent despite the aforesaid direction, had appointed the enquiry officer to conduct departmental enquiry, the petitioners were compelled to issue the letter dated 27th September, 2004 thereby, requesting the enquiry officer to adjourn the proceeding till further notice from the A.L.C. (Central). The petitioners thereafter did not appear before the Disciplinary Authority.
3. Unfortunately, the disciplinary proceeding continued *ex parte* and ultimately, the petitioners were dismissed from service with effect from 18th March, 2005. Since, according to the petitioners, the

aforesaid order of dismissal was contrary to the statutory provisions, the petitioners, on 4th April, 2005, had submitted a joint application under Section 33A of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”) before the A.L.C. (Central) against the order of dismissal of the petitioners. Following the aforesaid, a failure report was submitted by the Conciliation Officer. Since, no steps were taken by the Ministry of Labour, Government of India despite issuance of the failure report, the concerned Unions had filed a writ petition before this Hon’ble Court which had been registered as WP No. 12882 (W) of 2006. By an order dated 28th June, 2006, a Co-ordinate Bench of this Hon’ble Court had directed the Ministry of Labour, Government of India to immediately take appropriate steps under Section 12(5) of the said Act. Although, an appeal was preferred by the respondent no.2, the same was, however, dismissed by an order dated 28th August, 2006.

4. After dismissal of the aforesaid appeal, the Ministry of Labour, Government of India by an order dated 27th November, 2006 held that since, the demand raised by the Reserve Bank Employees Co-operative Canteen Ltd. Workmens’ Union and Reserve Bank Employees Co-operative Canteen Employees Union at Kolkata, for absorption of workmen as direct workmen of the Bank, is similar to the demands raised by the All India Reserve Bank Canteen Employees Federation, Mumbai, which had already been referred to

the Central Government Industrial Tribunal -Cum- Labour Court No. II, Mumbai, the same would also cover the dispute raised by the aforesaid Workmens' Union and the said Employees' Union.

5. Being aggrieved by the order dated 27th November, 2006, a writ petition was filed before the Hon'ble High Court at Calcutta, which was registered as W.P. No. 1067 of 2007. By an order dated 28th July, 2009, a Co-ordinate Bench of this Hon'ble High Court at Calcutta by taking note of the order passed by the Co-ordinate Bench of this Court on 28th June, 2006, disposed of the said writ petition by directing the Ministry of Labour, Central Government to consider the dispute arising out of the issue of termination of service of the aforesaid four persons and to decide whether the dispute is worthy of being referred for adjudication, keeping in mind the point of fixing the identity of the employer of the petitioners and to provide reasons, in case the Central Government decides not to refer the dispute to the Tribunal for adjudication, with a further direction to communicate the same to the petitioners.
6. In compliance of the said direction, the Ministry of Labour, Government of India by an order dated 18th September, 2009, while identifying the following issues, had forwarded the same to the Central Government Industrial Tribunal -Cum- Labour Court, Kolkata, for adjudication. The schedule of the reference reads as follows:

“Whether the action of the management of Reserve Bank of India in terminating the services of S/Shri Bipad Bhanjan Sarkar, Arun Kumar Das, Amal Kr. Day and Nipu Das, is justified? If not, what relief the workmen concerned are entitled to?”

7. Following the aforesaid the petitioners had filed two separate Statements of Claim, by the respective two Unions.
8. Subsequently, the petitioners had applied before the Central Government, seeking amendment of the reference by incorporating the name of the Reserve Bank of India Employees Cooperative Canteen Ltd., who according to the petitioners was a necessary and proper party. Since, the aforesaid application was kept pending, the petitioners had moved a writ petition before this Hon’ble Court which was registered as WPA 19277(W) of 2013. By an order dated 12th November, 2013, a Co-ordinate Bench of this Hon’ble Court was, *inter alia*, pleased to direct the Central Government to dispose of the said application filed by the petitioners within a specified period.
9. Pursuant to the aforesaid order, the Central Government by letter dated 22nd January, 2014, was, *inter alia*, pleased to amend the schedule of reference to the following effect

The Schedule

“Whether the action of the management of Reserve Bank Employees Co-op. Canteen Ltd. in terminating the services of S/Shri Bipad Bhanjan Sarkar, Arun Kumar Das, Amal Kr. Day

and Nipu Das, is justified? If not, what relief the workmen concerned are entitled to?”

10. In the interregnum, a settlement was arrived at in the reference pending before the Tribunal at Mumbai, in connection with the reference made by the All India Reserve Bank Workers' Federation, wherein a scheme was introduced, for switch over of class IV staffs of Canteen to the cadre of Office Assistants and Catering Attendants, in the Reserve Bank of India. The Canteen managed by the Kolkata, Reserve Bank Employees Co-operative Canteen Ltd. being the respondent no.3 herein was also Party to such settlement.
11. Ultimately, by an award dated 30th September, 2019, the learned Tribunal concluded that the Central Government did not have jurisdiction to make the reference and it is the State Government which is the appropriate Government. Therefore, the reference made by the Central Government is bad-in-law and is not maintainable. While answering the reference as such, the learned Tribunal had recorded that the question, whether the service conditions of the persons covered under the reference were changed or not, was beyond the scope of the reference, since, the reference was made with regard to the action of the respondent no.3 in terminating the service of the aforesaid persons. Despite having held the reference to be not maintainable the Tribunal was, however, of the view that for the sake of argument, if such reference

was maintainable, then the action of the management of the respondent no.3 in terminating the service of the petitioners cannot be said to be illegal and unjustified.

12. Mr. Kar, learned advocate representing the petitioners, submits that the Tribunal committed a fundamental error, primarily in holding that the reference was not maintainable and subsequently in concluding that it was beyond the terms of reference to consider whether the service conditions of the persons covered under the reference had been changed or not. He submits that the Tribunal was required to consider the issue whether the dismissal was bad or unjustified. It was not within the realm of reference for the Tribunal to conclude whether the petitioners were employees of Reserve Bank of India or not. A master-servant relationship between the Reserve Bank of India and the petitioners was the subject matter of dispute before the Mumbai Tribunal. The learned Tribunal at Kolkata obviously failed to exercise jurisdiction when it had concluded that the service conditions of the persons covered under the reference were changed or not, was beyond the scope of the reference.

13. It is submitted that the Tribunal while adjudicating whether the action of the respondent no.3 in terminating the services of the petitioners were bad or not, was obviously required to consider, whether there had been violation of Section 33 of the said Act. In the event, had the learned Tribunal come to the conclusion that

there was violation of Section 33 of the said Act, the termination order could not be sustained and ought to have been set aside. This aspect was not at all considered by the learned Tribunal. By referring to a judgment delivered in the case of ***Employers in relation to the Management of Reserve Bank of India v. Workmen***, reported in **AIR 1996 SC 1241**, he submits that the obligation to provide a canteen may be implicit or explicit. Whether the obligation to provide canteen becomes part of service conditions of the employee requires to be decided. He further submits that the petitioners were protected workmen and during pendency of conciliation the service conditions of the petitioners could not have been changed. This aspect was completely ignored by the Tribunal. Reliance has been placed on a judgment delivered in the case of ***Vikramaditya Pandey v. Industrial Tribunal, Lucknow & Anr.***, reported in **AIR 2001 SC 672** to contend that once termination is held illegal reinstatement is a natural consequence. In the facts stated hereinabove, it is submitted that the instant award cannot be sustained, the same is perverse and the same should be set aside.

14. *Per contra*, Mr. Banerjee, learned advocate representing respondent no.2, by referring to the order of reference at page 42 of the writ petition submits that the order of reference was irregular, since, termination was not affected by Reserve Bank of India. By placing reliance on Section 2 sub-section (k) of the said Act, he says that the dismissal cannot be construed to be an Industrial Dispute as between Reserve Bank of India and the petitioners within the

meaning of Section 2(k) of the said Act, nor could a reference in terms of Section 10 of the said Act be made since, admittedly Reserve Bank of India was not the employer. He says that at best reference could have been made by the State Government who is the appropriate Government. In the facts stated hereinabove, a question of maintainability was raised by Reserve Bank of India. By drawing attention of this Court to the order dated 12th November, 2013 passed by a Co-ordinate Bench of this Hon'ble Court, it is submitted that even the petitioners had sought for amendment of the reference so as to incorporate the name of the respondent no.3, who according to them was a necessary and a proper party. Since, it is an admitted position that the order of termination was issued by the respondent no.3, the Coordinate Bench of this Court had directed the Central Government to decide upon the petitioners' application. It is still further submitted that pursuant to the aforesaid order, by letter dated 22nd January, 2014, the schedule of reference was amended so as to question the action of the respondent no.3 in place of the respondent no.2

15. The learned Tribunal has rightly concluded that the reference was bad as the Central Government was not the appropriate Government to refer the dispute between the petitioners and the respondent no.3. There is no irregularity on the part of the learned Tribunal in passing the award impugned. The aforesaid order of reference or the order of amendment of the reference does not

clothe the Tribunal with the authority or jurisdiction to decide an issue which is beyond the competence of the Central Government to refer. In any event unless a specific reference is made, the learned Tribunal cannot answer the same. The learned Tribunal while answering the reference has to confine its enquiry to the question referred and had no jurisdiction to travel beyond the question or the terms of the reference. In support of the aforesaid contention reliance has been placed in the case of ***Oshiar Prasad and Others v. Employers in relation to Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited, Dhanbad, Jharkhand***, reported in **(2015) 4 SCC 71**.

16. Mr. Kar, in reply, submits that as on the date when the award was passed, the reference had already been amended. The Central Government had proceeded to robe in Reserve Bank of India since, Reserve Bank of India was running the canteen. A notice by the Canteen is a notice by the Reserve Bank of India, since, the Canteen is the agent of the Reserve Bank of India. Central Government cannot be faulted for making the initial reference. By once again referring to Rule 61 of the Industrial Disputes Central Rules, 1957, it is submitted that petitioners are the protected workmen. The reference was limited to question of legality of the order of termination and not whether the petitioners were the employees of the respondent no2. As such the learned Tribunal exceeded its authority in deciding the same.

17. In the alternative, it is submitted that once the Tribunal holds that it does not have jurisdiction in the matter, no declaration or directions could have been issued by it. Even acquiescence by a party cannot confer jurisdiction on a Court/Tribunal which it inherently lacks. In support of the aforesaid proposition, reliance has been placed on a judgment delivered by the Hon'ble Supreme Court in the case of ***Kanwar Singh Saini v. High Court of Delhi*** reported in **(2012) 4 SCC 307**.
18. Heard the learned advocates appearing for the respective parties and considered the materials on record.
19. I find that the initial dispute raised by the parties was with regard to providing proper service conditions, scale of pay including equal pay for equal work and for regularisation of the employees of two concerned Unions as employees of the Reserve Bank Employees Cooperative Canteen Ltd. During the pendency of the conciliation proceedings, since, the management of the respondent no.3 had purported to issue suspension orders on the petitioners which were followed by charge-sheets and orders of dismissal, the petitioners had filed an application under Section 33A of the said Act, before the Assistant Labour Commissioner (Central) against the aforesaid orders of dismissal. Following the failure report since, no dispute was referred for adjudication, the petitioners were compelled to file a writ petition which was registered as WP No. 12882 (W) of 2006. By a judgment and order dated 28th June, 2006

a Co-ordinate Bench of this Court, while taking note of the objection raised by the Reserve Bank of India, had directed the Central Government before taking a decision in the matter to consider the objection raised by the respondent no.2. Although, an appeal was preferred from the aforesaid order, by a judgment and order dated 28th August, 2006, the same was dismissed. Pursuant to the aforesaid direction passed by a Co-ordinate Bench of this Court, the Central Government by a communication dated 27th November, 2006 had refused to refer the dispute for adjudication by, *inter alia*, observing as follows:

“The dispute raised by Reserve Bank Canteen Employees Federation, Mumbai against the management of the Reserve Bank of India that the canteen employees engaged through different agencies and catering to the needs of Class III and IV employees of the Reserve Bank of India all over India should be absorbed as direct workmen, as in the case of canteen catering to the Class I and Class II Officers of Bank, was referred for adjudication to the Central Government Industrial Tribunal cum Labour Court No. II, Mumbai vide this Ministry’s order No.L-12011/02/2000-IR(B1) dated 28.12.2005 and the issue is still pending with the Tribunal. Reserve Bank Employees’ Coop. Canteen Workers Union, Kolkata and Reserve Bank Employees’ Coop. Canteen Employees Union, Kolkata demanding similar relief on behalf of the workers engaged by the Canteen catering to the Class III and Class IV employees would also be covered by the decision of

the Tribunal as and when given by it. In the circumstances, the matter is not found fit for adjudication.”

20. Challenging the said communication, the petitioners had filed a writ petition which was registered as WP No. 1067 of 2007 and by an order dated 28th July, 2009, the Co-ordinate Bench of this Court was of the view that whether or not there had been violation of Section 33 of the said Act had to be adjudicated by the Tribunal and since, the decision of the Central Government did not appropriately redress the issue as regards termination of service of the petitioners, the writ petition was disposed of with a direction upon the Ministry of Labour, Government of India to consider the dispute arising out the issue of termination of service of the 4 (Four) petitioners and to decide whether the same is worthy of being referred to the appropriate forum for adjudication. It was further made clear that the appropriate Government while deciding the same shall keep in mind the point of fixing the identity of the employer of the 4 (four) petitioners.

21. Records reveal that pursuant to the aforesaid order dated 28th July, 2009, the Ministry of Labour, Government of India had by identifying the issues, forwarded the same to the Central Government Industrial Tribunal –cum- Labour Court at Kolkata for adjudication.

22. During pendency of such proceeding, the petitioners had applied before the Central Government, *inter alia*, praying for amendment of the terms of reference so as to question the action of the management of the Reserve Bank Employees Co-operative Canteen Limited, in terminating the service of the petitioners and as such had sought for incorporating the name of the Reserve Bank Employees Co-operative Canteen Limited as a necessary and proper party to the reference. Since, the petitioners' request was not being adhered to, the petitioners had filed a writ petition, which was registered as WP No.19277 (W) of 2013. By an order dated 12th November, 2013, a Co-ordinate Bench of this Hon'ble Court had directed the concerned respondent to dispose of the application filed by the petitioners. Pursuant to the aforesaid, the schedule reference was amended by the following.

The Schedule

“Whether the action of the management of Reserve Bank Employees Co-op. Canteen Ltd. in terminating the services of S/Shri Bipad Bhanjan Sarkar, Arun Kumar Das, Amal Kr. Day and Nipu Das, is justified? If not, what relief the workmen concerned are entitled to?”

23. Since, then the respective parties had filed their respective written statements. It appears that it has been the contention of the Reserve Bank of India that there is no employee-employer relationship between the petitioners and Reserve Bank of India. The

learned Tribunal appears to have considered this issue and has returned a finding that there is no master-servant relationship between the Reserve Bank of India on the one hand and the petitioners on the other. The learned Tribunal has also identified that the Canteen was run by a co-operative society. It appears that it has been the contention of the Reserve Bank of India that it had no supervisory control over the staffs of the Canteen. On the basis of the aforesaid and by taking into consideration the judgment delivered by the Hon'ble Supreme Court in the case of ***Employers in relation to the Management of Reserve Bank of India*** (supra), the learned Tribunal had concluded that no master-servant relationship existed between the petitioners on one hand and the Reserve Bank of India on the other.

24. Mr. Kar has, however, strenuously argued that an obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award, it may be inferred from the circumstances, and the provisions of the canteen may be held to have become a part of the service conditions of the employees. By also placing reliance on the settlement between the All India Reserve Bank Workers' Federation and the Management of Reserve Bank of India, he claims since, the same also includes the employees of the respondent no.2, he insists that a notice/order of termination issued by the respondent no.3 would be deemed to be a

notice/order issued by the respondent no.2 being its agent. I am, however, unable to accept such contention. Such an issue was not before the Tribunal for consideration. In this case, I find that admittedly on the facts as set forth hereinabove, the Tribunal was required to consider whether the action of the management of the respondent no.3 in terminating the service of the four petitioners was justified. For deciding the same, it had to consider whether the four petitioners had any employee employer relationship with the respondent no.2, since, the reference was made by the Central Government and the respondent no.2 was denying the relationship. While deciding as such it had arrived at a conclusion that there was no master-servant relationship between petitioners on the one hand and the Reserve Bank of India on the other. Although, Mr. Kar has argued that the aforesaid issue was not before the Tribunal, I am of the view that the Tribunal was competent to adjudicate upon the same since, the same was an ancillary issue, which required consideration, especially in the light of the order dated 28th June, 2006. In this context, I must note that in the order dated 28th June, 2006, the Co-ordinate Bench of this Hon'ble Court by taking note of the confusion, as regards, the status of and the identity of the employers of petitioners had directed the Central Government to take a decision in the matter, by fixing the identity of the employers of the petitioners, in as much as the petitioners at that stage were not sure as to whether Reserve Bank of India

Cooperative Canteen Ltd. or the Reserve Bank of India, were their employers. I also find that the dispute pending before the Central Government Industrial Tribunal, Mumbai as regards the regularisation of the canteen workers had been dismissed on the basis of a settlement arrived thereat.

25. As such once, the learned Tribunal came to a conclusion that there was no master-servant relationship between the petitioners and the respondent no.2, the reference failed. The issue of change in service conditions as highlighted by Mr. Kar, could not have been decided independently by the learned Tribunal in this reference since, the same was inexplicably interlinked with the order of termination issued by the management of the respondent no.3. The order of reference which was later amended so as to convert the same, as a dispute between the petitioners and the respondent no.3, in my view, does not and cannot clothe the Central Government with the authority or jurisdiction to make a reference in relation to a dispute between the petitioners on the one hand and the respondent no.3 on the other, as the Central Government is not the appropriate Government within the meaning of the said Act to make such a reference.

26. I, however, find that the learned Tribunal, after holding that it did not have jurisdiction in the matter, has proceeded to return a finding on the basis of the assumption of jurisdiction in the matter which it did not have. Such a finding, in my view, is not binding on

the parties to say the least. It is well settled that a consent cannot confer jurisdiction. By a mere participation of the petitioners in the proceeding, the Tribunal cannot assume jurisdiction over the matter especially when the petitioners were not the employees of the respondent no.2. The Hon'ble Supreme Court in the case of **Kanwar Singh Saini** (supra) in paragraph 22 has been, *inter alia*, please to observe as follows:

“22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute.”

27. Having regard to the aforesaid, the findings rendered by the learned Tribunal, as regards the action of the respondent no.3 in terminating the service of the petitioners, is without jurisdiction, *non-est* and cannot be acted upon.

28. I, however, find that in this case, one of the petitioner has already died. As such taking into consideration the fact that no adjudication of the industrial dispute raised by the original petitioners through their respective unions, by the learned Tribunal is possible, and also by taking note that the petitioners cannot be permitted to be left high and dry and without any remedy, I grant leave to the petitioners to approach the State Government being the appropriate Government for reference of the disputes. If such an application is made within a period of four weeks from date, the State Government as appropriate Government, by treating the long pendency of the proceeding before the Tribunal as failure of conciliation, shall decide on the application for reference within a period of six weeks from the date of making such application. While taking such a decision, the appropriate Government should take into consideration the long pendency of proceedings. The petitioners may also raise individual disputes if so advised.

29. The writ petition is, thus, ***disposed of***.

30. There shall be no order as to cost.

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

(Raja Basu Chowdhury, J.)