

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 7404 of 2019

**Dilip Kumar Viswakarma
Versus
Central Government Industrial Tribunal-cum-Labour Court & Ors.**

For the petitioner : Mr. Nirmalendu Ganguly,
Mr. Angshunath Chakraborty,

For the ECL Authorities : Mr. Syed Nurul Arefin,
Mr. Rahul Singh,
Mr. Rashmi Binayak,
Mr. S. M. Arefin,

Heard on : 6th September, 2023.

Judgment on : **10th October, 2023.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, praying for a direction so as to modify the award dated 2nd January, 2017 passed by the Central Government Industrial Tribunal-cum-Labour Court, Asansol, thereby, awarding interest in favour of the petitioner.
2. The petitioner claims to have been working as a Security Guard in Neamatpur Central Workshop under M/s. Eastern Coalfield Limited (in short "the respondent company"). As per the service conditions,

the petitioner was also permitted to occupy a quarter No. 07/03 in Block No.5, Neamatpur workshop Colony. According to the respondent no.4, the petitioner was wrongfully occupying a quarter along with family. As such by letter dated 16th November, 1992 the petitioner was asked to handover vacant possession of the quarter within 24 hours, failing which disciplinary action was proposed be taken against him. The petitioner did not vacate the quarter. On 17th November, 1992 he was issued a charge-sheet which reads as follows:

*“The charges mentioned below is made against you:
That you have unauthorisedly occupied a quarter at 5 No. Block qtr no. 07-030 on 16.11.92 during the night hours which was vacated by Sri M. S. Maji an ex-employee of Neamatpur Central Workshop.*

As a result of your illegal and unauthorised possession of the said quarter, four security guard(T)s staying in the above accommodation coming for their duties from outside places have become shelterless.

You were directed to handover the aforesaid quarter in vacant condition vide this office letter No. MN/WO/2371/82 dated 16.11.92. The reply submitted by you against the aforesaid letter is found to be unsatisfactory and totally baseless and thus you have violated the lawful instruction of the management by not handing over the said quarter in a vacant situation within the stipulated time.

This constitutes a gross misconduct on your part and you are charged under clause No. 17(i)(c) of the standing order.

You are directed to submit your explanation within 46 hours from the date of receipt of this letter so as to why suitable disciplinary action would not be taken against you. Meanwhile you will remain under suspension pending enquiry”

Clause 17(i)(c) of the Standing Order defines misconduct as:

“Willful insubordination or disobedience, whether alone or in conjunction with another or others of any lawful or reasonable order of the superior. The order of the superior should normally be in writing.”

3. In answer to the charge-sheet, the petitioner claimed that he had been allowed to occupy the quarter by a resolution of Housing Committee of the respondent company, at a meeting held on 27th March, 1992. He also claimed that other employees, who had been allotted quarters at the same meeting, had been occupying the quarters without any charge-sheet being filed against them. It was also claimed that he had not violated Clause 17(1)(c) of the Standing Orders and that the letter dated 16th November, 1992 was only issued on the petitioner since, he was a member of WBCMS (UTUC) Union, which was not favoured by the respondent no.4. Following the aforesaid reply although, the respondent no.4 withdrew the suspension but proceeded with the charge-sheet

against him. By an order dated 6th September, 1993 the service of the petitioner was terminated. At that stage, an Industrial Dispute was pending on some of the workmen of the respondent no.4 before the Tribunal and the petitioner was a concerned workman in such proceeding. It is in the backdrop as aforesaid, the respondent no.4 being obliged to, had made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”) for giving effect to the order of dismissal. The said application was registered as Application No. 1 of 1993. By an order dated 12th March, 1997 the Tribunal found that the domestic enquiry was invalidly held and accordingly set down the matter for determination on merits. The said order had not been challenged by the respondent company. Subsequently, after hearing of the matter on merit the Tribunal, *inter alia*, held as follows:

“On looking at the whole affair it becomes very clear that the so called objections were not against actual decisions dated 27.3.92 and that the same were only against the alleged subsequent discussion about the matter of Sujata Chatterjee and the promise by the agent to provide a quarter to Ranjit Chakraborty. One can safely infer that the management knew it very well and so it went ahead to implement the allotment in favour of Hideswar B.P. as per the decision in the meeting dated 27.3.92 and even inform the members present in the meeting dated 12.8.92 that this allotment had been implemented.”

4. In the aforesaid backdrop, the learned Tribunal refused to grant approval to the order of dismissal issued by the respondent no.4 on the following grounds:

“(i) The draft dated 14.4.92 signed by the Agent is in reality the implementation order for allotment of the disputed quarter to the Opposite Party.

(ii) Excessive unfairness and victimization by the management in initiating the disciplinary action against the Opposite Party.

(iii) The management stands estopped from raising the plea that it was not the implementation order.

(iv) Occupation of the disputed quarter by the Opposite Party was not unauthorised.”

5. Although a writ petition was filed before this Hon'ble Court challenging the aforesaid order and the same was registered as WPA 1809 of 1998, on contest a Co-ordinate Bench of this Court by an order dated 23rd March, 1998 by, *inter alia*, observing the following was pleased to dismiss the said petition:

“This is what the Tribunal found. The Tribunal has carefully gone through the evidence. In his answer to the letter dated 16.11.92 the respondent workman had given particulars of other workman who were similarly situated as the respondent No.1 and who had not been asked to vacate the premises occupied by them pursuant to the decision of the management taken on 27th March, 1992. This was in evidence before the inquiry officer as well as the Tribunal.

Para 4 of the Tribunals order reflects this. It is therefore not a case where the Tribunal has acted on extraneous considerations nor can the finding be said to be contrary to the evidence on record. At the very least it can be said that this is a view which is certainly possible on the basis of the existing facts. That being so the award cannot be stated to be perverse. I, therefore, find no reason to differ from the finding of the Labour Court on the question of victimisation, apart from the fact that a finding of victimisation is generally a question of fact and cannot be agitated in this Court [vide P. H. Kalyani – vs- M/s. AIR France (Supra)].

For all these reasons the writ application is dismissed with costs assessed at 100Gms.”

6. Notwithstanding the aforesaid, the respondent company did not permit the petitioner to resume his duty, instead challenging the order dated 23rd March, 1998, filed an intra Court appeal before the Division Bench of this Hon’ble Court, which was registered as M.A.T. 1313 of 1998. The respondent company did not succeed in such appeal. Although, the order of dismissal had become *non est* by reasons of non-grant of approval under Section 33(2)(b) of the said Act, and the petitioner was deemed to be in continuous employment, the respondent company in flagrant violation of law prevented the petitioner from resuming his duty.

7. Ultimately, at the instance of the petitioner that to on the basis of service of the contempt application, pursuant to a direction issued by the Co-ordinate Bench of this Hon'ble Court, on 24th July, 1998 that by a communication in writing dated 21st August, 1998, the respondent company instructed the petitioner to resume his duty with effect from 22nd August, 1998.
8. In light of the aforesaid development, the contempt application stood disposed of by an order dated 30th July, 1998. Despite the fact that the order of dismissal dated 6th September, 1993 was inoperative yet, the respondent company did not afford the petitioner with the financial benefits that the petitioner was otherwise entitled to, for the period between 6th September, 1993 to 21st August, 1998, that is, the period for which he was refused employment. In the facts as noted hereinabove, the petitioner was compelled to file an application under Section 33(C)(2) of the said Act, read with Rule 62 of the Industrial Disputes Central Rules 1957, before the learned Central Government Industrial Tribunal-cum-Labour Court, Asansol, which was registered as Computation Case No. 25 of 1998. The said application was contested by the respondent company. Ultimately, by an order dated 23rd November, 2016 passed by the Central Government Industrial Tribunal, the respondent company was directed to make payment of back wages

to the petitioner for the period between 6th September, 1993 to 21st August, 1998.

9. Mr. Ganguly, learned advocate appearing on behalf of the petitioner, submits that the Tribunal ought to have granted interest in favour of the petitioner. Inasmuch as the respondent company had wrongly withheld payment of back wages, for the period from 6th September, 1993 to 21st August, 1998. He submits that the respondent company was otherwise obliged to deposit interest on the CMPF accumulation of the petitioner, for the period for which he was wrongfully kept out of service. By placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Suresh Sakharam Chaugule & Ors. v. Parel Cotton Press Factory Pvt. Ltd.**, reported in **1994 Supp (3) SCC 704**, it is submitted that it is obligatory on the part of the respondent company to make payment of interest, when back wages are awarded and when employment is illegally refused. He has also placed reliance on a judgment delivered by the Delhi High Court in the case of **Bhim Singh Bajeli v. P.O. Central Government Industrial Tribunal**, reported in **ILR (2013) III Delhi 1724**, in support of his contention that both the Tribunal as well as the Hon'ble High Court have the power and competence to award interest in respect of a quantification of claim under Section 33(C)(2) of the Industrial Disputes Act, 1947.

10. Mr. Arefin, learned advocate representing the respondent no. 2 to 4, on the other hand, submits that the respondent company had always acted in accordance with law. Immediately upon the determination being made under Section 33(C)(2) of the said Act, payment had been disbursed in favour of the petitioner. The petitioner did not make any prayer for interest before the Labour Court and as such the claim of the petitioner is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure. In support of his contention, he has placed reliance on a judgment delivered by this Court in the case of **Babulal Rana v. State of West Bengal & Ors.**, reported in **(2013) 1 CAL LT 346 (HC)**. Having regard to the aforesaid, it is submitted that the present writ petition is misconceived and the same should be dismissed. He, however, could not justify the stand of the respondent company to withhold back wages, nor could he afford any explanation as to what prompted the respondent company to refuse employment to the petitioner despite the Tribunal refusing to allow the application under Section 33(2)(b) of the said Act.
11. Heard the learned advocate appearing for the respective parties and considered the materials on record.
12. In this case, I find that the petitioner at the relevant point of time was employed with the respondent company, when on the basis of a charge-sheet issued against him, he was dismissed from service.

Although, the respondent company had approached the concerned Labour Court/Tribunal under Section 33(2)(b) of the said Act, for giving effect to the order of dismissal, the application filed by the respondent company did not succeed and the learned Tribunal was, *inter alia*, pleased to reject such application by an order dated 10th September, 1997. Notwithstanding dismissal of such application, the petitioner was not permitted to resume his duties.

13. In the interregnum, the respondent company had unsuccessfully challenged the order of rejection by filing a writ petition before this Hon'ble Court. Since, the challenge to the said order was turned down by a Co-ordinate Bench of this Hon'ble Court in W.P. No. 1809 of 1998 by its order dated 23rd March, 1998, an intra Court appeal was filed by the respondent company, challenging such order as well.

14. Records reveal that the Division Bench of this Hon'ble Court refused to interfere and had dismissed the said appeal in limine, by its order dated 30th July 1998. Notwithstanding the dismissal of such appeal the petitioner was not permitted to join nor was he disbursed his pay. The petitioner had thereafter filed a contempt application, which was registered as CPAN No. 1025 of 1998. It was only after the service of the contempt application that the petitioner was permitted to join his duties. It appears that by an order dated 4th September, 1998 the Co-ordinate Bench of this Hon'ble Court

had granted liberty to the petitioner to apply in accordance with law for realization of his dues. The petitioner immediately thereafter, had filed an application under Section 33(C)(2) of the said Act, *inter alia*, praying for computation of the amount payable to him. Such application was filed on 22nd December, 1998 and was registered as computation case no. 25 of 1998. After contested hearing, by an award dated 23rd November, 2016, which was published on 2nd January, 2017 that the claim of the petitioner could be quantified. It appears that the matter was pending before the Tribunal for more than a decade that is for nearly 18 years. Admittedly, the petitioner had been wronged. The respondent company had wrongfully not only refused employment to the petitioner but also held back his rightful entitlements, in the form of back wages. The respondent company cannot evade responsibility for the same and cannot avoid payment of compensation to the petitioner, *inter alia*, by contending that the petitioner having not prayed for interest is not entitled to the same. While filing the application in the year 1998, little did the petitioner know that on account of resistance put forwarded by the respondent company, determination of a simple computation case would take nearly two decades to conclude.

15. It has been established that the initiation of proceedings to seek eviction of the petitioner from his quarter and to dismiss him was to victimize the petitioner. Despite Award of the tribunal the

respondent company did not permit him to rejoin duty. By its conduct it wrongfully refused employment to the petitioner. The respondent company did not stop there, despite having unsuccessfully challenged the Award passed by the Tribunal, before two judicial forums, did not permit the petitioner to rejoin service. It waited and watched the next move of the petitioner and ultimately on the threat of contempt despite permitting the petitioner to rejoin his duties, had held back the back wages without any justifiable reason. Having regard to the aforesaid it would be iniquitous not to compensate the petitioner. The respondent company having not adhered to the rule of law cannot disentitle the petitioner's claim towards compensation, for not having claimed interest. The judgment ***Babulal Rana (supra)*** relied on by the respondents is not in relation to payment of back wages. The same is otherwise factually distinguishable. The Court exercising jurisdiction under Article 226 of the Constitution has the power and competence to remedy the wrong. It must be noted that there cannot be a wrong without a remedy. In this case the petitioner has been wronged.

16. Having regard to the aforesaid and in the peculiar facts, I am of the view that the respondent company should be directed to make payment of interest at the rate of 12 per cent per annum on the claim of the petitioner from the date of filing of the application

under Section 33(C)(2) of the said Act till the date of making payment, of the determination made by the Tribunal.

17. The aforesaid payment of compensation in the form of interest must be made within a period of 4 weeks from the date of communication of this order. The writ application is, thus, 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 upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)