

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 18876 of 2017

**Tamralipta Co-operative Spinning Mills Limited
Vs.
Sushil Mondal & Ors.**

For the petitioner	:	Mr. Soumya Majumder Mr. Victor Chatterjee
For the respondent no.1	:	Ms. Sikta Roy
For the State	:	Mr. N. C. Bhattacharyya Ms. Sujata Ghosh
Heard on	:	01.03.2023
Judgment on	:	19.05.2023.

Raja Basu Chowdhury, J:

1. The writ application has been filed challenging the award dated 31th March, 2017, passed by the learned First Labour Court, West Bengal in Case No. 01 of 2013 under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), which was published by the Government of West Bengal, Labour Department vide publication order dated 27th April, 2017, being annexure P-14 and P-15 herein, respectively. The petitioner is a Co-operative

Society under the administrative control of the Government of West Bengal through the Department of Industry, Commerce and Enterprise, Government of West Bengal.

2. The respondent no.1 was inducted as a trainee in the petitioner's factory, since 31st July, 1993. Subsequently, he was absorbed in the service with effect from 13th August, 1995, on no work no pay basis.

3. By a memo dated 15th June, 2011, the respondent no.1 was instructed to report in the "G" shift duty at the petitioner's factory. The respondent no.1, however, remained absent from duty on and from 16th June, 2011, without any intimation. After having waited for about a month, the management issued a letter dated 13th July, 2011, to the respondent no.1 instructing him once again, report for duty within 3 days from the date of receipt of the said letter. The respondent no.1 by a communication in writing dated 16th July, 2011, responded to the petitioner's letter dated 13th July, 2011 and denied all allegations made in the petitioner's said letter. By a further communication dated 24th November, 2013, the respondent no.1 alleged refusal of employment by the petitioner. A conciliation was also initiated. This followed a proceeding under Section 2A(2) of the said Act and a case being no. 01 of 2013, was registered before the learned First Labour Court, West Bengal. In connection with such case the respondent no.1 filed a statement of claim, *inter alia*,

praying for a direction that termination of service of the respondent no.1 by the petitioner is unjustified and illegal and to direct the petitioner to reinstate the respondent no.1 with full back wages/salary. The aforesaid proceeding was also contested by the writ petitioner and the same culminated in an award dated 31st March 2017, which is impugned in the present proceedings.

4. Mr. Chatterjee, learned advocate representing the petitioner, has submitted that the respondent no.1 during the pendency of the proceedings before the learned First Labour Court had been reinstated on 18th February, 2014. The respondent no.1, however, on reaching the age of superannuation sometimes on or about November, 2022, has been paid his superannuation benefits and all his claims had been settled. There is nothing more due and payable to the respondent no.1 since the terms of his employment, *inter alia*, provided that he had been engaged on “no work no pay” basis. The respondent no.1 was not paid any amount for the period for which he did not render any service. By referring to the award, which is impugned in the present proceedings, he says that there is no basis for the findings arrived at by the labour Court that the respondent no.1 was refused entry on four days subsequent to 20th March, 2013. The finding that the respondent no.1 was refused entry/employment or the same tantamount to dismissal is not based on evidence, the same is perverse. In any event, since the respondent no.1 during the pendency of the writ application has

taken all benefits, no further relief can be afforded to the respondent no.1. The respondent no.1, thus, cannot be entitled to back wages for the period from 20th March, 2013 to 17th February, 2014.

5. *Per contra*, Ms. Roy by drawing attention of this Court to the written statement filed on behalf of the writ petitioner before the learned First Labour Court submits that the writ petitioner had made out a case that the respondent no.1 had absented from duty and had not joined without any reason. Notwithstanding the aforesaid the respondent no.1 was not issued any show cause notice. In any event upon receiving the respondent no.1's communication dated 16th July, 2011, no further steps had been taken. No charge-sheet was issued, no disciplinary proceeding had been initiated nor any enquiry conducted. She submits that the respondent no.1 was at all material times interested to work and it is the petitioner who had prevented the respondent no.1 from joining his duty. On repeated occasions, the respondent no.1 had expressed his desire, both orally and in writing that he wanted to join the duty but was refused. It is only during the pendency of the proceedings before the Labour Court that the respondent no.1 was reinstated. Since the petitioner prevented the respondent no.1 from joining duty, payment of back wages for the period for which he was refused employment cannot be denied to him.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record.
7. I find that the parties had duly contested the proceedings before the learned First Labour Court, West Bengal by filing their respective statements. The parties were permitted to lead evidence and the witnesses were permitted to be cross-examined. In course of examination, the respondent no.1 had categorically asserted that he had not unauthorisedly absented from his duties, nor did he absent himself from duty from 15th June, 2011 and onwards. Based on the pleadings of the parties the learned Court had framed the following issues:-

1. Whether the case is maintainable in the eye of law and in facts?
2. Whether the applicant has been terminated from the service of the Opposite Party or not? If so, then whether the termination of service is justified or not?
3. To what relief is the applicant entitled?

In the aforesaid proceedings the following documents were exhibited:

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| 1. Exhibit no.1 | Photo copy of pay slip; |
| 2. Exhibit no.2 | Photo copy of letter dated 15.06.2011; |
| 3. Exhibit no.3 | Photo copy of letter dated 13.07.2011; |

4. Exhibit no.4 Photo copy of letter dated 13.07.2011 address to the applicant by Works Manager;
5. Exhibit no.5 Photo copy of letter dated 16.07.2011 sent by the applicant to the Works Manager of the O.P. Company;
6. Exhibit no.6 Photo copy of letter dated 16.01.2013 sent by the applicant to the A.L.C.;
7. Exhibit no.7 Photo copy of letter of A.L.C. dated 19.10.2011;
8. Exhibit no.8 Photo copy of letter of A.L.C. dated 01.12.2011;
9. Exhibit no.9 Photo copy of letter dated 24.01.2013 sent by the applicant;
10. Exhibit no.9/1 Photo copy of A/D Card;
11. Exhibit no.10 Photo copy letter dated 06.02.2013 sent to the A.L.C. by the applicant;
12. Exhibit no.11 Photo copy of letter dated 13.03.2013 sent to the applicant by O.P.;
13. Exhibit no.12 Photocopy of letter dated 20.03.2013 sent by the applicant to the Works Manager of the O.P.;
14. Exhibit no.13 Photo copy of the letter dated 20.03.2013 sent by the applicant to the Works Manager of the O.P.;
15. Exhibit no.14 Photo copy of the envelope;
16. Exhibit no.15 Photo copy of the A/D Card;
17. Exhibit no.16 Photo copy of letter dated 25.03.2013;
18. Exhibit no.16/1 Photo copy of envelope;
19. Exhibit no.17 Photo copy of letter dated 26.03.2013 sent by the applicant to the Works Manager;

20. Exhibit no.18 Photo copy of letter dated 09.04.2013 sent by the applicant to the Works Manager;
 21. Exhibit no.19 Photo copy of letter dated 26.08.2011 sent by Gopal Bhattacharyay to the Deputy Labour Commissioner.
8. In course of hearing of the proceedings before the learned Labour Court, respondent no.1 himself deposed as PW-1 and abovementioned documents were marked as exhibits.
9. On behalf of the writ petitioner Netai Chandra Bhar, the Assistant spinning Master deposed as OPW-1 and the following documents were marked as exhibits.
1. Exhibit 'A' Photo Copy of O.P's letter dated 31.07.1993;
 2. Exhibit 'B' Photo Copy of Probational Appointment letter dated 07.04.1995;
 3. Exhibit 'C' Photo Copy of O.P's letter dated 16.09.1995;
 4. Exhibit 'D' Photo Copy of internal note dated 15.06.2011;
 5. Exhibit 'E' Photo Copy of job card for December, 2000;
 6. Exhibit 'F' Photo Copy of O.P's letter dated 13.07.2011;
 7. Exhibit 'G' Photo Copy of O.P's letter dated 09.08.2011;
 8. Exhibit 'H' Photo Copy of O.P's letter dated 13.03.2013
 9. Exhibit H/1 Photo Copy of Ext-H forwarded to A.L.C.;

10. Exhibit 'T' Photo Copy of applicant's letter dated 20.03.2013;

11. Exhibit 'J' Photo Copy of O.P's letter dated 25.03.2013

10. I find that on the basis of the issues framed and upon elaborate discussion, the learned First Labour Court decided issue no.1 in favour of the respondent no.1 and held the case to be maintainable. After discussing in detail and upon analyzing the exhibits the learned First Labour Court while answering issue no.2, had accepted the contention of the respondent no.1 that on 20th March, 2013, the respondent no.1 had tried to join his duty in the "G" shift as a Fitter/Helper-cum-Cleaner, however, he was not allowed to join. On the basis of the aforesaid discussions the learned First Labour Court concluded that the respondent no.1 had been refused entry on four dates subsequent to 20th March, 2013, and held that the refusal of employment would tantamount to unjust dismissal. The said issue no.2 was, thus, decided in favour of the respondent no.1. Taking note of the subsequent development the learned First Labour Court granted relief in the form of full back wages for the period from 20th March, 2013 to 17th February, 2014, for the period for which the respondent no.1 was denied employment.

11. Although Mr. Chatterjee, learned advocate representing the writ petitioner, has strenuously argued that during pendency of the present writ application the respondent no.1 after being

superannuated was paid emoluments, no documents in support of his aforesaid contention has been disclosed. Although it has been contended that the respondent no.1 cannot be entitled to back wages inasmuch as the respondent no.1 was employed on “no work no pay” basis, since the respondent no.1 had not worked, no money is due and payable to him for the period for which he did not work, such an argument, in my view, is unacceptable. The petitioner having prevented the respondent no.1 from joining his duty cannot be permitted to deny back wages to the respondent no.1, for the period for which he was not permitted to work. If back wages are denied to the respondent no.1, the same shall be granting a premium to the employer, who had refused employment and had prevented the respondent no.1 from working. Once it is established that the petitioner had prevented the respondent no.1 from discharging his duty, payment of back wages cannot be denied. I do not find any infirmity in the Award passed by the learned First Labour Court. The award passed by the learned First Labour Court cannot be said to be perverse, far less suffering from any jurisdictional error. No case for interference has also been made out.

12. The writ application being WPA No. 18876 of 2017 is, accordingly, dismissed.

13. There shall be no order as to costs.

14. 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.)