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Ct 550

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18921 of 2023

Starmilk Products Private Limited & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Soumya Majumder
Mr. Victor Chatterjee
Ms. Deblina Chattaraj
Ms. A. Dutta

... For the petitioners.

Mr. Jayanta Samanta
... For the State.

1. Affidavit of service filed in Court today is taken on record.
2. Despite service, the respondent no.3 is, not represented.
3. The grievance of the petitioners, in the instant application, is that the Conciliation Officer in the guise of carrying out conciliation has, in fact, by a communication dated 21/24th July, 2023 directed the petitioners to not only reinstate the respondent no.3 but also to clear the back wages and other allowances for the period from July, 2017 to June, 2023 on or before 1st August, 2023.
4. Mr. Majumder, learned advocate representing the petitioners by drawing attention of this Court to Section 12 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act") submits that the Conciliation

Officer under no circumstances could have directed the petitioners to reinstate the respondent no.3 and to clear the back wages and other allowances. He submits that although, the respondent no.3 was engaged in the plant of the petitioner no.1 purely on temporary basis from 10th May, 2017 as an unskilled labour, the said respondent no.3 unauthorizedly remained absent from duty from 26th July, 2017 to 30th July, 2017, without any intimation. On 31st July, 2017, when the respondent no.3 reported for duty and was asked about his unauthorized absence from 26th July, 2017 to 30th July, 2017, he misbehaved with the sectional in-charge and used filthy language. Subsequently, he left the plant premises on his own accord and did not submit any leave application nor did he provide any explanation for his unauthorized absence.

5. According to the petitioners, the respondent no.3, never reported for duty thereafter, though he had moved before the Minister, Labour Department, on 27th July, 2019, whereupon The Assistant Labour Commissioner, Arambagh, by taking cognizance of such letter by a notice dated 13th August, 2019 had called upon the petitioner no.1 to provide a written explanation as regards the allegation of refusal of employment of the respondent no.3.

6. By referring to the written communication dated 27th August, 2019 issued by the petitioner no.1, which

has been annexed to the writ application as Annexure P-2, it is submitted that the petitioner no.1 had duly clarified the aforesaid position and had specifically noted therein that the respondent no.3 himself abandoned the service.

7. Subsequently, on 20th March, 2023, the petitioner no.1 was called upon by the office of Assistant Labour Commissioner to attend a conciliation proceeding. The petitioner no.1 had duly attended such conciliation and by a communication in writing dated 6th April, 2023 had once again clarified its position. Notwithstanding the aforesaid, all on a sudden by a purported communication dated 21/24th July, 2023, which has been annexed to the writ application, the Assistant Labour Commissioner, Arambagh had issued a direction upon the petitioners to not only to reinstate the respondent no.3 but also to clear the back wages and other allowances for the period from July, 2017 to June, 2023. This, according to the petitioners, is without jurisdiction and *de hors* the provisions of the said Act and is not sustainable in the eye of law. The petitioners pray for quashing of the aforesaid communication dated 21/24th July, 2023.

8. Mr. Samanta, learned advocate representing the respondent nos. 1 and 2 candidly submits that the aforesaid direction issued by the Assistant Labour Commissioner, Arambagh, is without jurisdiction and *de*

hors the provisions of the said Act and cannot be sustained.

9. Having regard to the submissions made by the parties and taking into consideration the materials on record and the duties of the conciliation officer as set forth under Section 12 of the said Act, I am of the view that the Assistant Labour Commissioner had no jurisdiction or authority to direct the petitioner no.1 to reinstate the respondent no.3 as also to call upon the petitioner no.1 to clear the back wages and other allowances for the period from July, 2017 to June, 2023. The aforesaid direction is apparently without jurisdiction. Ordinarily, if a conciliation proceeding is initiated and if no settlement can be reached, it is for the Conciliation Officer to prepare a report and forward the same to the appropriate Government and only if the appropriate Government upon going through the report is satisfied that there is a case for reference to Board, Labour Court, Tribunals or National Tribunals as the case may be, a reference in that regard may be made. Only upon such reference being made or alternatively in the event, the respondent no.3 initiates an independent proceedings under the provisions of the said Act and on the basis of an adjudication being made by the Labour Court/Tribunal that a direction to reinstate him in service or direction to make payment of back wages can be issued.

10. In the light of the aforesaid, the direction issued by the respondent no.2 on 21st/24th July, 2023 is wholly without jurisdiction and in colourable exercise of power. In view thereof, the communication dated 21st /24th July, 2023 is quashed.

11. The aforesaid order shall, however, not prevent the respondent no.3 from initiating appropriate proceeding or taking such steps for redressal of his grievance, as may be advised, in accordance with law.

12. The writ application is, thus, disposed of.

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

(Raja Basu Chowdhury, J.)