

S/L 9-11
28.02.2023
Court No.652
SD

CO 2201 of 2021

M/s. Dibyendu Pal
Vs.
Sk. Lyakat Ali & Anr.

With
CO 2202 of 2021

M/s. Dibyendu Pal
Vs.
Sk. Khajer Ali & Anr.

With
CO 2203 of 2021

M/s. Dibyendu Pal
Vs.
Sk. Saidul & Anr.

Mr. Gokul Chandra Chakraborti
Ms. Arifa Sultana

...for the Petitioner.

Mr. Arjun Ray Mukherjee
Mr. Victor Chatterjee
Mr. Joyjeev Medhi

...for the Opposite Party No.1.

Being aggrieved and dissatisfied with Order No.32 dated 15.03.2021 in Case No.01 of 2017 under Section 2A(2) of the Industrial Disputes Act, 1947 passed by the learned Judge, Second Labour Court, West Bengal, present revisional applications have been preferred.

The petitioner contended that the petitioner being a contractor carrying on the business of supply of labours to different companies under Contract Labour Regulation Act. As per requirement of the principal employer, the said applicant with other labourers were provided in the factory

of the principal employer/opposite party no.2 for engagement in different works in the factory.

The petitioner after his appearance in the said case filed written statement wherein he has pleaded that he is contractor for supply of labour to the opposite party no.2 who engages labour through contractors for execution of work in the factory. It is the allegation of the principal employer/opposite party no.2 that the said applicant along with two others forcibly took away a loaded truck with scrap material from the gate of the factory of opposite party no.3 upon which FIR was lodged by the opposite party no.2/ principal employer. The applicant admittedly was arrested by police and thereafter he was enlarged on bail. The said applicant with two others were not allowed to come inside the factory premises of principal employer/opposite party no.2. The petitioner submits that he has no power and authority to engage them for work in the factory nor the petitioner had received any amount of wages from company of principal employer/opposite party no.2 for disbursement to the said opposite party no.1 for discontinuation of his engagement under the principal employer/opposite party no.2. The petitioner/opposite party no.1 in the said case submitted written statement denying all allegations and responsibilities as to the engagement of the said applicant in work.

The petitioner further submits that it revealed from the cross-examination of the opposite party no.1/applicant

and two others to get the compensation from the principal employer/opposite party no.2. The evidence of the said applicant in the Case concerned has been completed. Thereafter, the date fixed for evidence of the petitioner in the Labour Court. The petitioner being the opposite party no.1 before adducing evidence filed an application on 26.8.2019 with list of documents to substantiate his oral evidence necessary for adjudication, subject to leave of the court.

Petitioner submits that those documents relied upon by the petitioner are absolutely necessary for the ends of justice and to substantiate his oral evidence for the purpose of complete justice in the case.

Learned Judge of the Tribunal by the impugned order granted leave to file documents subsequent to the period of 01.6.2018 i.e. Sl No.1 to 3 of the list of documents and disallowed to accept all other documents in the list. Petitioner submits unless said documents are allowed to be filed by the petitioner, the petitioner would be highly prejudiced and it would affect the oral evidence to be adduced by the petitioner in that case.

The petitioner further submits that due to unstable mental condition for discontinuation of his work/contract for supply of labour in the factory of the opposite party no.2, he could not produce those documents prior to the period and now he has sought for giving liberty to produce all those documents. He further submits that the court below ought to have allowed production of such documents so as to

advance the cause of justice and he should have held that there is no intentional delay in production of the said documents. But learned court below has failed to consider the cardinal principal of natural justice for adjudication of such case before the Labour Court, where the Civil Procedure Code has limited application.

He further submits that the court below failed to consider that the documents prior to the period of 01.6.2018 are well connected to the documents subsequent to the period of 01.6.2018. He also submits that permission to rely upon the documents subsequent to period of 01.6.2018 would be totally infructuous if documents prior to 01.6.2018 are not allowed to rely upon by the petitioner. Accordingly, he has prayed for a direction upon the court below for giving liberty to produce all the documents that the petitioner wants to produce before the court below.

Learned counsel appearing on behalf of the opposite party no.1 submits that the grounds assigned by the petitioner for not filing those documents in time is not at all convincing and he has also not filed any medical paper to show that his mental condition was really unstable at the relevant point of time, which prevented him to file those documents earlier.

He further submits that as the prayer is not supported by any cogent reason so while exercising power under Article 227 of the Constitution of India, this court is not required to interfere with the order impugned.

Considered the submissions made by both the parties.

Rule 15 of the Industrial Disputes (Central) Rules, 1957 are reproduced hereinbelow:-

15. Evidence. – *A Board, Court, Labour Court, Tribunal or National Tribunal or an Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/him and in such manner as it/he may think fit.*

From the aforesaid provision, it is quite clear that it is the absolute discretion of the Tribunal to accept, admit or call for evidence but such discretion is judicial discretion which can be exercised at any stage of the proceeding.

On perusal of the order impugned, it appears that the court below has rejected the prayer of the petitioner only on the ground that opposite party intends to file the letters of the year 2014, 2015, 2016 without assigning any reason of delay in filing those documents and he has also not stated what prevented him from filing those documents before the court on 01.6.2018 or prior to that date when opposite party no.1 was given several opportunities to file list of documents. He further held that failure to file those documents is the laches on the part of the opposite party no.1 and as such, he disallowed the said prayer filed at the belated stage when cross-examination of applicant have already completed.

Considering the facts and circumstances of the case and also relying upon the judgment as cited by the petitioner, it appears to me that the documents sought to be

filed being relevant for the purpose of determination of dispute, tribunal should have exercised its power under Rule 15 of the said Rule after entertaining the same particularly when the examination of the witnesses on the side of the petitioner has not yet been concluded. In the present case tribunal should not have thrown out the application on a technical plea that in spite of getting several opportunities, petitioner failed to file those documents before commencement of trial. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rule of procedure.

In this context a coordinate Bench of this Court in **National Textile Corporation Limited Unit Arati Cotton Mill Vs. Learned Second Industrial Tribunal (WR 974 of 2005)** was pleased to held as follows:-

“9. A perusal of the Rule 15 shows that it confers power upon the Tribunal to accept, admit or call for evidence “at any stage of the proceedings” in such manner as it may think fit. Even if Rule 20C lays down the time frame when the list of documents are to be filed and the copies of the documents are to be disclosed, yet the language of Rule 15 leaves no manner of doubt that its scope is wider. The words “at any stage of the proceedings” is a pointer to that direction. To subserve justice the Tribunal may accept, admit or call for evidence. If any evidence is found to be vital, the Tribunal has been conferred the power to “call for” it. It is all for an effective adjudication of an industrial dispute. However, the words “if he may think fit” clothes the Tribunal with a

discretionary power. A power which has to be applied judiciously not mechanically.”

Moreover, the opposite party will have no cause to prejudice if the opportunity to reexamine his witnesses is given on the points of documents, sought to be produced by way of additional documents by the petitioner herein.

In view of the above, the Order No.32 dated 15.03.2021 in Case No.01 of 2017 under Section 2A(2) of the Industrial Disputes Act, 1947 passed by the learned Judge, Second Labour Court, West Bengal is hereby set aside.

The learned Tribunal is hereby directed to accept those documents which the petitioner wants to produce and/or call for in evidence. However, the learned Tribunal would give an opportunity to the opposite party to re-examine those witnesses, on the point of those additional documents, whose cross-examination have already been completed. The Tribunal is also directed to expedite the hearing.

With these observations, C.O. being no. 2201 of 2021, 2202 of 2021 and 2203 of 2021 along with connected application (if any) are disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)