

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 20493 of 2022

**Armenian College and Philanthropic Academy and
Davidian Girls' School, Non-teaching Staff Union
Versus
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Rananeesh Guha Thakurta Ms. Senjuti Sengupta Ms. Dipa Roy
For the State	:	Mr. Jayanta Samanta Mr. Manas Kumar Sadhu
For the respondent No. 3	:	Mr. Soumya Majumder Ms. Sanjukta Dutta
Heard on	:	31 st August, 2023.
Judgment on	:	31st August, 2023.

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the award dated 18th March, 2021, passed by the learned Second Industrial Tribunal, West Bengal, in Case No. VIII-04 of 2016 under Section 10(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act").

2. The petitioner claims to be a trade union, registered under the Trade Unions Act, 1926. Since, the appropriate Government was of the view that an industrial dispute exists between the petitioner and the respondent no.3, by an order dated 4th January, 2016 was, *inter alia*, pleased to refer the following issues for determination before the learned Second Industrial Tribunal West Bengal.

Issues

1. Pay-Scale of the Non-teaching Staff including Dearness Allowance
 2. Other allowances
 3. Leave Rules.
3. Both the petitioner as also the respondent no.3 participated in the said proceeding and filed their respective written statements. Although, it is the petitioner's case that an affidavit-in-chief was filed on behalf of the petitioner before the learned Tribunal, however, since, the petitioner's witness could not present himself before the learned Tribunal due to the pandemic, the matter had been adjourned and the petitioner was also not aware with regard to the factum of dismissal of the case, until the receipt of the certified copy of the award.
 4. Mr. Guha Thakurta, learned advocate representing the petitioner by drawing attention of this Court to the award submits that after the affidavit-in-chief was filed on behalf of the petitioner, the PW-1 was present before the Tribunal on 20th February, 2020.

Unfortunately, since, the learned lawyer for the petitioner was engaged before another Court, the matter was adjourned till 19th March, 2020.

5. On 19th March, 2020, no hearing took place as the Presiding Officer was not available. Accordingly, the next date was fixed on 16th April, 2020. In the meantime, by reasons of pandemic, lockdown intervened. No effective hearing took place in the matter on the subsequent dates as the Presiding Officer was not available. On 8th February, 2021, though both the parties were present since, the respondent no.3 had filed an application praying for adjournment, such prayer was considered and allowed and the matter was fixed on 4th March, 2021 for further evidence of PW-1. Unfortunately, on 4th March, 2021, since the petitioner was not represented and the petitioner's witness was also not present, the learned Tribunal was pleased to close the evidence of PW-1. By a subsequent order dated 18th March, 2021, the Tribunal was pleased to hold that the evidence of the PW-1 having been closed on 4th March, 2021 and both parties being absent on 18th March, 2021, the industrial dispute under reference was no longer in existence, as such the Case No. VIII-04 of 2016 under Section 10(2A) of the said Act was dismissed.
6. By referring to the provisions of Section 2(b) of the said Act as also Rules 22 of the West Bengal Industrial Disputes Rules, 1958 (hereinafter referred to as the "said Rules"), it is submitted that

although, the said Rules specifically provided that in the event the parties fail to appear without sufficient cause being shown, the Court or the Tribunal may submit a report to such effect to the State Government that the industrial dispute is not in existence, however, before such finding is returned with the report, the Tribunal is obliged to issue a show-cause. In this case, no show-cause had been issued. In any event, it is submitted that the aforesaid order cannot be said to be an award within the meaning of Section 17 of the said Act. According to the petitioner, till date, there has been no publication of the aforesaid award.

7. *Per contra*, Mr. Majumder, learned advocate representing the respondent no.3, by placing before this Court the affidavit-in-opposition filed by the respondent no.3 in Court today which is taken on record, submits that the award in question had been passed way back on 18th March, 2021. The present writ application, however, has been filed more than a year thereafter. There is no satisfactory explanation for delay. The petitioner did not even choose to apply before the Tribunal for review/recalling of the aforesaid award within the time prescribed. It is submitted that since, PW-1 chose not to appear, no option was available before the Tribunal but to close his evidence and subsequently by reasons of continued non-appearance, it held that no industrial dispute exists.

8. Mr. Majumder, by drawing attention of this Court to Rule 22 of the said Rules, submits that the award passed by the Tribunal is in consonance with the provisions of the said Act and Rules framed thereunder. Admittedly, in this case, the petitioner had not appeared before the Tribunal and there was no explanation forthcoming for its non-appearance. In such circumstances the Tribunal had held that the industrial dispute under reference was no longer in existence, there is no irregularity in returning such a finding. In the factual backdrop as aforesaid, the present writ application should be dismissed with costs.
9. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it is noticed that a reference had been made by the appropriate Government for adjudication of industrial dispute by framing three several issues and referring the same for adjudication before the learned Second Industrial Tribunal, West Bengal. The parties to the said dispute not only participated in such proceeding but had also filed their respective written statements. The petitioner had also led evidence and an affidavit-in-chief was filed on its behalf by one of its witness, Shib Charan Balmiki, sometimes in January, 2020 before the learned Tribunal. The said witness was present before the Tribunal on 24th February, 2020, unfortunately, the matter was adjourned since, his advocate was not available. Subsequently, although, the matter was posted for hearing on

19th March, 2020, since the Presiding Officer had expired, no hearing took place. Following the aforesaid the pandemic intervened and no effective hearing took place in the matter. The order sheet would reveal that on 8th February, 2021, both the parties were present. However, at the instance of the respondent no.3, the matter was adjourned to 4th March, 2021. Subsequently, on 4th March, 2021, since the petitioner was not represented and the petitioner's witness, PW-1, was not present, his evidence was closed. Such fact would corroborate from the order no.60 dated 4th March, 2021. On the following date, i.e., on 18th March, 2021 by order no.61, since the petitioner was unrepresented on the said date, the learned Tribunal was, *inter alia*, pleased to return a finding to the following effect:-

“Considering the above conduct of both parties to this case, I hold that the industrial dispute under reference between them is no longer in existence.

Hence it is

ORDERED

that the Case No. VIII-04 of 2016 under Section 10(2A) of the Industrial Disputes Act, 1947 is dismissed as the industrial dispute under reference is no longer in existence.

Let this order be treated as an award.”

10. In paragraphs 16, 18 and 21 of the aforesaid writ application, the petitioner has stated, *inter alia*, as follows:-

“16. *Your petitioner states that on February 20, 2020, the case before the Respondent Tribunal was*

adjourned at the instance of the petitioner whereafter Covid-19 pandemic set in and the members of the petitioner, who were in dire economic distress were not able to keep in contact with the Advocate-on-Record, who is the conducting Advocate before the Respondent Tribunal also.

...

18. *Your petitioner states that despite several requests to the Bench Clerk, the Advocate-on-Record could not inspect the Case File due to the embargo on the same by the Learned Presiding Officer and ultimately the Advocate-on-Record opined that since the case has been dismissed, an Award must have been passed and the petitioner should await the receipt of the same after its publication by the 1st Respondent, which is the normal course as prescribed under the Act, 1947 and then seek judicial review of the same before this Hon'ble Court.*

...

21. *Your petitioner states that nearly a year passed this way when ultimately, the Advocate-on-Record opined for applying for a certified copy or the Order dated March 18, 2021 of the Respondent Tribunal in Case No. VIII – 04/16 even though the same was also not being given at by the Respondent Tribunal since long and at least, the pronouncement of the said impugned Order, which was ultimately done on March 07, 2022.”*

11. From the certified copy of the award it appears that although, an application was made for certified copy sometime on 7th March, 2022, the said copy was made ready only on 5th July,

2022. Admittedly, when the award was passed treating the industrial dispute under reference is no longer in existence, pandemic was in full swing. The Hon'ble Supreme Court taking into consideration the effect of the pandemic and the difficulties that the litigants may face, in *Suo Motu* Case No. (C) 03 of 2020 had, *inter alia*, by an order dated 10th July, 2022, been pleased to relax/extend the period of limitation.

12. The learned Tribunal, however, by overlooking the pandemic situation, appears to have acted mechanically and proceeded to close the evidence of PW-1 without affording appropriate opportunity to the said witness to present himself. The learned Tribunal ought to have during the pandemic, at least issued a show-cause before closing the evidence of PW-1 and before treating that the industrial dispute is no longer in existence.

13. I find that the petitioner has also been able to explain the delay in approaching this Court. In the aforesaid conspectus of fact as noted above, it is apparent and clear that there had been violation of natural justice.

14. It is well settled that this Court while issuing a writ of certiorari is competent to correct jurisdictional errors committed by the Tribunal or a quasi-judicial body. A jurisdictional error may be from the failure to observe the limits of its jurisdiction or may arise from procedural irregularity adopted by the Tribunal,

after validly assuming jurisdiction. An error occasioned on account of violation of principles of natural justice can also be corrected. There may be other instances where a writ of certiorari can be issued.

15. In view thereof, both the orders dated 4th March, 2021 and the award dated 18th March, 2021 are set aside and Case No. VIII-04 of 2016 under Section 10(2A) of the Industrial Disputes Act, 1947 is restored to its file and location. The learned Tribunal is directed to hear out and dispose of the aforesaid reference in accordance with law.

16. It is made clear that I have not gone into the legality and/or authority of the petitioner to maintain its claim. It shall be open to the learned Tribunal after taking into consideration the respective pleadings and evidence to decide on the order of reference issued by the appropriate Government. However, taking note of the fact that the reference has been made by the appropriate Government on 4th January, 2016, it is only expected that the learned Tribunal shall expeditiously hear out and dispose of the said reference.

17. With the above observations/directions the writ application stands ***disposed of***.

18. There shall, however, 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.)

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