

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE**

WPO/188/2020

TATA CONSULTANCY SERVICES LIMITED

VERSUS

JYOTIRMOY MUKHOPADHYAY & ANR.

For the Petitioner : Mr. Kuldeep Mullick, Advocate
Mr. Shivam Ray, Advocate
Ms. Paramita Trivedi, Advocate

For the Respondent no.1: Mr. Aniruddha Singh, Advocate
Mr. Siddhartha Ghosh, Advocate

For the State : Ms. Tapati Samanta, Advocate

Hearing concluded on : 22.03.2023

Judgment on : 22.03.2023

RAJA BASU CHOWDHURY, J. :-

1. The present writ application has been filed, inter alia, challenging the order dated 27th November, 2019 passed by the Learned 7th Industrial Tribunal, West Bengal in case no.03/2A(2) of 2014 under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the said Act').

2. It is a petitioner's case that the respondent no.1 was an employee of erstwhile CMC limited, a subsidiary of the petitioner. The CMC limited was merged with the petitioner with effect from 1st October, 2015. The respondent no.1 was appointed by the erstwhile CMC limited as a Technical Assistant for primarily discharging supervisory functions in the erstwhile company. The nature of job of the respondent no.1 was partly managerial as well. The respondent no.1 was, however, evaluated through the company's policy on Performance Improvement Plan (PIP) and his evaluation was poorly rated. Since despite being put on notice, the respondent no.1's performance did not improve, the termination of the respondent no.1 was recommended. Since then a show cause notice dated 25th January, 2013 was issued to the respondent no.1, and upon considering his reply to the said notice, he was terminated from service vide letter dated 21st May, 2013. Consequent thereupon on 3rd September, 2013, the account of the respondent no.1 was settled and he was paid a sum of Rs,1,92,343/- towards his terminal benefits. The respondent no.1, however, raised an industrial dispute and approached the learned 7th Industrial Tribunal, West Bengal, by invoking the provisions of Section 2A(2) of the said Act. It is in connection with the aforesaid proceedings that the respondent no.1 had filed an application for interim relief which culminated in the order dated 27th November, 2019 which is impugned in the present writ application.

3. Mr. Mullick, learned Advocate representing the petitioner, submits that the Tribunal not only committed procedural irregularity in deciding the application but also exceeded its jurisdiction in granting relief to the respondent no.1. By drawing attention of this Court to Section 15(2)(a) of the said Act, he says that the statute categorically provides that where an industrial dispute has been referred to a Labour Court or Tribunal under Section 10(1) of the said Act, the Tribunal shall, after filing of statements and taking of evidence, giving day to day hearing and pronounce its award or render its decision in the manner specified in Section 17AA of the said Act. He says that although Section 15(2)(b) of the said Act, provides for a remedy in the form of interim relief, a perusal of such section would reveal that there is no scope for leading evidence and once the Tribunal proceeds to take evidence, the Tribunal is duty bound to hear out the matter, day to day and pass an award.
4. In the instant case, the Tribunal notwithstanding permitting the parties to lead evidence in the matter, ultimately did not adjudicate the dispute by passing a final award. The Tribunal only passed an order for interim relief. This, according to Mr. Mulick, is not permitted. A statutory authority is bound to adhere to the statutory provisions and act in accordance therewith. It is next contended that since, this was not a reference under Section 10(1) of the said Act, the Tribunal was not competent to pass interim relief. By referring to Section 15(2)(b) of the said Act, it is submitted that where an industrial dispute has been

referred to a Labour Court or Tribunal under Section 10(1) of the said Act, it shall after hearing the parties to the dispute, determine, within a period of 60 days from the date of the order referring such industrial dispute or within such shorter period as specified in such order, the quantum of interim relief admissible, if any. He says that in the instant case there has been no reference under Section 10(1) of the said Act and as such the Tribunal did not have the jurisdiction to entertain the application for interim relief. The order passed by the Tribunal is, otherwise, perverse. The Tribunal did not take into consideration the evidence led by the petitioner and only placed reliance on the statements made by the respondent no.1, by disregarding the petitioner's contention while disposing of the application for interim relief. The order impugned cannot be sustained and the same should be set aside.

5. *Per contra*, Mr. Singh, learned Advocate representing the respondent no.1, by referring to Section 2A(2) of the said Act, has submitted that upon receipt of an application under Section 2A(2) of the said Act, the Labour Court or the Tribunal shall have the powers and jurisdiction to adjudicate the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of the Act and all the provisions of the said Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government. He says that by deeming provision as provided in Section 2A(2) of the said Act, the Tribunal while deciding an application

under Section 2A(2) of the said Act, is competent to treat such application as a dispute referred to it by the appropriate Government. As such, the objection that the Tribunal would not have jurisdiction to grant any interim relief, since it is not a reference under Section 10(1) of the said Act cannot be sustained.

6. He then submits that Section 15 substituted by West Bengal Act 33 of 1986, only provides for the manner in which a Tribunal shall decide. Simply because the Tribunal had permitted the parties to lead evidence, the same does not denude the Tribunal of its right to grant interim relief. The order passed by the Tribunal cannot be faulted on such ground. He next contends that the petitioner has only challenged the grant of interim relief on the ground of perversity, at this stage, this Hon'ble Court should not permit the petitioner to raise the question of perversity. It has been pointed out by Mr. Singh that the provisions of 10(1)(b)(d) were inserted by West Bengal Act 33 of 1989 w.e.f. 8th December, 1989 which authorises an industrial dispute related to an individual workman, to be referred to the Labour Court/Tribunal. Similar provision in the form of Section 2A(2) of the said Act, had been introduced by the Central Amendment Act 24, 2010. There is no irregularity on the part of the learned tribunal either in assuming jurisdiction or in granting interim relief. The writ application deserves to be dismissed with costs.
7. Ms. Samanta, learned Advocate representing the State, submits that there is no jurisdictional error on the part of the Learned 7th Industrial

Tribunal in passing the order impugned. The Tribunal has the jurisdiction to grant interim relief in an application presented before it under Section 2A(2) of the said Act.

8. Having heard learned Advocates appearing for the respective parties, I find that an application under Section 2A(2) of the said Act has been filed by the respondent no.1 before the Learned 7th Industrial Tribunal. Although it has been argued by Mr. Mullick, learned Advocate representing the petitioner that since no reference has been made under Section 10(1) of the said Act, the Tribunal has no the jurisdiction to grant interim relief, I am unable to accept the aforesaid contention. I find that by reasons of the deeming provision provided in Section 2A(2) of the said Act, a reference of a dispute made to a Tribunal under section 2A(2) of the said Act, is deemed to be a dispute referred to it by the appropriate Government and the Tribunal has been conferred with all such powers and jurisdiction the Tribunal enjoys, while deciding a dispute referred to it by the appropriate Government under Section 10(1) of the said Act. In this context, to more fully appreciate the aforesaid Section 2A(2) of the said Act, the same is extracted hereinbelow:-

“2A.....

1.

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein

after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.]”

9. From a plain reading of the aforesaid Section it is crystal clear that the Tribunal by reasons of the deeming provision as set forth in the said Section has the power, jurisdiction and competence to grant interim relief, in respect of an application filed under Section 2A(2) of the said Act.
10. Although Mr. Mullick has strenuously argued that once the Tribunal had proceeded to take evidence, it was no longer permissible for the Tribunal to grant interim relief and the Tribunal was obliged to pass a final award under Section 15(2)(a) of the said Act, I, however, find that the provisions of Section 15(2)(a) and 15(2)(b) of the said Act, not to be conflicting with one another; they are, in fact, complementing each other. While Section 15(2)(a) provides for hearing of the main application, 15(2)(b) authorises and empowers the Tribunal to grant interim relief. Granting of interim relief is to facilitate justice delivery and to afford the

minimum protection wherever and whenever necessary. From a perusal of the award in question, it would appear that the petitioner had contested the application for grant of interim relief and had also challenged the authority of the respondent no.1 to invoke the jurisdiction of the Tribunal, inter alia, by contending that the respondent no.1 does not come within the definition of workman as defined in Section 2(s) of the said Act. Once a dispute of this nature is before the Tribunal, the Tribunal is obliged to permit the parties to lead evidence, for ascertaining whether the Tribunal has the jurisdiction to entertain the said application filed at the instance of the respondent no.1.

11. Records reveal that the Tribunal only upon, prima facie, satisfaction that the respondent no.1 was a workman within the meaning of the said Act, had allowed the application for interim relief. The Tribunal cannot be faulted for adopting the aforesaid procedure.
12. The next point urged by Mr. Mullick is that the order passed by the Tribunal is perverse and Tribunal did not take into consideration the evidence put forward by the petitioner and/or disregarded the same and allowed the said application by placing reliance on the evidence led by the respondent no.1. In my opinion, while deciding the application for interim relief, by appreciating evidence, the Tribunal had not exceeded its jurisdiction. At this stage, it is not necessary for this Court to adjudicate the evidentiary value of each document or to ascertain whether the

Tribunal had considered and appreciated the evidence led by the parties appropriately. Since, there was dispute as regards relationship between the parties and since the Tribunal has determined the status of the respondent no.1, I do not find any irregularity on the part of the Tribunal in allowing the application for interim relief. It also does not appear that the order passed by the learned tribunal to be perverse or not supported by reasons. No case of violation of principles of natural justice has been made out. No interference is also called for. For reasons more fully discussed herein above the writ application fails.

13. The Registrar, Original Side of this Court is directed to encash the fixed deposit prematurely, if required, and to refund the amount deposited by the petitioner pursuant to the order dated 20th September, 2022, along with the accrued interest thereon, after deducting the commission.
14. The Tribunal shall, however, decide the application under Section 2A(2) of the said Act, being uninfluenced by the observation made in this application.
15. The writ application being WPO 188 of 2020 is dismissed.
16. Urgent photostat, Certified copy of this order, if applied for, be given to the parties expeditiously upon compliance of all necessary formalities

(RAJA BASU CHOWDHURY, J.)