

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BEFORE

The Hon'ble Justice RAJA BASU CHOWDHURY

WPO/879/2023
ABDUL RAHIM
VERSUS
THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. S. E. Huda, Advocate
Md. Rizwan Alam, Advocate
Sk. Aptabuddinm, Advocate
Mr. Himadri Roy, Advocate

For the Respondents: Mrs. Tapati Samanta

Heard on : 7.8.2023

Judgment on : 7.8.2023

RAJA BASU CHOWDHURY, J.:

1. The present writ application has been filed, *inter alia*, challenging an award dated 19th September, 2019, passed by the Learned 7th Industrial Tribunal, West Bengal in case no.41 of 2013.
2. It is the case of the petitioner that he had been employed by the respondent no.4 in the year 2001. Subsequently, since, 4th February, 2013, Mr. Sandeep Kumar Rajpuria without any cause refused entry of the petitioner to office premises thereby, preventing him to join his duty. On account of refusal of employment as aforesaid, the petitioner

was prompted to seek intervention of the Labour Commissioner. Since, the conciliation proceeding did not yield any fruitful result, after expiry of the statutory period, he filed an application under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”) before the Learned 7th Industrial Tribunal, West Bengal and the same was registered as Case of 41 of 2013. The respondent no.4 duly participated in the said proceeding by filing written statement. On the basis of the pleadings of the parties, Learned 7th Industrial Tribunal was, *inter alia*, pleased to frame the following issues:-

- “1. Whether the case is maintainable in both facts and in law?*
- 2. Whether is termination by way of refusal of employment w.e.f. 4.2.2013 of the workman by the Company justified?*
- 3. Whether is the workman entitled to re-instatement alongwith back wages and any other consequential benefits during the period of forced unemployment?*
- 4. Any other reliefs?”*

3. Although, the Learned 7th Industrial Tribunal on the basis of the evidence on record had arrived at a finding that there was an employee and employer relationship between the petitioner and the respondent no.4, however, by concluding the petitioner had failed to prove, he was refused employment with effect from 4th February, 2013, and by accepting that the petitioner was retained on the rolls of the respondent no.4 dismissed the said application.
4. Mr. Huda, learned Advocate representing the petitioner, submits that the petitioner after being refused permission to join his duties, had

lodged a complaint on 2nd April, 2013, with the Tiljala Police Station. The said complaint was exhibited in the aforesaid proceeding. By relying on the records of the proceeding, *inter alia*, the cross-examination of the witness of the respondent no.4, he submits that notwithstanding the management witness claiming that the petitioner had remained absent from 4th February, 2013, no action was taken against the petitioner for his absence, which according to the respondent no.4 was unauthorised. Ordinarily, if an employee absents from duty, as per standing orders, action is taken. In this case since, the petitioner was refused employment, no action was taken against the petitioner. The case of absence from duty, for such a prolonged period without any action against the petitioner is not plausible. Admittedly, the management witness had accepted the petitioner to be an employee of the respondent no. 4, however, in an attempt to wiggle out of the liability, he had claimed that the petitioner is on the roll of the company. In the given fact, the learned Tribunal ought to have directed the respondent no.4 to reinstate the petitioner and ought not to have held that the petitioner has failed to prove his case with regard to refusal of employment. He submits that the petitioner in the application under Section 2A(2) of the said Act, has prayed for reinstatement with full back wages. That the petitioner is unemployed till this date. Despite the award, the petitioner has not been permitted to join his duty. By drawing attention of this Court to the

representation dated 12th June, 2013, he stated that the respondent no.4 had not even bothered to respond to the petitioner's representation. The aforesaid would clearly establish the case as made out by the petitioner and his right to reinstatement with full back wages. That the aforesaid award should be set aside and the petitioner may be directed to be reinstated along with full back wages.

5. Heard learned Advocates appearing on behalf of the petitioner as also the State and considered the materials on record. Despite service, the respondent no.4 is not represented. As would appear from the above, the present proceeding arises out of and in connection with the refusal of employment of the petitioner w.e.f. 4th February, 2013. It is noticed that the petitioner had initially after refusal of employment, lodged a complaint with the police authorities. Subsequently, he had represented to the respondent no.4 by letter dated 12th June, 2013, to allow/permit him to join his duty. Since, the representation was not adhered to, the petitioner had sought for intervention of the Labour Commissioner. As there was no favourable outcome in the conciliation proceeding, he had filed an application under Section 2A(2) of the said Act, claiming for the following relief:-

“It is, therefore, most humbly prayed that your Honour may kindly be pleased to hold that the forced refusal of employment on and from 4.2.2013 is unjustified band and illegal and to pass an award in favour of your applicant/workman directing the opposite party, herein company to re-instate your applicant with full back wages for the period of forced unemployment and

consequential statutory benefits thereto or pass any such order or order as you may deem fit and proper.”

6. The respondent no.4 had participated in the said proceeding by filing written statement. Incidentally, in paragraph 16, of the written statement it has been stated on behalf of the respondent no.4 that the petitioner had remained absent from 4th February, 2013, without any intimation. In the aforesaid paragraph, it has also been asserted by the respondent no.4 that the petitioner is still on the roll of the company. The written statement filed on behalf of the respondent no.4 proceeds on the premise that there had been no termination or refusal, of employment of the petitioner and as such, question of reinstatement does not arise. As noted above, on the basis of the pleadings filed by both the parties, the learned Tribunal had framed 4 several issues. It is also noted that the petitioner had relied on 11 several documents which not only included the complaint made to Tiljala Police Station but also the letter dated 12th June, 2013, addressed to the respondent no.4 along with the postal confirmation slip, whereby the petitioner had questioned his refusal of employment and had requested the respondent no.4 to permit him to join his duty. The aforesaid letter remains unanswered. In course of hearing, eight documents including the letter dated 12th June, 2013, were exhibited on behalf of the petitioner. Particulars of the exhibited documents are set out hereinbelow:-

EXHIBITS OF THE WORKMAN

<i>Sl. No.</i>	<i>Ext. No.</i>	<i>Details of the documents</i>	<i>Dated</i>	<i>Exhibited on</i>
1.	1.	<i>Co's letter to National Insurance</i>		10.7.15
2.	2.	<i>Copy of payment voucher for Jan' 13</i>	2.2.13	"
3.	3.	<i>WM's letter to Tiljala P.s.</i>	2.4.13	"
4.	4.	<i>Applicant's letter to the Co.</i>	14.5.13	"
5.	5.	<i>Copy of Returned Envelope</i>		"
6.	6.	<i>Workman's letter</i>	12.6.13	"
7.	7.	<i>Postal confirmation slip</i>		"
8.	8.	<i>WM's Application to Labour Comm.</i>	15.7.13	"

7. The respondent no.4 in turn had also exhibited five several documents, three of them being payment vouchers, were marked as Exhibit A series, a staff advanced ledger which was exhibited as Exhibit B and a letter dated 26th December, 2013, addressed to the Assistant Labour Commissioner exhibited as Exhibit C. It would appear from the letter dated 26th December, 2013, which has been marked Exhibit C in the present proceeding, that the respondent no.4 had claimed that the petitioner used to mislead the Directors and very often attended duty for short time or used to come as per his wish and hamper the company work. It had also been, *inter alia*, claimed in such letter that the petitioner remained absent from work without any intimation and had forced the company to make payment, for the days

he remained absent. It appears that the Learned Tribunal, had concluded that the petitioner could not prove his case that he was prevented by Mr. Sandeep Kumar Rajpuria from entering into the company premises, for joining the duty on and from 4th February, 2013. By further proceeding on the premise that the petitioner was still on the roll of the company had concluded that the petitioner is at liberty to report for duty. Consequentially, the learned Tribunal held that no industrial dispute between the parties as envisaged in Section 2A(1) of the said Act exists, as such the case is not maintainable.

8. While deciding an application challenging an award, this Court ordinarily, does not take into consideration the evidence led by the parties and if two views are possible, it is not for this Court to substitute the view of the Tribunal with its own. In this case, however, I notice that the finding reached by the learned Tribunal is perverse. The learned Tribunal did not take into consideration all relevant aspects by posing unto itself the correct questions, especially those relating to the steps taken by the respondent no.4, regarding the prolonged absence of the petitioner. It also did not consider whether it was plausible to accept that the petitioner could remain on the roll of the company, despite the petitioner remaining absent unauthorisedly for a prolonged period. On the contrary, I find that the respondent no.4 despite receipt of the letter dated 12th June, 2013, chose not to respond to the same. The delay in lodging the complaint with the

Tiljala Police Station and the delay of 56 days in making the complaint could not be so fatal, so as to non-suit the petitioner, the same may at best deny the claim for full back wages upto such date. Admittedly, in this case, no step had been taken by the respondent no.4 on account of alleged absence of the petitioner from duty despite the respondent no.4 complaining of the petitioner's conduct before the Labour Commissioner.

9. Having regard to the aforesaid and on a conspectus of facts, I am of the view that the aforesaid award passed by the Learned 7th Industrial Tribunal cannot be sustained. The same is, accordingly, set aside. As noted above, I find that the complaint dated 2nd April, 2013 as well as the letter dated 12th June, 2013 had been exhibited. The aforesaid exhibits complain of refusal of employment. The postal confirmation slip which had also been exhibited and marked as Exhibit-7, confirms delivery of the letter to the respondent no.4. The management witness despite claiming the petitioner to have absented from duty did not produce the attendance registrar, to establish the factum of absence of the petitioner, thereby, withholding best evidence. Ordinarily, this Court while issuing a writ of certiorari is competent to correct a jurisdictional error committed by the Tribunal or a quasi judicial body. Such error may be from failure to observe the limits of its jurisdiction or may arise from procedural irregularity adopted by the Tribunal, after validly assuming jurisdiction. It may also be on account of

violation of principle of natural justice as also on account of perversity as in the present case. It may also correct refusal to admit admissible and material evidence as in the present case.

10. The learned Tribunal appears to have discarded the police complaint by treating the same to be belated. Refusal to accept cogent unimpeachable material and failure to accept the positive case made out by the petitioner, as regards his refusal of employment, which is writ large in this case, requires interference. If the aforesaid admissible and cogent material evidence is accepted, which has been rejected as belated, the same read with the pleadings and the evidence on record would, in no uncertain terms, establish that the petitioner had been able to prove his case of refusal of employment, at least from 2nd April, 2013, being the date of police complaint lodged with the Tiljala Police Station.
11. Having regard to aforesaid and since, no useful purpose would be served in remanding the matter to the Tribunal as the available material if accepted, would establish the factum of refusal of employment, I am of the view and do hereby direct the respondent no.4 to reinstate the petitioner in service within a period of eight weeks from date. However, considering the fact that the petitioner has challenged the award dated 19th September, 2019, only in the year 2023, and there is nothing on record to demonstrate that he had reported for duty in terms of the liberty reserved in the award, in my

view justice would be sub-served if petitioner is paid a lump sum compensation of Rs.1,00,000/- (Rupees One Lack) only, provided the petitioner reports for duty within a period of eight weeks from date.

12. The department is directed to return the records of the proceedings to the Court of Learned 7th Industrial Tribunal, Kolkata.
13. With the aforesaid observation, the writ application is disposed of.
14. There will be no order as to costs.
15. Urgent photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)