

OD-14

ORDER SHEET  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

WPO/2875/2022  
IA NO: GA/1/2022

BIDHU BHUSAN SARKAR  
VS  
STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 5<sup>th</sup> December, 2023.

*Appearance :*  
*Mr. Bidhu Bhusan Sarkar*  
*... in person.*

*Mr. Susanta Pal, Adv.*  
*Mr. P. Basu, Adv.*  
*... for respondent no.3.*

The Court: 1. The subject matter of challenge is a final order dated 26<sup>th</sup> December, 2019 passed by the learned Judge, First Labour Court at Kolkata under Section 33(c)(2) of the Industrial Disputes Act, 1947.

2. The brief facts of the case are that the management had entered into a Memorandum of Settlement dated 9<sup>th</sup> October 1996, with the Chowringhee unit branch office and the main branch at Kolkata allowing certain benefits to its employees including workmen. Similar memoranda of agreement were entered into separately with the employees of other units of the company at Asansol, Delhi and Mumbai.

3. Admittedly, no formal settlement was entered into with the employees of the Behala unit at Kolkata. The petitioner was an employee of Behala unit. He was dismissed from service after disciplinary proceedings sometime in the year 1999. The order of dismissal dated 07.06.1999 came to be challenged under Section 33(2)(b) of the Industrial Disputes Act and was rejected. There are further proceedings pending in respect of the order of dismissal taken out by the petitioner. The same are not relevant to the subject matter of the instant proceeding.

4. It appears to this Court from the records of the writ petition that the petitioner has claimed a third retirement benefit to the tune of Rs.3,20,000/- together with compound interest at the rate of 18% per annum from June, 2004 till realization. Such claim is based on the aforesaid MoS dated 9<sup>th</sup> October 2019. The Tribunal received evidence both oral and documentary evidence from the writ petitioner as well as the employer the third respondent herein. Examination and cross-examination occurred. The impugned order was passed after a proper trial on evidence.

5. Based on the evidence had come on record the Tribunal found that the memorandum of settlement did not cover the companies employees located at Behala. The entire evidence on record was discussed in detail. The Tribunal also considered the contention of the management. The memorandum of understanding did not consider a

settlement within the meaning of Section 2(p) of the Industrial Disputes Act, 1947.

6. This Court has carefully considered that the impugned decision dated 26<sup>th</sup> December, 2019 and the evidence before the first labour Court below. This Court finds that the procedure prescribed under the Industrial Disputes Act of 1947 was duly followed. The petitioner got a fair opportunity to present his case and also cross-examined the witness of the management. There is therefore no error on account of procedure or violation of principles of natural justice in the proceedings leading to the impugned order.

7. Insofar as of the merits of the order are concerned it is now well settled that a writ Court under Article 226 of the Constitution of India does not sit an appeal over decisions of a lawfully constituted Tribunal which has followed the procedure prescribed under the Act and the Rules.

8. The findings of the Tribunal are based on the evidence on record. The Tribunal has not travelled outside the evidence that has come on record the memorandum of settlement dated 19.10.2019 has been duly considered, in accordance with law, as has been the oral evidence of the witnesses including that of the writ petitioner. The impugned order can neither be called perverse nor is it contrary to the records.

9. The settlement in question could not constitute an award within the meaning of Section 33(c)(2) of the Act, 1947.

10. In those circumstances the impugned judgment and order dated 22<sup>nd</sup> December, 2019 passed by the first labour Court, Kolkata calls for absolutely no interference and is upheld.

11. The decision of the Tribunal has been confined to the entitlement, if any, of the petitioner under the aforesaid memorandum or settlement dated 9<sup>th</sup> October, 1996.

12. Needless to mention that in the event the petitioner succeeds in the challenge to the dismissal order passed against him in any forum he may be entitled to any other benefits that are available to him in law.

13. In view of the above, WPO/2875/2022 shall stand dismissed.

14. Interim order, if any, shall stand vacated.

15. No order as to costs.

16. The records of the Tribunal be returned back by the Registry as expeditiously as possible.

(RAJASEKHAR MANTHA, J.)