

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE AJAY KUMAR GUPTA

WPA 8484 of 2024

M/S Grasim Industries Ltd. Unit – Jaya Shree Textiles

Versus

The State of West Bengal & Ors.

For the Petitioner : Mr. Soumya Majumder;
Mr. Suvodip Bhattacharjee;
... Advocates

For the Respondent : Mr. P. K. Patwari;
Ms. S. Manna;
Mr. S. K. Mustafi;
... Advocates

For the State : Mr. Suman Ghosh;
Mrs. M. Tewary;
... Advocates

Heard on : 25.09.2024

Judgment on : 05.11.2024

AJAY KUMAR GUPTA, J.

1. In this Writ Petition, the petitioner challenges the impugned order dated 31.01.2024 passed by the Learned Third Industrial Tribunal, Kolkata in a Case No. 08/2022 filed under Section 10 (1B) (d) of the Industrial Disputes Act, 1947, thereby the Learned Tribunal rejected the petition dated 16.08.2023 filed by the Petitioner under Section 11 (3) of the Industrial Disputes Act, 1947 read with Rule 15 of the West Bengal Industrial Disputes Rules, 1958 seeking therein for special leave for filing and relying upon certain documents in the proceedings pending before the Learned Tribunal. According to the petitioner, documents are necessary for proper and effective adjudication of the proceedings pending before the Learned Tribunal.

2. Brief facts, leading to filing of this Writ Petition, are to the effect that the Respondent no. 2 was the workman of the Petitioner. He used to work as Creel Boy in Hosepipe Department and subsequently he discharged as a DG Operator. He has been superannuated from the service on 31.12.2020 as per the record of the Petitioner. However, he made a representation that his actual date of superannuation would be in the year 2024 without any valid documents. He had never submitted any such documents to show his date of birth recorded as 30.04.1996. As soon as a notice

of superannuation had been served upon him, he started disputing the date of superannuation claiming that his superannuation date would be on 31.12.2024 and further refused to accept the letter of superannuation as well as declined to vacate the quarter allotted to him by the company although he had recorded the year of birth as 1962 in Form-2 of the Provident Fund Account i.e. Declaration and Nomination Form under the Employee's Provident Fund and Employee's Pension Scheme. He had signed and accepted without any protest and demur. Hence, the question of mistake on the part of the Petitioner does not arise. Respondent No. 2 is trying to make out a new case by levelling all baseless and false allegations against the Company/Petitioner. His date of birth has been recorded in the service record of the Company as 1962 but now at the fag end of the service career, he cannot take the plea of Change in year of birth after lapse of 25 years from filling up of the Form-2 of the Provident Fund Account i.e. Declaration and Nomination Form under the Employee's Provident Fund and Employee's Pension Scheme.

3. He raised a dispute before the Assistant Labour Commissioner, Serampore, Government of West Bengal. During pendency of the said conciliation proceedings, he has obtained Pendency Certificate and has filed an application under Section 10 (1B) (d) of the Industrial Disputes Act, 1947. The application was registered as Case No. 08/2022.

4. The writ petitioner duly appeared before the Learned Tribunal after receiving notice and filed its written statements on 19.04.2022. Subsequently, both the Respondent No. 2 and the petitioner have filed their respective list of documents.

5. On the basis of the contention of the parties, the Learned Tribunal has framed the following issues on 21.07.2022 for final disposal of the proceedings as follows: -

i) Is the instant application under Section 10 (1B) (d) of the Industrial Disputes Act, 1947 maintainable?

ii) Is the termination of service of the applicant Sri Baski Ram by the OP/Company w.e.f. 31.12.2020 in the form of retirement treating his year of birth as 1962 instead of 1966 justified?

iii) What relief, if any, the applicant is entitled to?

6. During pendency of the aforesaid proceedings, one complaint case has been filed against the Respondent No. 2 and his daughter before the Learned Additional Chief Judicial Magistrate, Serampore being C.R. Case No. 371/2022 on 13.10.2022 by the Petitioner. At the same time, Respondent No. 2 has filed one court complaint under Section 156(3) of the CrPC. The same was registered as C/386/2022. It was subsequently treated as an FIR and registered being Serampore Police Station Case No. 470/22 dated 04.12.2022 under Sections 325/307/427/506/34 of the Indian Penal Code, 1860 against the

petitioner on the basis of direction passed by the Learned Additional Chief Judicial Magistrate, Serampore. After completion of the investigation, Investigating Officer has submitted final report on 31.12.2022 and the same was forwarded before the Learned Court on 19.09.2023.

7. The writ petitioner, in the meantime, has filed an application on 16.08.2023 under Section 11 (3) of the Industrial Disputes Act, 1947 read with Rule 15 of the West Bengal Industrial Disputes Rules, 1958 before the Industrial Tribunal after completion of examination-in-chief and cross-examination of the P.W. 1, Sri Baski Ram praying therein for incorporating some documents for proper adjudication of the matter pending before the Learned Industrial Tribunal. Those documents are relevant to show the conduct and behaviour of the Respondent No. 2 during pendency of the proceedings. Those documents are as follows:

“A. Letter dated 04.07.2022 issued by the company to Mr. Baski Ram, postal receipt dated 05.07.2022 and the envelop.

B. Copy of General Diary made by Rakesh Pandey, Senior Manager Administration dated 10.10.2021 against Baski Ram before the Inspector-in-Charge, Serampore Police Station.

C. Copy of General Diary dated 29.05.2022 before the Serampore Women Police Station by Manorama Singh

who stays in the staff quarter against Baski Ram, Anita Devi, Nikki Kumari and Nirsingha Ram.

D. Copy of General Diary dated 05.07.2022 before the Serampore Police Station by Arun Kumar Singh who is one of the drivers of the opposite party company against Baski Ram.

E. Copy of General Diary made by Rakesh Pandey, Senior Manager Administration dated 13.09.2023 against Baski Ram before the Inspector-in-Charge, Serampore Police Station.

F. Copy of General Diary made by Rakesh Pandey, Senior Manager Administration dated 16.09.2023 against Baski Ram before the Inspector-in-Charge, Serampore Police Station.

G. Copy of General Diary made by Rakesh Pandey, Senior Manager Administration dated 28.09.2023 against Baski Ram and Priti Kumari before the Inspector-in-Charge, Serampore Police Station.

H. Copy of Serampore Police Station F.I.R. No. 355/22 dated 01.10.2022 under Sections 279/337/427 lodged by the Opposite Party/Company against Baski Ram.

I. Copy of the Complaint Petition being CR – 371/22 filed by Rakesh Pandey and all orders (Now certified copy received).

J. Copy of Examination of Complainant Rakesh Pandey in connection with CR – 371/22 (Now certified copy received).

K. Copy of application of employees of company with the request to allot quarter.

L. Copy of the Final Report which has been filed by Serampore Police with regard to the complaint filed by Baski Ram against opposite party company (Now certified copy received).”

8. According to the petitioner, aforesaid documents are very much essential for proper and effective adjudication of the proceedings. The Learned Tribunal, however, has rejected the said application after consideration of the application and objection thereto on 31.01.2024 upon imposing a cost of Rs. 2,000/=. Feeling aggrieved with the said impugned order dated 31.01.2024, the writ petitioner has filed this Writ Petition contending that the Learned Tribunal did not consider the documents, which are relevant to show the conduct and habit of the Respondent No. 2 in making false, fabricated and fictitious complaint against the writ petitioner and its high officials before the Police, Provident Fund Authorities, Assistant Commissioner, Learned Tribunal and Courts etc.

9. All those documents, relied by the Petitioner, are certified copies of the different cases, which apparently indicating the behaviour of the Respondent No. 2 towards the company. He always disturbs the management of the factory and also the staff quarter. Respondent No. 2 had deliberately lodged false and

fictitious complaint against the company and its officials without any basis and proof. He is also trying to malign the petitioner and its officer so that an adverse effect will be created on the other workmen of the petitioner but the Learned Tribunal has miserably failed to appreciate those documents related to the false complaint case and those documents are certified copies. Those documents are treated as public documents under Section 74 (2) of the Evidence Act, 1872 and the same cannot be rejected whimsically as such same is liable to be set aside. The Writ Petitioner has prayed for setting aside the said impugned order passed by the Learned Tribunal and further prayed to allow to rely on such documents in the proceedings pending before the Learned Tribunal otherwise the Writ Petitioner would be highly prejudiced.

SUBMISSION ON BEHALF OF THE PETITIONER:

10. Learned counsel representing the Petitioner submitted that the Learned Tribunal has whimsically and capriciously rejected the prayer of the Writ Petitioner for allowing to incorporate some certified copies of the documents to show the bad habits and illegal activities of the Respondent No. 2 towards the Company. He illegally occupied the quarter although he has been already superannuated on 31.12.2020. Furthermore, he is lodging false and fictitious complaints against the company and its higher officials as such, the Writ Petitioner is facing difficulty with regard

to maintain the peace and tranquillity within the factory precincts. The Petitioner wanted to produce and incorporate documents in the proceedings pending before the Learned Tribunal for proper adjudication but the Learned Tribunal failed to appreciate that the workman must maintain discipline in the factory or quarter premises for smooth functioning of the industry and same cannot be compromised at the behest of the illegal activities of the Respondent No. 2. Accordingly, the impugned order of rejection is liable to be set aside and same should be allowed to incorporate in the proceedings pending before the Learned Tribunal.

11. In support of his contention, the learned counsel appearing on behalf of the petitioner has placed reliance on judgments passed by the Hon'ble High Court at Calcutta in the cases as follows: -

i) Alkem Laboratories Pvt. Ltd Vs. Third Industrial Tribunal, West Bengal & Ors.¹;

ii) ICI & Associated Companies Employee's Union & Anr. Vs. State of West Bengal & Ors.².

¹ (2001) 1 CHN 171;

² (2005) 1 CHN 251

SUBMISSION ON BEHALF OF THE RESPONDENT NO. 2:

12. On the other hand, learned counsel appearing on behalf of the Respondent No. 2 has raised objection of such prayer of the Petitioner and further submitted that the Learned Tribunal rightly rejected the application with costs because the Petitioner tried to harass the workman and linger the proceedings by filing frivolous application for incorporating documents, which are not at all relevant for the purpose of adjudication of the proceedings pending before the Learned Tribunal. Those documents are not disclosed at the time of filing list of documents and filed with inordinate delay and same cannot be accepted at the belated stage. Examination and cross-examination of P.W. 1 have been over. As such the Writ Petition is liable to be dismissed with costs. Learned counsel has also placed reliance of a judgment passed in the case of ***General Manager, Barsua Iron Ore Mines vs. Vice President United Mines Mazdoor Union and Others***³ to support of his contention that his actual year of birth is 1966 and not 1962 as per the documents relied by the Respondent No. 2.

DISCUSSION AND FINDINGS:

13. Heard the rival contention of the parties and upon perusal of record, it appears that initially a dispute arose between the employer and workman with regard to the date of superannuation.

³ 2024 SCC Online SC 491

As per the Writ Petitioner, date of superannuation of its workman i.e. Respondent No. 2 was 31.12.2020. At the same time, as per employee, Respondent No. 2, his date of superannuation is 31.12.2024. Furthermore, Respondent No. 2 refused to accept the letter of superannuation as well as declined to vacate the quarter allotted to him by the company.

14. Respondent No. 2 further raised a dispute before the Assistant Labour Commissioner, Serampore, Government of West Bengal. During the pendency of the conciliation proceedings, he obtained Pendency Certificate and has filed an application under Section 10 (1B) (d) of the Industrial Disputes Act, 1947 before the Learned 3rd Industrial Tribunal, West Bengal. The application was registered as Case No. 08/2022 and same is still pending before the Learned Industrial Tribunal for its disposal. During trial of the proceedings, the Petitioner wanted to produce some documents to show the conduct and behaviour of the Respondent No. 2. He disturbed and harassed the writ petitioner in different manner as well as by lodging false and fictitious complaints before different authorities. Accordingly, those documents are relevant for the purpose of disposal of the proceedings. However, the Respondent No. 2 denied and disputed the contention of the Petitioner and filed a written objection.

15. The Learned Tribunal has been pleased to rejected the prayer of the Writ Petitioner with a cost of Rs. 2,000/= after hearing the parties as such a question emerges before this Court whether the Learned Tribunal rightly rejected the application dated 12.08.2023 praying for incorporating the documents relied by the Petitioner in the proceedings or not?

16. It is admitted fact that the petition dated 16.08.2023 had been filed after more than 13 months of the filing list of documents. Petitioner had earlier filed some documents on 29.06.2022 and further wanted to file further 9 additional documents after recording of evidence of P.W. 1 (Workman) on the ground that it was missed out by the petitioner at the time of filing the claim statement along with the list of documents though most of the documents were in possession of the company. It should be explained by the company as to why those documents were not filed at the time of filing list of documents. It is incumbent upon the Petitioner to give satisfactory explanation for filing documents in later stage and also explain what prevented the Petitioner for not filing those documents in the earlier stage. Compliance of Rule 20C of the West Bengal Industrial Disputes Rules, 1959 should be maintained by the parties. A Board, Court, Labour Court or Tribunal or an Arbitrator can allow to submit or incorporate the documents at any stage of the proceedings to sub-serve justice and effective disposal of the proceedings. The Tribunal may accept,

admit or call for evidence but that should be judicious manner not mechanically. In the present case, the Petitioner failed to prove the relevancy of the production of the documents sought for. All the documents sought to be produced are relating to criminal cases pending between the employer and workman. Those documents are not relevant for the purpose of disposal of the proceedings because the industrial dispute pending between the Petitioner and Respondent No. 2 is with regard to allegation that Respondent No. 2 was terminated illegally and given effect of premature retirement by the management of the Company. Respondent No. 2 has alleged his actual year of birth was 1966 and not the year 1962 but it is alleged that the company declared his year of birth wrongly as 1962. Therefore, the dispute between the parties is mainly on the point of date of superannuation of workman, Sri Baski Ram. Issues involved in the proceedings are totally different. Hence, additional documents relating to criminal cases pending between the parties sought to be produced before the Learned Tribunal are not at all connected or relevant for consideration and disposal of the proceedings pending before the Learned Tribunal. The allegation made against the Respondent No. 2 that he is residing and illegally occupied the quarter of the Writ Petitioner till date is the matter to be considered after final disposal of the proceedings by the Learned Tribunal. Thus, the Writ Petition is devoid of

merits. The impugned order dated 31.01.2024 passed by the Learned Tribunal does not call for interference by this Court.

17. The judgment relied by the Petitioner passed in the case of **ICI & Associated Companies Employee's Union & Anr. Vs. State of West Bengal & Ors.** is concerned. The Hon'ble High Court in the said judgment held that *"the Court or the Tribunal cannot be restrained from looking into it. Moreover, the Rule 15 of the West Bengal Industrial Disputes Rules, 1958, says that a Board, Court, Labour Court or 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. Therefore, the rule is inbuilt. But, it will be applied with great caution when disclosure and inspection applying General Rule 20C is already made and evidence is closed. Possibly, the learned Counsel appearing for the management wanted to say that by virtue of such rule a workman witness can be recalled. Therefore, the examination of the witness of the workmen cannot be said to be closed. Therefore, the examination of the witness of the workmen cannot be said to be closed. In fact, the witness action of the workmen is closed and one of the witness/management has been examined. But until and unless the evidence is entirely closed, test of veracity of the documents is open for the Court or Tribunal at any stage of the proceeding. That apart, under law of evidence re-examination is also permissible. But only caution is such mechanism will be sparingly*

used under the appropriate circumstances. Therefore, when the stage of evidence is open before the Tribunal, the deposit of any public document having face value should not be disallowed in the manner as proposed. This Court has considered only upto that point. If necessary, the parties are at liberty to examine the witness by allowing the public document and its evidentiary value. Further point is open for the Tribunal to consider in either ways.”

18. At the same time, the Hon’ble High Court in second judgment held that *“the Learned Tribunal should in exercise of its power under Rule 15 of the aforesaid rules have entertained the same, particularly when the examination of the witnesses on the side of the petitioner has not yet been concluded.”*

19. Both judgments are not applicable in the present case as the facts and circumstances of the instant case are different. The documents wanted to be incorporated in the proceedings by the writ petitioner are not at all relevant for proper and effective disposal of the case pending before the Learned Tribunal as those documents are not related to the issues involved in the proceedings pending before the Learned Tribunal.

20. In the light of above discussion, this Court does not find any sufficient reasons or cogent grounds to allow the Writ Petition. Accordingly, the impugned order dated 31.01.2024 passed by the Learned Third Industrial Tribunal, Kolkata in a Case No. 08/2022

filed under Section 10 (1B) (d) of the Industrial Disputes Act, 1947 is hereby affirmed.

21. Accordingly, **W.P.A. No. 8484 of 2024** is **dismissed**.

Connected applications, if any, are also, thus, disposed of.

22. Let a copy of this Judgment be sent to the Learned Tribunal for information by the Registry.

23. Parties will act on the server copies of this Judgment uploaded from the official website of this Court.

24. Urgent Photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)