

D/L.31.
September 11, 2024.
MNS

WPA No. 19856 of 2024

Bayer Zydus Pharma Private Limited
alias M/s. Bayer Zydus Pharma Private Limited
Vs.
The State of West Bengal and Others

Mr. Samriddha Sen
Mr. Barnik Ghosh
... for the petitioner.

Mr. A. Lahiri,
Mr. Bikash Chakraborty

...for the private respondent No. 3.

Affidavit-of-Service filed by the petitioner
be kept with the records.

The writ petition is directed against an order dated December 22, 2022 passed by the Learned First Industrial Tribunal in Case No. 03 of 2021, whereby the Tribunal allowed the application of the private respondent and directed reinstatement along with back wages, damages on account of mental agony as well as costs.

Briefly, the private respondent had filed an application under Section 2A(2) of the Industrial Disputes Act, 1947 alleging that he had joined the petitioner company on June 5, 2013 in the post of a business officer trainee at the Kolkata Headquarters. Subsequently, his services were confirmed in or around December 2013 and the private respondent was continuing to discharge his duties. Thereafter, on December 2, 2020 the

service of the private respondent was terminated post issuance of a show cause notice.

In this background, the private respondent had sought for reinstatement along with back wages and damages on account of mental agony as well as costs.

The operative portion of the impugned order reads as follows:

“I have perused the pleadings of the parties, documents filed by the Workman and the citations filed by the Workman and since the Company did not challenge the fact of the Case as claimed by the petitioner in true sense or spirit. I have found no reason to go otherwise and therefore I am constraint to hold that the dismissal of the Workman in this respect without following any lawful recourse is illegal and unjustified w.e.f. 02.12.2020 and thereafter Issue No- 1 is decided against the Company.

So considering all circumstances stated above from the unchallenged evidence of the Workman both oral and documentary I am of opinion that the Workman has succeeded to prove the case beyond all reasonable doubts and therefore, he is entitled to reliefs as prayed for.

In sum the case succeeds”.

By the impugned order, the Tribunal has also directed costs of Rs.10,000/- to be paid by the petitioner, reinstatement of the private respondent and additionally pay compensation of Rs.50,000/- on account of damages.

It is contended on behalf of the petitioner that the impugned order has been passed in violation of the principles of natural justice. There are no reasons in the impugned order. In any event, the application was liable to be dismissed

on merits. It is also alleged that the application before the Tribunal was not maintainable in view of the repealing provisions of Section 2A(2) of the Act. The impugned order also fails to consider the Written Statement and the objections which had been raised in the pleadings filed on behalf of the petitioner before the Tribunal. In support of such contentions, the petitioner relies on the following decisions. *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*; (1998) 8 Supreme Court Cases 1 and *Board of Trustees for the Port of Kolkata & Anr. vs. Vijay Kumar Arya and Others*.

On behalf of the private respondent, it is submitted that this writ petition is liable to be dismissed on the ground that the petitioner has a statutory alternative remedy under Rule 27 of the West Bengal Industrial Disputes Rules, 1958, which provides as follows:

“27. Correction of errors and review of an award.- The Labour Court, Industrial Tribunal or Arbitrator may-

(i) Correct any clerical or arithmetical mistake arising from and accidental slip or omission in any award made by it or him, and

(ii) Review an award on the ground of some mistake or error apparent on the face of the record, either of its/his own motion or on the application of any of the parties;

(iii) For sufficient cause set aside after notice to the opposite party or parties, as the case may be, the ex parte award or an award on the footing that the industrial dispute under reference is no longer in

existence either of its/his own motion or on the application of any of the parties”.

It is contended that the above Rule provides for an alternative remedy of review. It is further contended on behalf of the private respondent that despite repeated notices, the petitioner company chose to be unrepresented before the Tribunal and the Tribunal was justified in passing the order ex parte. In any event, in passing the impugned order, the Tribunal has gone into the merits of the case and considered all the aspects of the matter. In support of such contentions, the private respondent relies on the following decisions. *Pradeep Kumar Bisoi vs. Presiding Officer, Labour Court and another*; 2024(180) FLR 557, *A. V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*; 1961 AIR 1506; and *M/s. Haryana Suraj Malting Ltd. vs. Phool Chand*; AIR 2018 Supreme Court 2670.

The impugned order records no reasons at all. The Tribunal has narrated the facts of the case and arrived at a conclusion without any discussion on the merits. The impugned order is simply bereft of any reason. Reason shows as to how a judicial mind is applied to an issue at hand and conveys the nexus between the matters that have been considered and the conclusion based thereon.

[Uniworth Resorts Limited vs. Ashok Mittal (2007) 4 CHN 712].

Moreover, even though the petitioner chose to be unrepresented, the Written Objection on record filed by the petitioner was not even considered nor adverted to.

There is also no merit in the contention of the private respondent that the petition is liable to be dismissed on the ground of alternative remedy. It is well settled that Writ Jurisdiction is discretionary in nature. Ordinarily, a Writ Court is loath to exercise jurisdiction if there is an alternative efficacious remedy available to the writ petitioner unless there are exceptional circumstances. One such exceptional circumstance is where an order has been passed in violation of the principles of natural justice *[Board of Trustees for the Port of Kolkata & Anr. vs. Vijay Kumar Arya & Ors. (2009) 2 CHN 274 (DB)]*.

The question of review is neither an alternative nor an efficacious remedy. Rule 27 is neither applicable nor relevant in the facts of the case. All the decisions cited by the private respondent are distinguishable and inapposite. There has also been violation of the principles of natural justice and thus the discretion in entertaining the writ petition. In view of the above,

the impugned order is set aside. The parties are remanded back to the Tribunal to have the matter reheard after giving notice to all the parties.

It is made clear that there has been no adjudication on the merits of the claim before the Tribunal and the impugned order has been set aside purely on the ground of violation of the principles of natural justice. It is expected that the Tribunal would dispose of the above matter preferably within a period of three months from the date of communication of this order.

With the above directions, WPA No. 19856 of 2024 stands allowed.

(Ravi Krishan Kapur, J.)