

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 19923 of 2011

**Eastern Coalfields Ltd.
Versus
Smt. Janta Bauri & Ors.**

For the petitioner	:	Mr. Shiv Sankar Banerjee Ms. Sanchita Barman Roy
For the respondent no. 1	:	Mr. Partha Ghosh Ms. Simran Sureka
Heard on	:	16.01.2024
Judgment on	:	16th January, 2024.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the award dated 1st December, 2009 passed by the Central Government Industrial Tribunal cum Labour Court at Asansol, West Bengal.
2. The petitioner is a Government Company within the meaning of Companies Act, 1956. In usual course, the petitioner had appointed one, Gobardhan Bauri (hereinafter referred to as the “workman”) as an underground loader at Manoharbahal Colliery of the petitioner. Since, the workman had unauthorisedly absented himself from his

duty from 23rd April, 2001 to 23rd November, 2001, a charge sheet dated 23rd November, 2001 was issued for his unauthorized absence. According to the petitioner, an enquiry officer was appointed to enquire into the charges levelled against the workman. Since, the workman did not appear before the enquiry officer, the enquiry was held *ex parte* and the enquiry officer had given a report as regards the findings of the enquiry on 26th February, 2003, holding that the charges levelled against the workman stood proved.

3. The General Manager, Salanpur Area, as the Disciplinary Authority after going through the enquiry report submitted by the enquiry officer and while concurring with the findings of the enquiry officer, by an order dated 18/20th March, 2003 had dismissed the workman with immediate effect. At the instance of the workman, through the concerned union, a conciliation proceeding was initiated and ultimately, the conciliation having failed, by an order dated 28th December, 2006, the Central Government as the appropriate Government was, *inter alia*, pleased to refer the disputes between the parties in exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act"), for adjudication to the Central Government Industrial Tribunal-cum-Labour Court at Asansol, West Bengal, by framing the following issues:-

“ Whether the action of management of Manoharbahal Colliery of M/s. ECL in dismissing Sri Gobardhan

Bouri, U.G. Loader from service w.e.f. 20.3.2003 is legal and justified? If not, to what relief is the workman entitled? ”

4. By the self-same order, the workman concerned was directed to file a statement of claim complete with relevant documents, list of reliance and witnesses with the Tribunal within 15 days from the date of receipt of the order of reference and was further directed to forward a copy of such statement to each of the opposite parties involved in the disputes in terms of Rule 10(B) of the Industrial Disputes (Central) Rules, 1957. It is not in dispute that union espousing the cause of the workman had filed written statement, *inter alia*, praying therein as follows:-

“It is therefore prayed that the Hon’ble Tribunal may kindly declare the said dismissal order illegal and unjustified and direct the management of Manoharbahal Colliery of M/s E.C.L. to give employment to the widow of the deceased employee as per provisions of NCWA and assuming the workman in service at the time of death. The management may also be directed for payment of back wages of the workman till his date of death and all other consequential benefits.”

5. In the interregnum, however, the workman had died during the conciliation proceeding. The petitioner, however, did not file any written statement nor did it adduce any evidence. Ultimately, the Learned Tribunal by award dated 1st December, 2009 was, *inter alia*, pleased to hold that the order of dismissal dated 20th March, 2003 cannot be held to be justified and accordingly set aside the same. Since, the workman had died in the interregnum and was represented by his widow, Smt. Janta Bauri, it was provided in the

award that she shall be entitled to financial benefits which would have been disbursed in favour of the workman, had he been alive, including benefits that would lawfully flow down to the successor of the workmen, dying in service, including financial and employment.

6. The aforesaid award is under challenge.
7. Mr. Banerjee, learned advocate appearing for the petitioner, submits that the award is a non speaking award. The Tribunal overlooked the fact that not only a charge sheet was issued but the workman did not participate in the enquiry which resulted in his dismissal. As such, the Tribunal had overstepped its authority in holding that the order of dismissal passed by the petitioner was not justified. By referring to the award, it is submitted that the Tribunal had taken note of the medical certificate, though no such certificate had been produced by and on behalf of the workman.
8. Ordinarily, even if the petitioner had not filed the written statement, it was obligatory on the part of the union to prove its case. No evidence has, however, been led on behalf of the union to disprove the factum of enquiry. As such, the aforesaid order cannot be sustained. In any event, it is submitted that the Tribunal had no jurisdiction to direct grant of consequential relief in favour of the legal heirs of the deceased workman. In the facts as noted above, it is apparent that the award passed is perverse and should be set aside.

9. *Per contra*, Mr. Ghosh, learned advocate representing the legal heirs of the deceased workman, submits that although, a written statement was filed by the respondent no. 2, no written statement was filed on behalf of the petitioner. It is submitted that in absence of any written statement, no challenge can be thrown to the statements made in the written statement filed on behalf of the workman through the union. Since, it appeared that no enquiry was held prior to dismissal of service, nor any charge sheet or any enquiry report was served on the deceased workman, the Tribunal had found the said enquiry to be vitiated and the petitioner having not led any evidence in support of its contention, held that the order of dismissal is unjustified and cannot be sustained.
10. The medical report captioned as '*sick certificate*' is referred to in paragraph 4 of the written statement. Having regard to the aforesaid, it cannot be said that the award passed is based on no evidence or is perverse. He submits that the learned Tribunal is competent to pass consequential reliefs and there is no irregularity on the part of the Tribunal in issuing appropriate reliefs in favour of the legal heirs of the deceased workman. In the facts as noted above the writ petition should be dismissed with costs.
11. Heard the learned advocates appearing for the respective parties and considered the materials on record.
12. In this context, it is found that an industrial dispute was raised by the union, in effect challenging the order of dismissal of the

workman concerned, who has since, died. It is well settled that in a domestic enquiry it is the primary obligation of the employer before imposing a punishment, to conduct a proper enquiry in accordance with the provisions of the standing orders, if applicable and by following the principles of natural justice. The enquiry should not be an empty formality. Ordinarily, where a proper enquiry had been held by an employer and the findings of misconduct have a plausible conclusion, flowing from evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body.

13. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation of unfair labour practice or malafide or in case where no enquiry has been held. In such a case, where no enquiry has been held or enquiry has been found to be defective, the Tribunal in order to satisfy the decision about the legality and/or validity of the order, is obliged to give an opportunity to the employer and the employee to adduce evidence before it.
14. It is also open to the employer to adduce evidence for the first time justifying its action and it is open to the employee to adduce evidence to disprove the same.
15. The aforesaid finds support in the judgment of the Hon'ble Supreme Court in the case of ***Workmen of M/s Firestone Tyre & Rubber Co.***

of India (P) Ltd. v Management & Ors., reported in **(1973) 1 SCC 813**.

16. In the instant case although, the petitioner, as the employer has claimed that the workman was dismissed on the basis of an enquiry, and despite the reference being made, there was no challenge thrown to the contention of the union that the workman was dismissed without holding any enquiry. In the instant case, the employer chose not to controvert the statement made in the statement of claim/written statement, nor did it adduce evidence in support of its contention. The order sheet which forms part of the records, would in no uncertain terms, demonstrate that despite repeated opportunities being afforded to the petitioner, the petitioner did not file its written statement, nor did it adduce any evidence.
17. In the facts as noted hereinabove, it cannot be said that the finding rendered by the learned Tribunal, holding that the dismissal of the workman from service with effect from 20th March, 2003 could not be held to be justified, is perverse or without evidence.
18. Although, Mr. Banerjee by placing reliance on a judgment of the Hon'ble Supreme Court in the Case of ***United Bank of India v. Tamil Nadu Banks Deposit Collectors Union & Anr.***, reported in **2008 AIR SCW 642**, has tried to impress upon this Court that it was the obligation of the respondent nos. 1 and 2 to lead oral evidence to prove their case, I however, find that the judgment does not assist the petitioner at all. The issue involved in the aforesaid

judgement was whether the tribunal could permit the employer to justify the order of termination by leading evidence. The Hon'ble Supreme Court in the aforesaid case by placing reliance on the judgement delivered in the case of **Workmen of Firestone Tyre Rubber Co.** (*supra*) had in fact reiterated the legal position that it is open to the employer to lead evidence before the tribunal even for the first time in support of its contention.

19. The only other point argued by Mr. Banerjee is with regard to grant of consequential relief in favour of legal heir of the deceased workman. In this context, it may be relevant to note that the Hon'ble Supreme Court in the case of **Rameshwar Manjhi (Deceased) Through His Son Lakhiram Manjhi v. Management of Sangramgarh Colliery and Other**, reported in **AIR 1994 SC 1176** in paragraph 13 has, *inter alia*, observed as follows:

"13. It is thus obvious that the applicability of the maxim 'actio personalis moritur cum persona' depends upon the 'relief claimed' and the facts of each case. By and large the industrial disputes under Section 2-A of the Act relate to the termination of services of the concerned workman. In the event of the death of the workman during pendency of the proceedings, the relief of reinstatement, obviously, cannot be granted. But the final determination of the issues involved in the reference may be relevant for regulating the conditions of service of the other workmen in the industry. Primary object of the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman. Even otherwise there may be a claim for back wages or for monetary relief in any

other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman.”

20. Having regard to the aforesaid and once, the learned Tribunal had come to the conclusion that there was no enquiry and that the order of dismissal passed was not justified, it was open to the Tribunal to grant consequential relief in favour of the legal heir of the deceased workman. The consequential relief granted is in conformity with the service rules applicable to the deceased workmen. I do not find any irregularity in the award passed by the learned Tribunal. The petitioner has not been able to identify any material irregularity, far less any jurisdictional error committed by the learned Tribunal.
21. In view of the above, the writ petition being WPA 19923 of 2011 fails and is accordingly **dismissed** without any order as to costs.
22. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)