

07.11.2024
Ct. No. 2
Sl. No. 23
Moumita/SM

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

WPA 24847 of 2024

**South Calcutta Clinic and Anr
Vs.
The Labour Department and Ors.**

**Mr. Swarup Paul
Mr. Guru Saday Dutta
Mr. Anish Roy
..... for the Petitioners**

**Mr. Suvadip Bhattacharjee
Mr. Balaram Patra
.....for the Respondent no. 3**

**Mr. Susovan Sengupta
Mr. Manas Kumar Sadhu
.....for the State**

Affidavit-of-service filed in Court today is taken on record.

Mr. Swarup Paul, learned Counsel appearing for the petitioner.

Mr. Susovan Sengupta, learned Additional Senior Government Pleader appears for respondent nos. 1 and 2.

Mr. Suvadip Bhattacharjee, learned Counsel appearing for the respondent no. 3.

The petitioner is the employer and the respondent no.3 is the employee. The employer through this writ petition has challenged the impugned order dated on **13th July, 2024** passed by referee under the

West Bengal Shops & Establishments Act, 1963 (for short, **the 1963 Act**).

The facts which were extremely relevant are only narrated. The respondent no. 3 is an employee of the petitioner. The petitioner issued a transfer order and transferred the employee from its one establishment to other. The employee refused to join at the transferred place. According to the petitioner for a certain period during this transferred phase the employee did not join the transferred place and accordingly wages were not paid to the employee. The petitioner claims that since the transfer was valid and lawful the question of payment of wages to the employee for the period during which the employee did not provide service to the employer is not payable.

Mr. Swarup Paul, learned Counsel appears for the petitioners employer submits that challenging the transfer by the employee, the issue is pending before the learned **7th Industrial Tribunal** and proceeding has been registered as **G.O Labr. 767/(LCIR) IIL-41/16 dated 10th August, 2022** filed under the **Industrial Disputes Act, 1947**.

He further submits that claiming wages the employee has also initiated a proceeding under the **Shops and Establishments Act** and the same is also pending.

Mr. Paul, learned counsel submits that since the main issue is transfer which is pending for adjudication before the **Industrial Tribunal** unless the same is finally decided, the question of paying any wages to the employee, as claimed by him, does not and cannot arise.

Hence, he prays for stay of the proceeding initiated by the employee under the **Shops and Establishments Act**.

Mr. Bhattacharya, learned counsel appearing for the employee, the respondent no.3, has denied and disputed the contention of Mr. Paul. He submits that, the transfer was illegal. He submits that, he has not absented from his duty. He further submits that, the employer has wrongly and illegally withheld the payment of wages payable to the employee. He further submits that, the period for which the employee has claimed his wages is During **August, 2017 and November, 2017**.

Mr. Susovan Sengupta, learned counsel appearing for the respondent nos. 1 and 2 submits that the impugned order passed under the **Shops & Establishment Act** at **page 74** to the writ petition is just and valid and should not be interfered with. He further submits that, the impugned order is a final order since it has held that, the proceeding is maintainable under the **Shops & Establishment Act**.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the two proceedings one has been initiated under the **Industrial Disputes Act** and the other one is under the **Shops & Establishment Act** are independent in their nature. The scope of the two proceedings are totally different from each other. It is true that, the proceeding initiated under the **Shops & Establishment Act** claiming wages has also arisen from the issue of transfer and challenging such transfer the proceeding is pending under the **Industrial Disputes Act**.

In the event the transfer is held to be lawful and valid then whether the unpaid wages claimed by the petitioner is payable, if the period for wages claimed is during the transferred period, will depend on the decision of the industrial tribunal. Similarly, if the wages are directed to be paid under the **Shops & Establishment Act** but ultimately the transfer is held to be valid at a later stage, then there shall be a chance of multiplicity of the judicial proceeding for recovery of wages from the employee or an adjustment thereof by the employer.

In view of the foregoing discussions and reasons the following directions are passed :

- i) The proceeding pending before the 7th Industrial Tribunal under the Industrial Disputes Act is directed to be concluded in accordance with law after granting an opportunity of hearing to the parties thereto positively within a period of **one year** from the date of communication of this order.
- ii) Similarly, the authority under the Shops & Establishment Act shall also conclude the proceeding in accordance with law after granting an opportunity of hearing to the parties thereto positively within a period of **one year** from the date of communication of this order but the authority under the Shops & Establishment Act shall not pass and publish any final order until the final decision of the Industrial Tribunal is communicated to it.
- iii) Upon communication of the final decision of the Industrial Tribunal, the authority under the Shops & Establishment Act shall pass its final order positively within a period of **two months** from the date of communication of the said order of the Industrial Tribunal.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

It is made clear that, this Court has not gone into the merits of the rival contentions of the employer or the employee and they shall be at liberty to urge whatever points they wish to urge before the two respective fora as mentioned above. The two respective fora shall proceed to conclude the proceeding before them in accordance with law and without being influenced by any observation made by this Court.

With the above observations and directions this writ petition, **WPA 24847 of 2024** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)