

M/L 2495
07.11.2025
sb
Ct 3

WPA 11749 of 2019
(Assigned)

A.P Fashions Pvt ltd
Vs.
Government of West Bengal & Ors.

Mr. Soumik Ghosh
Mr. Karuna Bose
.... For the writ petitioner/company

Mr. Nayan Rakshit
Mr. Nilay Rakshit
... For the applicant/respondent no.2.

Mr. Susanta Pal
Mr. Ananda Dulal Sarkar
... For the State.

1. The writ petition has been assigned before this Court and is accordingly taken up for consideration. Affidavit-in-opposition filed in Court today on behalf of the respondent no.2 is taken on record.

2. The instant writ petition has been filed challenging the Award dated 26th September, 2018, passed by the learned 7th Industrial Tribunal, West Bengal, in Case No. 23/2A(2)/2015.

3. The proceeding had originated when the respondent no.2 i.e. Susanta Kumar Sarkar had filed an application under Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”) on 24th March, 2015 against the writ petitioner/company claiming that the respondent no.2 was an employee of the said company

and that his employment was unlawfully terminated under the veil of forced resignation with effect from 1st October, 2014.

4. Upon a proceeding being registered, the learned Tribunal had directed the parties to file their respective written statements. Pursuant to the above, not only the respondent no.2 but the company also filed their respective written statements.

5. As per the case of the respondent no.2, he had joined the company on 26th July, 2010 and had worked continuously with honesty and efficiency and without any interruption up to the date of termination of his service with effect from 1st October, 2024, which the respondent no.2 claims to be on account of forced resignation. It is also the respondent no.2's case that a representation was made on 22nd December, 2014 but since the company did not respond and the respondent no.2 having waited for 45 days after initiating conciliatory mechanism and having not succeeded there-at a proceeding was filed before the tribunal. As per the respondent no.2 no disciplinary action was initiated and as such the aforesaid termination is a clear case of retrenchment within the meaning of Section 2(oo) of the said Act and as such he sought for reinstatement with full back wages and consequential reliefs.

6. Records would reveal that the company had denied

the contention of the respondent no.2 and had filed the written statement dated 22nd June, 2015 highlighting that the respondent no.2 was found unfit for the post, however, taking humanitarian ground the company did not terminate the respondent no.2 but had granted him further time and scope to improve his work to meet at least the minimal expertise required for the post. According to the company, since, the respondent no.2 was not fit for the post and did not have the required expertise, the respondent no.2 sought to and had resigned. Subsequently, when the respondent no.2 did not get any better opportunity, he filed the instant case as and by way of an afterthought.

7. On the basis of the pleadings the learned Tribunal had framed the following issues.

1. Whether the alleged termination of service of Susanta Kumar Sarkar is justified or nor?

2. To what relief, is he legally entitled to?

8. The respondent no.2 had examined himself and was also cross-examined at length. Twenty-six (26) several exhibits were marked in favour of the respondent no.2 as Exhibit 1 to 26 series. The company examined Sri Rajesh Agarwal who was also cross-examined at length and seven (7) documents were tendered and marked as Exhibit-A to Exhibit-G series. Details of the documents marked as

Exhibit1 to Exhibit 26 series and the Exhibits-A to Exhibit-G series have been detailed out in the Award.

9. It may be noted that on the basis of the evidence led and upon going through the documents, inter alia, including the Exhibit 18 which is a letter dated 15th December, 2014 issued by the company the tribunal had observed that the HR department of the company had called upon the respondent no.2 on 12th December, 2014 and asked him to provide proper resignation letter, however, when the respondent no.2 refused to give such resignation, the HR department had asked him to join his service from the next date i.e. 13th December, 2014.

10. As per the award, Exhibit 18 would demonstrate that the company had asked the respondent no.2 to join the service without any further delay within 7 days from receiving the letter dated 16th December, 2014. The Tribunal having examined the relevant exhibits including Exhibits-13, 17 and 18 noted that it was an admitted position between the parties that no formal resignation letter was submitted by the respondent no.2. The learned Tribunal also concluded that the company was insisting upon the respondent no.2 to submit a formal resignation and to collect his final dues. On the basis of the above, the learned Tribunal concluded that there was no formal resignation though the company insisted for the same and in light of the evidence available, the Tribunal came to a

conclusion that the company had terminated the services of the respondent no.2 by way of refusal of employment with effect from 1st October, 2015. The learned Tribunal further came to a conclusion that in absence of a disciplinary enquiry and penal action, the same constitutes a case of retrenchment as defined in Section 2(oo) of the said Act. The learned Tribunal also concluded that the respondent no.2 was in continuous service and accordingly held that by retrenchment of the respondent no.2, the company had acted in violation of the provisions of Section 25B of the said Act. Following the above, the Tribunal ordered as follows:-

i) *“That the termination of employment of the applicant Susanta Kumar Sarkar by the OP/Company M/s. A.P. Fashions Pvt. Ltd. w.e.f. 01.10.2014 by way of refusal of employment, be and the same is hereby held to be unjustified and unlawful and violative of Section 25F and such other provisions of the Industrial Disputes Act, 1947, and accordingly such termination is declared to be illegal and void and the same is set-aside;*

ii) *That the service of the applicant Susana Kumar Sarkar are directed to be reinstated with the OP/Company M/s. A. P. Fashions Pvt. Ltd. w.e.f. 01.10.2014 with further direction upon the OP/Company to pay full back wages to the applicant as well as to accord full consequential benefits. In line with such reinstatement of the applicant in*

their service;

iii) That, in the facts and circumstances of this case, thee shall be on order as to costs”

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. Mr. Ghosh, learned advocate representing the alleged petitioner /company has tried to impress upon the Court that the respondent no.2, in fact, had tendered his resignation by an e-mail communication. I find, that such contention upon appreciation of evidence had been turned down by the Tribunal. This court while exercising, its jurisdiction of judicial review cannot reopen or reappraise evidence. The finding of fact returned by the tribunal has to be accepted by the court. This court cannot reopen the factual aspects and take a decision afresh. Upon considering the award the materials on record this Court did not find any irregularity in the consideration of the Tribunal; the petitioner has also not been able to identify any. The Tribunal has specifically noted that it was an admitted position of the parties that formal letter of resignation had not been submitted by the respondent no.2. The learned advocate for the petitioner company has, however, attempted to make out a case that the respondent no.2 was not a permanent employee. I find that the Tribunal on the basis of available materials has returned a finding that the respondent no.2 was in

continuous service. As noted earlier there is no scope to re-appreciate the evidence at this stage. The finding reached by the Tribunal is not irregular or inconsistent with the Exhibits and the evidence on record. I find that there is enough evidence to support the findings reached by the Tribunal that the respondent no.2 did not tender any resignation, and was in continuous service. Independent of the above, although, the learned advocate for company has attempted to make out a case that the respondent no.2 was on probation and was a contractual employee, such case, in my view, cannot be put forth at this stage before this Court for the first time.

12. I find that the Tribunal has dealt the matter in detail and has considered the same on the basis of the available documents and the materials on record, inter alia, including the Exhibits. The learned advocate for the company has been unable to demonstrate perversity in the order. It is also not the case of the company that there has been denial of opportunity or violation of principles of natural justice.

13. Accordingly, the challenge to the Award cannot be sustained and no interference is called for. The writ petition is accordingly dismissed. All consequences shall accordingly follow.

14. The amount deposited pursuant to the order passed by the Division Bench of this Hon'ble Court on 29th April,

2024 read with the order dated 28th July, 2025 in the light of the observation made in the order dated 29th April, 2024, be released by the learned Registrar General in favour of the respondent no.2 along with accrued interest, as expeditiously as possible, preferably within a period of two weeks from the date of communication of this order, if necessary, by prematurely encashing the fixed deposit.

15. The writ petition is disposed of accordingly.

(Raja Basu Chowdhury, J.)