

10.03.2025
Court No.13
Item No.15
Pk/ap

**FMA 54 of 2025
CAN 1 of 2024**

**M/s. Jaya Shree Textiles
Vs.
The State of West Bengal & Ors.**

Mr. Soumya Majumder, Sr. Adv.
Mr. Victor Chatterjee

.....for the appellant.

Mr. T. M. Siddiqui,
Ms. Tanoy Chakraborty,
Mr. Saptak Sanyal

.....for the State.

1. The instant appeal arises out of an order dated 30th September, 2024 passed by a Single Bench of this Court in RVW 82 of 2023 in WPA 16391 of 2021.
2. The Court while reviewing its judgement dated 12.04.2023 refused to accept the argument of the management/appellant that the workman was not prejudiced for being denied an opportunity of availing a lawyer services in a domestic enquiry conducted against him.
3. The brief facts relevant to the case are that the original writ petition WPA 16391 of 2021 was filed challenging an interim award dated 7th May, 2021 in Case No. 1 of 2016 under Section 2A(2) of the Industrial Disputes Act, 1947, passed by the 3rd Industrial Tribunal, Kolkata.

4. In the said writ petition, the employer challenged the constitutional vires of Section 2A(2) of the Act of 1947. Dismissing the writ petition of the employer on the said challenge, the Single Bench did not enter into the merits of the interim award dated 7th May, 2021 passed by the Tribunal.
5. It would be an appropriate stage to set out the facts which led to passing of the said interim award by the 3rd Industrial Tribunal, West Bengal. The respondent Workman was charged with theft of the cables manufactured by the appellant company. A charge sheet was issued under the applicable standing orders. Enquiry and presenting officer were appointed. The Workman considering the experience and bio data of the presenting officer applied before the management to avail the services of the lawyer to defend himself in the domestic enquiry. The request was denied. The enquiry proceeded with the workman represented by a union leader in the industry. Witnesses produced by the management were cross examined at length. The Workman reexamined himself in course of enquiry.
6. The enquiry officer completed enquiry and submitted an enquiry report to the disciplinary authority who passed the order of dismissal of the workman from the services.

7. The matter was referred by the workman under Section 2A(2) of the Act of 1947. The Tribunal repelled the contention of the management that Section 2A(2) was not applicable. The Tribunal, however, found that the workman was prejudiced in the enquiry because he was not allowed to be defended by the lawyer. Several decisions cited by both the management and the workman's lawyer before the Tribunal came to be considered. The Tribunal found favour with the decision of the Supreme Court in the case of **Sur Enamel and Stamping Works Ltd. Vs. The Workman** reported in **1963 (7) FLR 236** and also the decision of the **Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others** reported in **(1983) 1 SCC 124**.
8. The Tribunal thereafter proceeded to direct the management to lead evidence in support of the order dismissed against the workman afresh, under Section 11A of the Act of 1947.
9. Aggrieved by the order of the Tribunal, the management filed the writ petition before the Single Bench when initially only the interim award to the extent of the legality of the applicability of Section 2A(2) of the Act of 1947 was dealt with by the Single Bench of this Court. On a review application, however, when the impugned order was passed, certain observations were made

upholding the interim award of the Tribunal as regards prejudice to the workman for not being allowed to be defended by a lawyer in the domestic enquiry.

10. This Court has carefully considered the decision of the **Board of Trustee case (supra)**. In the said decision, the Supreme Court found that the Bombay Port Trust had specially engaged a team of lawyers to present the case of port trust against the workman concerned in the domestic enquiry. It is in that back drop the Supreme Court held that the workman was seriously prejudiced and rightly so.

11. Insofar as the decision of **Sur Enamel (supra)** was dealing with an enquiry prior to the introduction of Section 11A of the Act of 1947. The question that arose for consideration there was recording of statements of witnesses behind the back of the delinquent employee. The **Sur Enamel decision (supra)** may not have come to the aid of the workmen by any stretch of imagination.

12. The Hon'ble Supreme Court of India has consistently held that if the Management is represented by a legally qualified and trained person, notwithstanding any Rules to the contrary, the workmen would be entitled to be represented by a Lawyer. There is a huge difference between the expressions "legally qualified" and "legally trained". The expression "legally

trained” would possibly attract the dicta of the Hon’ble Supreme Court of India in the case of **Board of Trustees of the Port of Bombay (supra)**.

13. However a legally qualified person may not be legally trained. Every other Personnel Officer in the Industrial Department or the Personnel Department of any public or private sector would invariably have a LLB Degree. Such degrees are until recently available easily and obtained by serving personnel in public sector by undergoing evening classes/part time courses. That by itself would not amount to being legally trained which only a practicing Lawyer would acquire. Long experience in the Industrial or Personnel Department, could obviously give more training to a person representing the Management engaged thereat. Using such person with a mere degree of law, as Presenting Officer, would not ipso facto, therefore, entitle a workman in a domestic enquiry to the services of a Lawyer.

14. In the instant case, this Court sees that the workmen had in extensio cross-examined the Management witnesses. He had also re-examined himself. The tenor of cross-examination scrutinized by this Court invariably indicates, an experienced and seasoned hand in defending domestic enquiries against the workmen and the employees.

15. This Court is, therefore, unable to agree with the Interim Award and the findings of the learned Single Bench in review that the workmen was seriously prejudiced in being denied the services of a Lawyer in the domestic enquiry.
16. This Court, however, in the peculiar facts of the case and having considered the evidence on record, does not wish to disturb the findings in the Interim Award against the Management and in favour of the workmen. Such findings would now place both the parties before the Tribunal under Section 11A of the Act of 1947 to re-establish and prove their case afresh.
17. As many as 14 years have elapsed since the date of the incident, it is unlikely that any of the witnesses of the management would be available for any side to lead evidence afresh.
18. In the above circumstances, this Court directs that the Tribunal shall after giving a fair and appropriate and comprehensive opportunity to the workman's representative and that of the Management to re-appreciate the entire evidence that is available on the record of the Enquiry Officer. Such re-appreciation shall be independent, impartial and fair. In the process of such re-appreciation, the Tribunal shall also be entitled to and the parties shall, if necessary, address the Tribunal on the quantum of punishment, if at all, to be imposed on the workmen.

19. This Court requests the Presiding Officer of the Third Industrial Tribunal at West Bengal seized of Reference Case No. 01/2016 under Section 2A(2) to dispose of the reference within a period of two months from date as far as possible.
20. Given the fact that the workman is apparently out of employment for a substantial period of time and ought to have atleast before the Tribunal filed an application under Section 15(2)(b) for interim relief, this Court directs the Management to pay an ad hoc sum of six months' wages, last payable to the workman. Such wages shall thereafter be paid month by month during the period when the reference shall be pending before the Tribunal.
21. With the aforesaid discussions and observations, the instant appeal shall stand disposed of.
22. In view of disposal of the appeal itself, the connected application being CAN 1 of 2024 shall also stand disposed of.
23. There will be no order as to costs.
24. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)