

(2013) 12 CAL CK 0002

Calcutta High Court

Case No: W.P. Nos. 7063 (W) of 2012 and 27330 (W) of 2013

Murlidhar Ratanlal Exports
Limited and Another

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Dec. 17, 2013

Citation: (2014) 1 CALLT 314

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Harish Tandon, J.

The petitioner has assailed the award passed by the First Labour Court, Kolkata whereby and whereunder the order of termination was declared to be arbitrary and unjust and the petitioner was directed to pay full back wages with all consequential benefits from the date of termination till the date of superannuation in W.P. 27330 (W) of 2013. The subject matter of W.P. 7063 (W) of 2012 is an order, No. 63 dated 20th July 2009, passed by the First Labour Court, deciding the issues numbers 1, 2 and 3 separately keeping the other issue to be decided later on.

2. The fact emerges from the respective pleadings is that the private respondent was issued a show cause notice as to why he should not be terminated from service. A domestic enquiry was conducted which culminated into dismissal of the private respondent from service. The private respondent approached Assistant Deputy Labour Commissioner, Government of West Bengal by filing a representation dated 23rd October, 2000. While the matter was under consideration before the Conciliation Officer, i.e. the Assistant Deputy Labour Commissioner, an application was made on 24th November 2000 for issuance of a certificate. The Conciliation Officer, on 5th December 2000, issued the Certificate of pendency of the conciliation proceedings. An application is made before the Labour Court u/s 10(IB)(d) of the

Industrial Disputes Act. The petitioner filed a written statement in the said proceeding and subsequently submitted suggested issues before the First Labour Court, West Bengal. On the basis of the suggested issues by the respective parties the Court framed the issues. Subsequently, the Court thought that issues Nos. 1, 2 and 3 should be decided in segregation to the other issue. It would be profitable to quote the issues framed by the Labour Court which are as follows:

1. Is the application maintainable in law?
 2. Is the Certificate issued by the Conciliation Officer under Clause (a) sub-section 1(B) of section 10, I.D. Act in conformity with the provisions of law?
 3. Is the result of the domestic enquiry binding upon the employee?
 4. Is the employee entitled to get relief? If so, what relief he is entitled to?
3. Simultaneously, the Labour Court directed the issues Nos. 1, 2 and 3 to be taken up as preliminary issues as it relates to the point of domestic enquiry.
4. By order No. 63 dated 20th July 2009, the preliminary issues are decided which is the subject matter of W.P. 7063 (W) of 2012.
5. Subsequently the other issue was taken up and is decided in the form of a final award which is the subject matter of W.P. 27330 (W) of 2013.
6. Mr. Arunabha Ghosh, the learned advocate appearing for the petitioner, attacks both the orders on two fold grounds; firstly that the Conciliation Officer has issued the Certificate, under Rule 12A of the West Bengal Industrial Disputes Rules, 1958, before expiration of the prescribed period and secondly, the Labour Court, after framing the issues, should have given another opportunity to the petitioner to file written statement against such issues.
7. Basically, on these two grounds the order dated 20th July 2009 and the final award are sought to be assailed in these two writ petitions.
8. The respondent workman says that issuance of a certificate before the prescribed period, provided under Rule 12A of the West Bengal Industrial Disputes Rules, 1958, is not incurable or fatal resulting into dismissal of a proceeding before the Labour Court.
9. It is further submitted that the provisions, contained under Rule 12A of the said Rules, are directory in nature and not mandatory. In support of the aforesaid contention, reliance is placed upon the Division Bench judgment of this Court in the case of [Ludlow Jute and Specialities Ltd. and Another Vs. State of West Bengal and Other, .](#)
10. It is audaciously submitted that the plea, that the Labour Court ought to have provided an opportunity to file written statement after framing of the issues, was neither taken before the Labour Court nor in the writ petitions filed before this

Court. According to him, a statement from the Bar, in absence of pleading in support thereof, cannot be allowed to be made.

11. In reply, the petitioner relies upon Form T, prescribed under Rule 12A(4) of the said Rules, to contend that the hearing is restricted to the framing of issues and, therefore, the Court ought to have given an opportunity to the petitioner to file written statement.

12. To strengthen the above submission, it is further contended that if a thing is required to be done in a particular manner, the same should be done in such manner and reliance is placed upon a judgment of the apex Court in the case of [Narbada Prasad Vs. Chhaganlal and Others](#) .

13. From the respective submissions, a point, which emerges for consideration, is whether the proceedings initiated by the private respondent before the Labour Court, on the basis of a certificate relating to the pendency of the Conciliation Proceedings having obtained before the prescribed period, be termed to be bad and should be dismissed upon consideration by Labour Court on issues, without affording opportunity to file written statement after framing issues, can be said to be illegal and irregular so as to render the proceedings liable to be dismissed.

14. Before proceeding to deal with the aforesaid points, it would be apt to quote the provisions contained under Rule 12A of the West Bengal Industrial Disputes Rules, 1958:

[R. 12A. Settlement of dispute on representation from individual workman.

(1) The Conciliation Officer on receipt of a representation relating to an individual workman shall investigate the matter and if he is satisfied that an industrial dispute exists, he shall take all such steps as he thinks fit and proper for the purpose of inducing the parties to come to a speedy, fair and amicable settlement of the dispute.

(2) If no settlement of the industrial dispute mentioned in sub-rule (1) is arrived at within a period of 60 days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer personally or by registered post with acknowledgement due in

Form P-4 for a certificate about the pendency of the conciliation proceedings before such Conciliation Officer.

(3) The Conciliation Officer, on receipt of the application referred to in sub-section (1B) of section 10, shall within 7 days from the date of receipt of such application, issue a certificate about the pendency of conciliation proceedings to the applicant in Form S.

(4) The party may, within a period of 60 days from the date of receipt of such certificate or when such certificate has not been issued within 7 days under sub-rule

(3), within a period of 60 days commencing from the day immediately after expiry of 7 days as aforesaid, file an application in Form T to such Labour Court or Industrial Tribunal as may be specified by the State Government by notification in the Official Gazette.]

15. On a meaningful reading of the aforesaid provisions, it appears that Conciliation Officer, on receipt of the representation, shall make an investigation and shall satisfy himself that industrial dispute exists and thereafter would take utmost steps to induce the parties to come to a speedy, fair and amicable settlement of the dispute.

Sub rule 2 of 12A of the said Rules provides if the settlement could not be arrived at within sixty days from the date of raising of the dispute, the party may apply before the Conciliation Officer for a certificate in prescribed manner relating to pendency of the said proceedings.

Sub rule 3 of 12A of the said Rules cast a duty on the Conciliation Officer to issue such certificate within seven days from the date of such application in Form S.

Sub rule 4 of 12A of the said Rules provides a period of limitation for making an application before the Labour Court or the Industrial Tribunal in prescribed form, i.e. Form T.

For the purpose of convenience, Sub-rule 4 of 12A of the said Rules which prescribes Form T it would be profitable to reproduce Form T which is reproduced hereunder:

Form T

[See Rule 12A(4)]

Before the.... Labour Court/Industrial Tribunal (specified under the Government of West Bengal, Labour Department Order No. ... dated....)

In the matter of an industrial dispute

Between

...the appellant,

And

...the opposite party,

Your abovementioned applicant begs respectfully to submit as follows:

THAT WHEREAS by a representation dated.... your applicant has raised an industrial dispute relating to....

AND WHEREAS the Conciliation Officer started conciliation proceeding but failed to arrive at a settlement within a period of sixty days from the date of raising of the dispute;

AND WHEREAS the said Conciliation Officer has issued a certificate about the pendency of conciliation proceeding (copy enclosed) as provided in section 10(1B)(b) of the Industrial Disputes Act, 1947.

NOW, THEREFORE, your applicant prays that cognizance be taken of this application and notices be issued to the parties for hearing the matter and for framing issues for an adjudication thereof as provided in section 10(1B)(d) of the Industrial Disputes Act, 1947.

16. Rule 12A of the said Rules is introduced vide notification No. 1806-IR dated 12th November 1993 which permits a party to a pending conciliation proceeding to approach the Labour Court after obtaining pendency certificate.

17. According to Mr. Ghosh, right to obtain certificate accrues only upon expiration of sixty days from the date of raising the dispute and not before; and the same would appear from the contextual reading of the language provided under Sub-rule 2 of 12A of the said Rules.

18. Admittedly, an application for issuance of the certificate is taken out within a period of sixty days from the date when the dispute was raised. In fact, the Conciliation Officer issued the pendency certificate within the said period, This Court, upon reading of the provisions contained under Sub-rule 2 of the Rule 12A of the said Rules, would have accepted the aforesaid submission made by Mr. Ghosh, until the judgment of the Division Bench of this Court is noticed.

19. A similar and identical point was raised before the Division Bench and it is held that the provisions contained under Sub-rule 2 of Rule 12A of the said Rules is directory in nature and not mandatory. The Division Bench took a pragmatic view holding that if a proceeding is to be drawn after contested hearing on the point which could have been raised at the very first step without waiting to file any counter statement and inviting the Labour Court to frame issues thereupon such the action cannot be said as void ab initio to oust the workman from legal arena for adjudication of his case by a competent Labour Court. In this context it would be profitable to quote paragraph 19 and 21 wherein the Division Bench observed:

19. As it appears that the West Bengal Amendment was made for the purpose of providing benefits to the workman concern to have adjudication of dispute by the adjudiciary body namely, Labour Court or the Tribunal by filing application upon having a certificate from the Conciliation Officer about pendency of the conciliation proceeding. The condition precedent or the sine qua non of maintainability of the said application under Clause C of the said section is only to see whether a conciliation proceeding was pending on that date or not. Time limit therein as prescribed by using the word "may" under Clause A practically. is a directory provision and it is not at all a mandatory provision. Clause C and Clause A if read together, it appears that conceptual idea to raise the industrial dispute postulates right to handle own case by filing application when a conciliation proceeding is

pending and not adjudicated within sixty days from the date of raising that dispute before the Conciliation Officer. The time limit, accordingly, cannot be construed as a mandatory provision to reject the application filed by the workman under Clause C aforesaid. Grant of certificate prior to sixty days, cannot be construed as a lapse of such a degree that the action would be rendered as void-ab-initio. At best it could be said that there is an irregularity and Conciliation Officer ought to have waited till sixty days from the date of raising the dispute to issue any certificate. For that irregularity, the action cannot be said as void ab initio to oust the workman from legal arena for adjudication of his case by a competent Labour Court. If the issue considered in another angle, it appears that the statute prescribed a time limit of 60 days u/s 12 to complete the conciliation proceeding either by settlement of it or by submitting a report to the appropriate government though the provision is not mandatory but a directory one.

20. If we consider the intention of the legislatures to stipulate the time limit, naturally a question will evolve that within 60 days everything should be completed u/s 12 sub-section (6). If it is considered that within 60 days conciliation proceeding is to be completed either by settlement or by submitting a report, naturally within 60 days the limit the workman gets right to approach the Conciliation Officer for a certificate about pendency of the conciliation proceeding under Clause A of sub-section (1-B) and the action cannot be said as so grave and so fatal that it could be declared as null and void. Furthermore, it is a basic principle of statutory provision that a conceptual idea for incorporating a statutory provision will be taken note of to provide the benefit for whom such beneficial legislation is provided. With that idea, the filing of an application prior to expiry of 60 days and roughly on 55 days from the date of filing the dispute before the Conciliation Officer by the workman-respondent cannot be said as an action to nullify his subsequent action to raise an action raising a dispute further by an application under Clause C of the said act, being State Amendment, subsequently before the concerned Labour Court. Grant of certificate also cannot be said as an illegal action on the part of the Conciliation Officer. Besides the aforesaid point, it appears that the concerned employer or the company has not suffered any prejudice due to lapse or irregularity even if any for filing of application by the workman prior to expiry of 60 days before the Conciliation Officer requesting to grant certificate and thereby grant of said certificate by the said Officer before expiry of such 60 days. As the provision is within the domain or field of procedural law, the point as taken by the writ petitioner-appellant before us to nullify the application filed before the Labour Court is not legally sustainable. So far as the second point is raised about the delay in filing the application before the Labour Court on the factual parameter as discussed namely, the filing of the application before the Labour Court on the factual parameter as discussed namely, the filing of the application initially to a Labour Court having no territorial jurisdiction and thereafter withdrawal of the same and re-filing in competent Labour Court having territorial jurisdiction, we are of the view

that lapse also could not be considered as so fatal to non-suit the workman for proper adjudication of the dispute by the proper Labour Court. (emphasis supplied)

21. Additionally, this Court finds that if at this stage the said plea is allowed, it would only result in issuance of a fresh certificate with a fresh number relating to pendency of the proceedings.

22. The parties are litigating since 2000 and this is a high time when the conclusion should come to its logical end. The Division Bench has expressed that the provisions contained under Sub-rule 2 of Rule 12A of the said Rules is directory in nature and not mandatory and further held that issuance of the certificate before expiration of sixty days from the date of raising the dispute is not fatal but may be termed as irregular not resulting in the dismissal of the proceeding.

23. This Court, therefore, holds that the first point, as canvassed before this Court, should be answered in negative; meaning thereby that the proceeding initiated on the basis of a certificate issued before expiration of sixty days cannot be held to be nonmaintainable and/or non-entertainable.

24. So far as the second plea is concerned, there is no doubt that the last paragraph of Form T requires that adjudications are to be made for hearing of the matter and for framing issues for adjudication thereof u/s 10(IB)(d) of the Industrial Disputes Act, 1947.

25. In the present case, after an application is filed by the private respondent, the petitioner appeared and filed the written statement. The petitioner even filed the suggested issues, on the basis thereof the Labour Court framed the issues for the purpose of determination. It further appears that the Labour Court, at the time of framing issues indicated that issues Nos. 1 to 3, which relates to departmental enquiry, should be decided as preliminary issues and the issue relating to relief should be decided later on. It does not appear from any document, annexed to these writ petitions, that the petitioner has ever raised any objection relating to non-grant of an opportunity to file written statement after framing of the issues. My endeavour has also failed to find out any whisper in the writ petitions relating to the aforesaid plea having been taken before this Court.

26. There is no quarrel to the proposition of law that if a thing is required to be done in a particular manner, it must be done in that manner or not at all, as has been held by the Supreme Court in the case of *Narbada Prasad (supra)*.

27. The argument made for the first time at the Bar which cannot be termed to be a pure question of law but depends upon facts as well as law should not be allowed to be addressed for the first time before the High Court and the High Court, exercising the power of judicial review should adjudicate the same, It would be different if no opportunity to file written statement was provided by the Court than filing of written statement before framing of issues. Issues are, in fact, framed on the suggestions

made by the parties, including the petitioner.

28. This Court, therefore, finds that in the peculiar facts and circumstances of the case, it would be mere an idle formality if permission is given to the petitioner to file written statement after the framing of issues. Because of special facts, this Court does not delve to decide the second issue whether the Labour Court should have heard the parties at the stage of framing issues and then permit the employer to file written statement or the employer should file written statement before framing of issues.

29. On the findings made hereinabove, this Court does not find that the impugned order in W.P. 27330 (W) of 2013 and the final award impugned in W.P. 7063 (W) of 2012 requires any interference. With the aforesaid observations both the writ petitions are dismissed without any order as to costs.

Urgent photocopy certified copy of this order, If applied for, be given to the parties, on priority basis.