

(2006) 1 CHN 469

Calcutta High Court

Case No: Writ Petition No. 896 of 2003

Bhudar Chandra Pal

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: Sept. 21, 2005

Acts Referred:

Constitution of India, 1950 – Article 136, 226#Industrial Disputes Act, 1947 – Section 10(1), 10A, 11A, 15(1), 15(2)

Citation: (2006) 1 CHN 469

Hon'ble Judges: Arun Kumar Mitra, J

Bench: Single Bench

Advocate: Arunava Ghosh and Anant Kr. Shaw, for the Appellant; Dipak Kr. Ghosh, for the Respondent No. 3, for the Respondent

Judgement

Arun Kumar Mitra, J.

The petitioner in this writ petition was originally appointed as Card Writer-Record Keeper and he was appointed in

the year 1976. The petitioner was promoted as a Clerk in the salary and wages Section of the respondent No. 3 in 1982 and according to the

petitioner since then he had been rendering satisfactory services to the respondent No. 3 with his utmost sincerity and honesty. The petitioner is

an workman within the meaning of Industrial Disputes Act, 1947.

2. The petitioner challenges an order passed by the respondent No. 2 whereby the said respondent refused to entertain an application u/s 15(2)(b)

of the Industrial Disputes Act, 1947 on the ground that no prima facie case has been made out by the applicant at that stage in order to ascertain

his chance of success in this case.

3. The background as made out in the writ petition is inter alia as follows :

There is a system in the respondent No. 3 Company that on the pay days, if any of the employee of the Company of the respondent No. 3 is

absent then any authorized representative of the absentee employee, which authorized representative should be an employee of the respondent No.

3 Company can draw the wages of the absentee employee on production of the authority letter. In this case the petitioner on receipt of such an

authority letter used to issue a payment voucher to the representative who used to give thumb impression or sign in the Payment Register the name

of the absentee employee and would receive the voucher wherein the name of the absentee was to be written by the petitioner. The authorized

agent is to place the said cash payment voucher in cash section, who upon verification of the voucher will disburse the cash to the authorized

representative.

4. On 13.02.1997 one operative Sri Sisir Kr. Palodhy of the Pipe Shop came with an authority letter for drawing the unpaid wages of January,

1997 of Sri Gour Chandra Naskar for which he could not come to the office to collect wages. On the basis of the authority letter and the

endorsement of the Senior Accounts Officer, Salary and Wages section, the payment voucher was handed over to Sri Palodhy and he collected

the wages after the voucher was verified by the cash department on being deposited therein. Sri Naskar had also admittedly, received his wages

for the month of January, 1997.

5. After a long period of more than one month, the petitioner was handed over a suspension letter along with a chargesheet both dated

28.03.1997. One receipt of such chargesheet the petitioner gave a reply dated 08.04.1997 categorically denying the charges levelled against him

and stating inter alia that the rules and norms prevailing for payment of wages to the absentee workers in the company of the respondent No. 3

was duly followed in the case of Gour Chandra Naskar also.

6. In spite of receipt of such reply, which according to the petitioner, contained the confirmatory statement of Sri Gour Chandra Naskar having

received his wages for January, 1997, the Management with a predetermined mind decided to initiate disciplinary action against the petitioner.

7. In the reply to the chargesheet, the petitioner categorically stated the procedure of giving wages through the authorized person. It was also

mentioned in the reply that Sri Gour Chandra Naskar wrongly mentioned the ticket No. of his authorized person which the applicant recorded in

the Payment Register from the authority letter, since verified by the sectional head and the petitioner wrote the name of Gour Chandra Naskar in

the voucher but Sri Palodhy, probably by mistake had failed to put the thumb impression over the name of Sri Gour Chandra Naskar and the cash

section on scrutiny of the payment voucher, which was also reverified by the sectional head made payment of wages of Sri Gour Chandra Naskar

to Palodhy.

8. In spite of the reply the management conducted domestic inquiry and according to the petitioner with a mind to determine the issue against the

petitioner. In the said inquiry the management made a perversion of justice inasmuch as the Inquiry Officer was a yesman of the management who

didn't allow the petitioner to take proper defence assistance considering the complex nature of the charges levelled against the petitioner

particularly the circumstances warranted verification of the relevant documents and official records by the sectional head of the petitioner which

ought to have and actually hampered the petitioner's free and natural participation in the inquiry solely without any legal assistance and/or lawyers"

representation.

9. The Management didn't produce Sri Gour Chandra Naskar as its witness to prove the charges but Sri Naskar appeared as a defence witness

to prove the case of the applicant.

10. According to the petitioner Sri Naskar was the most vital witness of the proceedings and he having trustworthily deposed in favour of the

petitioner, the whole issue ought to have been decided in favour of the petitioner without leaving any scope or iota of preponderance of

probabilities in favour of commission of any guilt on the part of the petitioner.

11. Neither Sri Palodhy nor the management of the respondent No. 3 company made any complaint before the police authority immediately

against the petitioner regarding such alleged charges of falsification, dishonesty and/or defacement of the respondent No. 3 company. The inquiry

was conducted violating the principles of natural justice without giving the petitioner proper chance to defend himself.

12. The petitioner received a copy of the Inquiry Report along with the letter dated 14th July, 1998. The petitioner submitted representation

against the Inquiry Report through letter dated 28th July, 1998. The petitioner alleged that in the said letter dated 14th July, 1998, it was nowhere

mentioned whether the disciplinary authority had agreed with the findings of the Inquiry Officer or disagreed. It was also not mentioned in the said

letter as to whether any proposed action as regards inflicting of punishment was contemplated against the petitioner or not. The petitioner was

deprived of the opportunity to meet the allegations which might lead to a certain action being taken against him. No such proposed action having

been communicated substantial natural justice was not met for which the petitioner suffered grave prejudice.

13. The management thereafter, imposed punishment of dismissal of the petitioner through a letter dated 1st/2nd September, 1998.

14. The petitioner raised an industrial dispute against such order of dismissal demanding reinstatement with full back wages and other consequential

benefits. The dispute could not be settled at the tripartite level and it culminated in the raising of dispute at the bipartite level.

15. The conciliation proceeding was not completed within sixty days from the date of raising the dispute and the petitioner prayed for a certificate

from the Conciliation Officer to that extent and the Conciliation Officer issued a certificate and consequently the petitioner filed an application with

a particular demand to the respondent No. 2.

16. Thereafter, the respondent No. 2 issued notice to the contesting parties and after giving hearing to the contesting parties framed the specific

issues-in-dispute with regard to the justifiability of the dismissal of the petitioner.

17. Before the respondent No. 2 the petitioner and the respondent No. 3 filed respective written statement. The petitioner had also filed an

application u/s 15(2)(b) of the Industrial Disputes Act and the petitioner annexed said application as Annexure "P1". The respondent No. 3 filed

an objection to the application which is Annexure "P2" to the writ petition.

18. In support of the application substantive evidence as laid by the contesting parties in relation to the claim of interim relief. Thereafter, arguments

were advanced in support of the rival contentions. The respondent No. 2 by an order dated 21/02/2003 rejected the application for interim relief

by holding that no prima facie case has been made out by the petitioner in order to ascertain his chance of success in this case. The said order

being Order No. 33 dated 21/ 02/2003 is Annexure "P3" to the writ petition which the impugned order under challenge.

19. On behalf of the company/respondent No. 3 affidavit-in-opposition was filed. The company in the said opposition stated that the petitioner Sri

Bhudar Chandra Pal, the concerned Clerk of salary & Wages Section made an entry in the Unpaid Wages Register for payment of rupees one

thousand four hundred ninety-one only for the month of January, 1997 against the name of Gour Chandra Naskar. T.No. 4477 of Shipbuilding

Shop who is the habitual absentee and put a thumb impression with T. No 6079 as authorized representative of Sri Gour Chandra Naskar on

13/02/1997, the day on which Sri Naskar was absent. But the existence of any such authorization letter could not be traced out in this case.

20. Thereafter, Sri Bhudar Chandra Pal obtained the thumb impression of Sri Sisir Kr. Palodhy (T. No. 8694) of Pipe Shop in the Unpaid Wages

Register against the name of Sri Gour Chandra Naskar, Afterwards Sri Bhudar Chandra Pal withdrew the said amount of Rs. 1491/- by putting

the name/signature of Sri Gour Chandra Naskar as payee on 13/02/1997 against Cash Payment Voucher No. 98 dated 10/02/1998.

Subsequently, Sri Kamalesh Chandra Saha of Pipe Shop, the original holder of T. No. 6879 declared that he neither know Sri Gour Chandra

Naskar nor he had put his thumb impression in Unpaid Wages Register with his Ticket No. on 13/02/1997, that part Sri Sisir Kr. Palodhy

confessed that his thumb impression was obtained obtained by Sri Bhudar Chandra Pal against his will.

21. The writ petitioner ultimately was served with a chargesheet bearing No. 14/1997 dated 28th March, 1997 alleging therein the following

charges under Certified Standing Orders of the Company :

Clause 5...fraud or dishonesty in connection with the company"s business or property.

Clause 11...Commission of any act subversive of good behaviour or of the discipline of the company.

Clause 21. Interfering with the record...willful falsification, defacement...of any records of the Company.

22. The petitioner, on 8th April, 1997 replied to the chargesheet. On a consideration of the reply to the chargesheet it was decided to hold a

domestic inquiry into the charges levelled against the petitioner. Accordingly, notice of domestic inquiry was issued and an Inquiry Officer was

appointed to inquire into the charges levelled against the petitioner The inquiry was conducted on 21/05/1997 and 04/06/1998 wherein the

petitioner participated fully.

23. On 13/07/1998 the Inquiry Officer submitted his report holding the petitioner guilty of all the charges levelled against him through the

chargesheet dated 28/03/1997.

24. Along with a forwarding letter dated 14/07/1998 the Inquiry Officer furnished to the petitioner an Inquiry Report advising him to make a

representation against the findings of the Inquiry Officer. On 28th July, 1998, the petitioner submitted his representation against the report of the Inquiry Officer.

25. The Company considered the chargesheet, reply to the chargesheet. the proceedings of the Inquiry Officer and all the connected papers and

documents. The appropriate authority concerned found that the charges were proved. The Company in its affidavit-in-opposition further stated that

the lots of misconduct committed by the petitioner that by virtue of the acts of misconduct committed by the petitioner he betrayed the confidence

reposed in him as an employee of the organization. The act also constitute offence involving moral turpitude. Since the charges levelled against the

petitioner are also proved against the petitioner, he was And serious in nature and retention in service was not compassable with smooth

working of the establishment especially in an organization catering to defence requirement, the retention in service was considered prejudicial to the

interest of the organisation, punishment warranted is that of dismissal from service. The past record of the petitioner was considered but there were

no mitigating circumstances. Accordingly, the petitioner was dismissed from service of the respondent company by letter dated 1st 72nd

September, 1998. The inquiry proceeding was annexed to the opposition as Annexure "R1."

26. The petitioner filed affidavit-in-reply. In the said reply the petitioner stated that the charges levelled against him are bad and baseless. The

petitioner in the reply reiterated his stand taken in the writ petition and in his reply he annexed xerox copy of the deposition of Sri Gour Chandra

Naskar.

27. On the above background the challenge in this writ petition is the order dated 21/02/2003 passed by the respondent No. 2 in Annexure "P3"

to the writ petition. The order is rejection of the application for interim relief filed by the petitioner. In summary, the respondent No. 2 that is the

learned Judge Second Labour Court found that no prima facie case has been made out by the applicant at this stage in order to ascertain his

chance of success in the case and on this ground the learned Judge, Second Labour Court rejected his prayer.

28. The learned Counsel for the petitioner submitted that the order impugned is bad in law. The learned Counsel submitted in detail the normal

practice of the company regarding authorization for receipt of salary or wages of another workman.

29. The learned Counsel further submitted that in the procedural aspect of authorization the petitioner had no role to play and the person

concerned admitted that he got the money.

30. The learned Counsel also submitted that had it been genuine case the company would have suspended the petitioner immediately or would

have lodged a complaint, before the police station immediately but two months after the incident the petitioner was suspended and/or

chargesheeted. This shows the mala fide on the part of the management. The company had mala fide intention to dismiss the petitioner and

accordingly, the company dismissed him. Even the company neither given the petitioner proper opportunity nor did the company allow him to take

his defence through any legal personnel.

31. The learned Counsel then submitted that along with his reply, the confirmatory statement of Naskar having received the wages for January,

1997 also submitted before the management but the management was determined to dismiss the petitioner from his service.

32. The learned Counsel also submitted that the defence witness Sri Naskar clearly admits that he was called for in the Chamber of A.M.

(Vigilance) in presence of Dutta of S.B. Shop.

33. The learned Counsel further submitted that A.M. (Vigilance) told Sri Naskar to give a statement in Bengali and on the dictation of Sri Dutta a

statement was prepared by said Sri Naskar. The said statement was written as Sri Naskar got frightened. Sri Naskar specifically stated that the

contents of the statement are not his own and he had written the same as slated by Sri Dutta.

34. The learned Counsel submitted that the Labour Court without considering the written statement, evidence on record and the documents

produced before it decided the matter and the learned Judge of the Labour Court did not apply his mind also when rejecting the interim relief

petition. It will appear from the order itself that the learned Tribunal did not consider the oral and documentary evidence of the worker and also did

not consider the evidence given before the Inquiry Officer.

35. Now the points for decision before this Court are :

Whether an application u/s 15(2)(b) of the Industrial Disputes Act should be allowed in a blanket manner that is immediately when it is filed it is to

be allowed.

Whether the interim relief is a matter of right of the workman and it does not require support of any evidence or any prima facie case or any merit.

36. The learned Counsel for the petitioner relied on the following decisions :

i) Parry"s (Calcutta) Employee"s Union Vs. Parry and Co. Ltd. and Others,

ii) JT 1999(6) p.507 (R. S. Saini v. State of Punjab and Ors.)

iii) The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another,

iv) JT 2000(3) p 184 (U.P. State Road Transport Corporation v. Subhash Chandra Sharma and Ors.)

v) Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar,

vi) Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others,

37. Parry"s case (supra) has been relied upon by the learned Counsel for the petitioner in support of his contention that interference can be made

by the High Court in an application under Article 226 with the findings of a Tribunal if the said findings are perverse. The learned Counsel laid

stress on the observations made in paragraph 58 of the said judgment which is quoted hereinbelow :

58. It has been argued before us that the findings of the Tribunal are perverse and are the result of bias. But merely because the Tribunal has drawn

certain adverse inferences or conclusions from the evidence on record, it does not necessarily lead to the conclusion that the Tribunal was partial or

biased or that the findings are perverse. The Tribunal has given reasons in great detail and it may be that in certain matters the line of reasoning is

not very cogent or logical or the Tribunal may have made observations and offered criticism which the Tribunal might not properly have made. But

that is far from saying that the findings are arbitrary or perverse or are actuated by bias. A perverse finding is not only against the weight of

evidence but is altogether against the evidence itself. A wrong finding is not necessarily a perverse finding. A finding cannot be said to be perverse

merely because it is possible to take a different view on the evidence. The Tribunal has found upon consideration of the evidence in this case that

the retrenchment was not bona fide and it was actuated by parochial considerations and the Tribunal has given reasons for coming to the

conclusion. It may be that this finding is a wrong one but it cannot be said that it is a finding which is based on no evidence or is a perverse finding.

38. The learned Counsel submitted that here, the Hon^{ble} High Court clarified as to what would be the term as "perverse finding".

39. The learned Counsel also relied on the judgment *R.S. Saini v. State of Punjab and Ors.*, (supra) to support his contention that the inquiring

authority is the sole Judge of the fact so long there is some legal evidence to substantiate the finding and the adequacy of reliability of the evidence

is not a matter which can be permitted to be canvassed before the Court in writ proceedings. The learned Counsel laid emphasis on the

observations made in paragraph 16 of the said judgment which is quoted hereinbelow :

16. Before advertng to the first contention of the appellant regarding want of material to establish the chargesheet and of non-application of mind,

we will have to bear in mind the rule that the Court while exercising writ jurisdiction would not give us a finding of the inquiring authority on the

ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it

is not the function of the Court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole Judge of the

fact so long there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be

permitted to be canvassed before the Court in writ proceedings.

40. Then the learned Counsel for the petitioner relying on the judgment of High Court of Judicature at Bombay through its Registrar v. Shashikant

& Patil and Anr., (supra) submitted that in this judgment the Hon"ble Apex Court has observed that the settled legal position is that if there is some

legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High

Court in a writ petition filed under Article 226 of the Constitution of India. The learned Counsel in this regard laid stress on the observations made

in paragraph 16 of this judgment which is quoted hereinbelow :

16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/

disciplinary authority of the High Court. Interfere with the decision of departmental authorities can be permitted while exercising jurisdiction under

Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory

regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and

merits of the case or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could

have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the

Disciplinary Committee of the High Court) is the sole Judge of the facts, if the enquiry has been properly conducted. The settled legal position is

that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for

canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

41. The learned Counsel when referring to the judgment of U. P. State Road Transport Corporation v. Subhash Chandra Sharma and Ors.,

(supra) laid emphasis on the observations of the Hon"ble Apex Court made in its paragraph 9 and the said observations of the said paragraph is

quoted hereinbelow :

9 The Labour Court while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the

respondent from the service. The charge against the respondent was that he, in drunken state along with a Conductor went to the Assistant Cashier

in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused

him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances the Labour Court

was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find

that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It

could not be said that the punishment awarded to the respondent was in any way (shockingly) disproportionate to the nature of the charge found

proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the

erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice.

42. The learned Counsel for the petitioner sought to submit that the High Court in writ jurisdiction should interfere if the finding of the Tribunal is

illegal and/or perverse.

43. The learned Counsel while referring to Chairman & Managing Director, UCO Bank and Ors. v. P.C. Kakkar's case (supra), relied on the

observations made in paragraph 12 of the said judgment which is quoted hereinbelow :

12. To put itself unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal,

there is no scope of interference. Further, to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording

cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct

the disciplinary authority or the appellate authority to reconsider the penalty imposed.

44. The learned Counsel for the petitioner on the point of interference of the Writ Court in the decision of the Industrial Tribunal relied on the

judgment reported in Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, . The learned Counsel submitted

that in this judgment the Hon"ble Apex Court has set aside the order of dismissal of an employee for misconduct. The Hon"ble Apex Court set

aside the dismissal and passed an order of reinstatement. The learned Counsel laid emphasis on the observations made in paragraphs 16, 20 and

21 of this judgment which are quoted hereinbelow :

16. Mr. Jain contended that once Mr. Kakkar came to the conclusion that the appellant was given full opportunity to participate in the domestic

enquiry neither High Court under Article 226 nor this Court under Article 136 can sit in appeal over the findings of the enquiry officer and

reappraise the evidence. We have not at all attempted to reappraise the evidence though in exercise of the jurisdiction conferred by Section 11A

of the Industrial Disputes Act. 1947 both arbitrator and this Court can reappraise the evidence led in the domestic enquiry and satisfy itself whether

the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the arbitrator has only the

power to decide whether the conclusions reached by the enquiry officer were plausible or not deducible from the evidence led in the enquiry and not

to reappreciate the evidence itself and to reach the conclusion whether the misconduct alleged against the workman has been established or not.

This Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , held that since the

introduction of Section 11A in the Industrial Disputes Act, 1947, the Industrial Tribunal is now equipped with the powers to reappraise the

evidence in the domestic enquiry and satisfy itself whether the said evidence relied upon by the employer-establishes the misconduct alleged against

the workman. It is equally well-settled that the arbitrator appointed u/s 10A is comprehended in Section 11A. This Court in *Gujarat Steel Tubes*

Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, held that an arbitrator appointed u/s 10A of the Industrial Disputes Act,

1947 is comprehended in Section 11A and the arbitral reference apart from Section 11A is plenary in scope. Therefore, it would be within the

jurisdiction both of the arbitrator as well as this Court to reappreciate the evidence though it is not necessary to do so in this case. It is thus well-

settled that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come,

the arbitrator appointed u/s 10A or this Court in appeal under Article 136 can reject such findings as perverse. Holding that the findings are

perverse does not constitute reappraisal of evidence, though we would have been perfectly justified in exercise of powers conferred by Section

11A to do so.

20. Where the order of dismissal is sought to be sustained on a finding in the domestic enquiry which is shown to be perverse and the enquiry is

vitiated as suffering from non-application of mind the only course open to us is to set it aside and consequently relief of reinstatement must be

granted and nothing was pointed to us why we should not grant the same.

21. It was next contended on behalf of the appellant that reinstatement with full backwages be awarded to him. P.K. Jain, learned Counsel for the

employer countered urging that there is evidence to show that the appellant was gainfully employed since the termination of service and therefore

he was not entitled to backwages. In support of this submission Mr. Jain pointed out that the appellant in his cross-examination has admitted that

during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law.

Tara Chand who owns a coal-depot, and that he and the members of his family lived with his father-in-law and that he had no alternative source of

maintenance. If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul together had

taken to begging and that would as well be a gainful employment. The gross perversity with which the employer had approached this case had left

us stunned. If the employer after an utterly unsustainable termination order of service wants to deny backwages on the ground that the appellant

and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this

period appellant was helping his father-in-law Tara Chand who had a coal depot, it cannot be said that the appellant was gainfully employed. This

was the only evidence in support of the submission that during his forced absence from service he was gainfully employed. This cannot be said to

be gainful employment so as to reject the claim for backwages. There is no evidence on the record to show that the appellant was gainfully

employed during the period of his absence from service. Therefore, the appellant would be entitled to full backwages and all consequential

benefits.

45. The learned Counsel submitted that High Court order was set aside by the Hon"ble Apex Court and the Hon"ble Apex Court directed

reinstatement with backwages and findings of the Tribunal was rejected being perverse.

46. The learned Counsel concludingly submitted that the impugned order is bad in law, the provisions of Section 15(2)(b) of the Industrial Disputes

Act (as amended) is mandatory and interim relief is a statutory right of the employee and as such the Tribunal went on wrong by coming to a

finding that the employee is not entitled to interim relief since there is no prima facie case.

47. The learned Counsel for the respondents submitted that Section 15(2)(b) is an interim relief and it is in aid of main relief and if there is no case

at all towards the main relief the employee cannot ask or pray for interim relief. The learned Counsel in this context relied on a Full Bench decision

of the High Court reported in 2000 (1) CLJ 17 (B. G Sampat [Babulal Gordhandas Sampat] v. State of West Bengal and Ors.),. The learned

Counsel submitted that in this judgment the Hon"ble Full Bench of this High Court observed that once an interim relief is prayed for, the Tribunal

has to apply its mind as regards the existence of a prima facie case. The learned Counsel submitted that by this judgment the Hon"ble Full Bench

overruled the judgment reported in Ganges Printing Ink Factory Employees Industrial Co-Operative Society Ltd. and Another Vs. The 7th

Industrial Tribunal and Others, .

48. The learned Counsel further submitted that by this judgment not only the Ganges Printing case was overruled but also all the judgments

following the Ganges Printing Ink Factory were overruled. The learned Counsel laid stress on the observations made in paragraphs 14,15 and 17

which are quoted hereinbelow:

14. It has also to be borne in mind that the very fact that Section 15(2)(b) has been added after Section 15(1) which, inter alia, provides for

passing of an award also goes to show that the relief granted in favour of the workmen, if any, although interim in nature, is final and binding on the

parties.

15. In fact, before us none of the learned Counsels had seriously contended that such a power has to be mandatorily exercised irrespective of the

facts and circumstances of the case and the Court has no discretion in the matter. We are, therefore, of the opinion that Ganges Printing (supra),

and the decisions following the same have not laid down the law correctly and on hearing overruled.

17. There cannot, therefore, be any doubt that once an interim relief is prayed for, the Tribunal has to apply its mind as regards existence of a

prima facie case. What would be the nature of the prima facie case in such a situation is one of the questions which also arises for our

consideration.

49. The learned Counsel for the respondents also relied on another unreported decision of one Hon"ble Single Judge (D.P. Kundu) passed in W.

P. No. 1041 of 2003 (Philips India Limited v. Id. Fourth Industrial Tribunal, West Bengal and Ors.),. The learned Counsel submitted that in this

judgment the Hon"ble Justice Kundu discussed all the decisions including Ganges Printing case, Webel Nicco case and mainly B.G. Sampat case

(supra) and came to the same finding.

50. The learned Counsel submitted that the Tribunal correctly came to the conclusion that since there is no prima facie case the employee is not

entitled to relief u/s 15(2)(b) of the Industrial Disputes Act.

51. Heard the learned Counsel for the parties. For the sake of discussion firstly, let me quote the provisions of Section 15(2):

15. Duties of Labour Courts, Tribunals and National Tribunals.-

(2) Where an industrial dispute has been referred to a Labour Court or Tribunal under Sub-section (1) of Section 10, it shall,-

(a) after the filing of statements and taking of evidence, give day to day hearing and pronounce its award, other determination or decision in the

manner specified in Section 17AA, and

(b) after hearing the parties to the dispute, determine, within a period of sixty days from the date of the order referring such industrial dispute or

within such shorter period as may be specified in such order, the quantum of interim relief admissible, if any:

Provided that the quantum of interim relief shall, in the case of discharge, dismissal or retrenchment of a workman from service or termination of

service of a workman, be equivalent to the subsistence allowance admissible under the West Bengal Payment of Subsistence Allowance Act, 1969

(West Bengal Act 38 of 1969)-W.B. Act 33 of 1986.

52. This Section 15(2)(b) is effective by way of State amendment of the year 1986. This may be termed as welfare legislation. As it appears from

the Section itself that provisions for interim relief for the employee was introduced so that if the litigation continues for a long period the employee

can fight the legal battle. In a judgment reported in Union of India (UOI) Vs. Rajiv Kumar, the Hon"ble Apex Court observed that it is a well-

settled principle of law that Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is

an edict of the legislature. The language employed in a statute or in statutory provision is the determinative factor of legislative intent of policy

makers.

53. I am to go by the statutory provision itself that is the language of Section 15(2)(b). In its language it says about interim relief. It is also settled

that interim prayer is always a prayer which is in aid of the main prayer and if the Court finds that chance of survival of the petitioner in the main

petition is bleak then the Court normally should not grant interim prayer. Tribunal, however, is not a Court but still then it is to follow the principles

adopted by the Court. In B.G. Sampat's case (supra) the Full Bench of this High Court clearly observed that to get an interim relief, prima facie

case must be there and the Tribunal is also to apply its mind and to find out whether there is prima facie case in favour of the petitioner/claimant so

the said employee can get interim relief. It goes without saying and rather it may be said to be an accepted proposition that if an interim relief is

granted to the employee and ultimately the employee fails then the relief goes astray. It is not of course possible for any Tribunal to decide and/or

to say at the first site as to whether the employee will succeed or the employer will succeed in the main battle but applying its mind in looking into

evidence, the Tribunal can at least say that there is chance of success or there is no chance of success. Chance may become wider during the

course of hearing of the main writ petition or the chance may be dipper or narrowed. In any event the Tribunal is to see to the fact that the interim

relief granted to the employee does not go in vain, though however, as observed above, it is not possible for the Tribunal even if for any Court to

say at the first look as to whether the employer will succeed or the employee.

54. I am in full agreement with the judgment delivered by Hon"ble Justice D.P. Kundu in Philips India Ltd. (supra) and I am of the view that there

must be a prima facie case to get the interim relief u/s 15(2)(b) of the Industrial Disputes Act. In that view of the matter the principle adopted by

the Tribunal is correct but the way the Tribunal has reached its conclusion is a very cut-short method. The Tribunal did not give any reasoning and

it appears from the impugned order itself that the Tribunal could not concentrate on the point as to why prima facie case is not there. Of course, it

has been observed in the case of B.G. Sampat (supra) that what would be the prima facie case is entirely depended on the findings of the Tribunal

and it is not the duty of the High Court to decide as to whether there is prima facie case or not. In the instant case, this Court also is not inclined to

interfere into the matter as to whether there is prima facie case or not but this Court can interfere to this extent that the Tribunal to reach or come to

a finding backed by reasons. Reasoning make the finding stronger; here, there is want of reasonings and in a very cryptic manner the Tribunal

found that since there is no prima facie case the employee is not entitled to interim relief u/s 15(2)(b) of the Industrial Disputes Act.

55. I, therefore, remand this part to the Tribunal to decide afresh on consideration of the entire evidence on record as to whether there is prima

facie case in favour of the employee towards his claim for interim relief or not. The Tribunal will decide the issue applying its mind in considering the

entire evidence on record. The Tribunal will give its findings within sixty days from the date of communication of the order.

56. The writ petition is thus disposed of with the above observations and/or directions.

57. There will be no order as to costs.

58. Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.