

(2010) 03 CAL CK 0016

Calcutta High Court

Case No: Writ Petition No. 17418 (W) of 2009

Bengal Chamber of Commerce
and Industry and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: March 10, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 231, 242
- Evidence Act, 1872 - Section 138

Citation: (2010) 126 FLR 890 : (2010) 4 LLJ 366

Hon'ble Judges: Aniruddha Bose, J

Bench: Single Bench

Advocate: Jayanta Dasgupta, Balaram Patra and S. Sharma, for the Appellant; Ajit Kumar Barat and Keya Banerjee, Jayanti Dhar Quarder and Nilima Das, for the Respondent

Final Decision: Dismissed

Judgement

Aniruddha Bose, J.

The dispute out of which the present proceeding arises relates to revision of grade and scale of pay and other service conditions Of three stenographers appointed by the writ Petitioner No. 1, an association of different commercial houses.

2. The cause of the said stenographers was espoused by. the staff union (Respondent No. 3) in this writ petition, and such dispute has been referred to the Fifth Industrial Tribunal by an order of reference dated December 28, 2006 issued by the State Government. Before the Tribunal, the respective parties being the writ Petitioner and the union have filed their written statements. The writ Petitioner has raised certain disputes as regards the maintainability of the reference, and locus of the union to take up the cause of the said stenographers but these disputes are not material for the purpose of adjudication of the present writ petition.

3. In this writ petition, the Petitioners have challenged the legality of an order passed by the Tribunal on June 30, 2009 rejecting an application of the Petitioner No. 1 for deferment of cross-examination of the first witness of the union until examination-in-chief is concluded in respect of all the witnesses the union intend to examine on their behalf.

4. This application, however, was rejected by the Tribunal by an order passed on June 30, 2009. The Tribunal opined that the normal rule of examination as incorporated in the Evidence Act ought to apply in a proceeding before the Tribunal. It is this order, a copy of which has been made annexure "P7" to the writ petition, is under challenge in this proceeding.

5. Mr. Dasgupta, learned Counsel appearing for the Petitioners submits that in the present case deferment of cross-examination has become necessary because in the event any lacuna in the case of union was exposed in course of cross-examination of a witness, such lacuna could have been filled up in course of examination-in-chief of the next witness of the union. His further case is that the union would not be prejudiced if such a course was adopted. According to Mr. Dasgupta, the very fact that the Union was resisting his clients' prayer, made it apparent that they were going to take advantage of the situation in the manner apprehended by the Petitioners, and they would utilise the opportunity for improving upon their case in course of examination-in-chief. He contended that deferment of cross-examination is permissible in such a situation under the provisions of Sections 231 and 242 of the Code of Criminal Procedure. Relying on a decision of the Honourable Supreme Court in the case of [Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another](#), Mr Dasgupta argued that in appropriate cases, the Labour Court could rely on the rules of procedure found in the Code of Criminal Procedure.

6. Appearing for the Union, Mr. Bharat submitted that the established rule of evidence ought to apply in the case before the Tribunal. In this regard, he referred to the provisions of Section 138 of the Evidence Act, 1872. His further submission on this count is that the employer or any party to the process of adjudication could not compel the Tribunal or the Labour Court to modulate its own procedure in a manner it suited a particular party.

7. Under the provisions of Section 138 of the Evidence Act, in respect of each witness, examination-in-chief is to be conducted first, followed by cross-examination and re-examination, as the case may be. Mr. Dasgupta, however, drew my attention to the provisions of Sections 231 and 242 of the Code of Criminal Procedure, 1973. Under these provisions, the Court has been conferred with discretionary power to permit cross-examination of any witness to be deferred until any other witness is examined or recall any witness for further cross-examination. Relying on the principle laid down in the case of *Management of Krishnakali Tea Estate v. Akhil Bharatiya Cha Mazdoor Sangha and Anr. (supra)*, Mr. Dasgupta submitted that in

facts of the present case, the Tribunal ought to have permitted deferment of cross-examination in the manner prayed for.

8. In my opinion, however, the principle of taking evidence, as laid down under the law of evidence ought to apply in a proceeding before the Tribunal. The above-referred provisions of the Code of Criminal Procedure cannot be implanted in an industrial adjudication. In a criminal case the burden of proof lies, except under exceptional circumstances, on the prosecution to establish the charges. Before the Industrial Tribunal, however, the procedure followed is more akin to the procedure followed in civil-suits where both parties file their written statements claims before examination of witnesses is undertaken and arguments commence on the basis of pleadings and deposition of the witnesses and the documents disclosed. Thus, unlike in a criminal proceeding, where question of filing written statement by an accused would not arise, and adducing of evidence by an accused is optional, in a civil case, the parties get bound to their respective stand on the basis of their pleadings. There cannot be deposition contrary to pleadings.

9. It is for this reason possibly the special provisions relating to deferment of cross-examination contained in the Code of Criminal Procedure, have not been incorporated in the procedure for adjudication of a dispute of civil nature, so far as following the sequence of examination of witnesses is concerned. The decision of the Honourable Supreme Court in the case of the Management of Krishnakali Tea Estate v. Akhil Bharatiya Cha Mazdoor Sangha and Anr. (supra) relates to application of general provisions or broad principles of the Code of Criminal Procedure in an industrial adjudication. This decision is not a ratio for the proposition that the Tribunal can alter the normal sequence of examination of witnesses, which is a special provision under the Code of Criminal Procedure, to be applied by the Courts trying a penal offence under special circumstances.

10. Mr. Dasgupta, had submitted that the very fact that the union was opposing such prayer was a justification for allowing such application. He wanted this Court to infer from this stand of the Union that they were going to take advantage of filling up of lacuna in deposition of their witnesses. At this stage, however, such apprehension is in the domain of probabilities as only one witness has been partly examined on behalf of the Union. If the union resists a prayer which would require the Tribunal to deviate from the established procedure under the law, it would be well within the right of such union to take objection to such prayer and from such objection I cannot come to a conclusion that this was being made to take advantage of a probable drawback or lacuna in deposition of a witness in the later stage of the proceeding pending before the Tribunal.

11. Under these circumstances, I do not find any error in the order of the Tribunal. The said order is sustained. The writ petition stands dismissed.

There shall however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, as expeditiously as possible.