

(1977) 03 CAL CK 0006

Calcutta High Court

Case No: C.R. No. 3208 (W) of 1974

Hind Galvanising and
Engineering Co. Pvt. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: March 4, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 33(2)(b)

Citation: 82 CWN 13

Hon'ble Judges: P.C. Borooah, J

Bench: Single Bench

Advocate: Chunilal Ganguly and Rathindranath Bhattacharjee, for the Appellant;
Satyanarayan Roy for the Opposite Party No. 3, for the Respondent

Final Decision: Allowed

Judgement

P.C. Borooah, J.

In this application under Article 226 of the Constitution the petitioner has impugned the validity of an order dated February 27, 1974 passed by Shri D.N. Sen Judge, Second Labour Court, West Bengal in Case No. 166|6 dismissing the petitioner's application u/s 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter "the Act"). It is an admitted fact that on May 6, 1966 the petitioner Company communicated the order of dismissal to the Respondent No. 3, Sri Sanaton Samanta, and on the same date despatched a Money Order covering his wages for a period of one month. The money order was received by the Respondent workman on May 11, 1966 and on that date the Company filed an application u/s 33 (2) (b) of the Act before the Labour Court seeking approval for the order of dismissal passed on the workman.

2. In dismissing the petitioner's application the Labour Court held that had the Company been able to establish that the order of dismissal was actually

communicated on or about May 11, 1966, when the money order was actually received, then it would have succeeded in urging that the proviso to section 33 (2) (b) of the Act was complied with. In other words, the Labour Court took the view that before an application u/s 33 (2) (b) of the Act could be allowed, the employer had to satisfy the court that one month's wages had actually been received by the workman concerned before the application for approval had been filed. This is not the scheme of the Statute. The Proviso to sub-section 33 (2) (b) of the Act lays down that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. Therefore, in considering an application u/s 33 (2) (b) of the Act the authority concerned has to satisfy itself (a) that the action against the workman was taken in connection with a matter unconnected with the pending industrial dispute and (b) that the workman has been paid wages for a period of one month. Payment of wages does not mean that the workman should have actually received the wages. The employer has to satisfy the authority concerned that the wages had been tendered or paid on the date the application u/s 33 (2) (b) of the act is filed. In the instant case the Money order having been sent prior to the application u/s 33 (2) (b) of the Act being filed, the Labour Court should have accorded the necessary approval, and the refusal is not in accordance with law.

This application must accordingly be allowed and the impugned order, copy being annexure "F" to the petition, is quashed. Let an appropriate Writ issue accordingly. Rule is made absolute but without any order as to costs.