Chittaranjan Mondal Vs Eastern Coal Fields Ltd.

Court: Calcutta High Court

Date of Decision: Jan. 31, 1994

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2(K), 36A

Citation: 98 CWN 835 : (1994) 1 ILR (Cal) 161

Hon'ble Judges: R. Bhattacharya, J

Bench: Single Bench

Advocate: Ashoke Sarkar and Md. Z. Rahaman, for the Appellant;Arunava Ghose, for the Respondent

Final Decision: Dismissed

Judgement

R. Bhattacharyya, J.
This Revisional application is directed against the successive orders passed by both the learned Courts below on

April 29, 1993, in T.S, No. 74 of 1993 and also in Misc. Appeal No. 17 of 1993 on June 14, 1993, declining to find favour with the claim far

temporary injunction of the Petitioner-revisionist as an employee of the Eastern Coal Fields Ltd. when this Revision preferred to explore the

remedy. It is needless to say that the orders complained of were passed by two different Courts, one by the learned Court of Munsif while the

other by the learned Court of Asstt. District Judge.

2. The Petitioner-revisionist to forestall the claim of superannuation has cultivated in his Revisional application sedulously that he was born on July

27, 1935, is borne out by "B" form register, identity card, service excerpts and the P.F. account maintained by the opposite parties.

3. The service of the Petitioner as studiously agitated in the lanes and bylanes of the Revisional application is that the service of the Petitioner was

wilfully and arbitrarily terminated by the opposite party under the pretence that he had already reached the age of superannuation on March 10,

1993. The superannuation bore a dent as it was passed foreign to National Coal Wage Agreement arrived at and concluded between the

management on the one hand and the workmen on the other. Undoubtedly, the order of superannuation was tainted. There was a complete

bankruptcy of administrative discharge of duties as the opposite party attached feather weight- to the claim of the Petitioner-revisionist in relation to

the said agreement.

4. Though the O.P. is laconic in its objection yet it is comprehensive to refute the claim.

5. For the sake of brevity in order to avoid obscenity,, the objection was built up on the anvil of absence of jurisdiction to decide the dispute, the

contract is unenforceable as its being a contract for employment of personal service, the date of birth manipulated or altered was a contravened as

the date of birth recorded in "B" form register of the erstwhile owner of Jamuria Colliery under Ponisiti Group was 1930 and the disputes spoken

of fell fairly and squarely on Industrial Disputes Act, 1947.

6. The points for consideration in the background of the claim and counter-claim are as to whether the instant revision is competent and the orders

assailed are travesty of law or justice revisable by a Court of Revision.

7. Mr. Ashoke Sarkar to crown success of his claim has argued that action of the opposite party behind superannuation smacks of foul play, as it

did not attach any premium to the National Coal Wage Agreement. The citadel of claim of Mr. Sarkar is that instruction No. 76 of the agreement

is an insuperable obstacle for the opposite party to pass such an order as the order could be passed only under the cloak of the aforesaid

Instruction. The order, according to Mr. Sarkar, is not fully consistent with the tenor and spirit of the National Coal Wage Agreement. The learned

Court below lost sight of the documents put in by the parties and rejected the claim of the Petitioner-revisionist simplicitor. It exposes the non-

application of the judicial mind and the infirmity of the order which is revisable by a Court of Revision. There is no cleavage of opinion that an

order, if passed on non-consideration of documents and affords no reasonings, such an order is foul of law which could be interfered with by a

Court of Revision.

8. The main fabric of argument of Mr. Sarkar, as contended by Mr. Ghosh for the O.P., has no fibre of strength. According to him, there is no

bridge between the argument and the order impinged. The order in truth and substance, if read through, it can be said with utmost precision that it

is pregnant of reasonings as the learned Court below took an account of the documents of both the parties who are prosecuting for the success of

their respective claims. The order does not suggest that the Court took any oblique view to the case of the parties.

9. A faithful perusal of the order, as canvassed by Mr. Ghosh, does not fuel the argument of Mr. Sarkar. The order significantly points out through

the documents about the history of the case and the conclusion following. It does not, therefore, behave for a moment that there is any force in the

contention.

10. Realising the futility and the frailty of his arguments Mr. Sarkar tried to call into aid the National Coal Wage Agreement which is made as an

Annex. "C to the Revisional application, the relevant portion of which may be extracted below:

Age Determination Committee/ Medical Board for the above will be constituted by the Management. In the case of employees whose date of birth

cannot be determined in accordance with the procedure mentioned in (B) (i) (a) or (B) (i) (b) above, the date of birth recorded in the records of

the Company, namely, Form "B" Register", C.M.P.F. Records and Identity Cards, there is a variation in the age recorded in the records

mentioned above, the matter will be referred to the Age Determination Committee/ Medical Board constituted by the Management for

determination of age.

11. There is no -affidavit to the effect of the Petitioner-revisionist that he did not retire from service with effect from March 18, 1993. Paragraph

14 of Annex. "D" is a prima facie pointer to the claim of the opposite party. It is true that the Petitioner-revisionist has challenged the order in its

entirety but unfortunately no ground was taken in the Revisional application that he did not retire on March 18, 1993. Only in ground No. VI of the

Revisional application the justifiability of the order has been assailed. More so, it is glaring upon making an evaluation of claims that Mr. Sarkar is

very much vocal about the entitlement of the Petitioner-revisionist to an order of injunction. But, it .is undeniable that he retired from service,

however, he may say for which enforcement of his claim recourse to Industrial Disputes Act. 1947, is the established principle of law for which

legions of ruling dominate the field. On the face of it, it is prima facie a breach of the settlement arrived at and concluded by and between the

opposite party and the workmen concerned including the Union of India.

12. In the background of the above, the controversy comes within the fold of Section 2(K) and Section 36A of the Industrial Disputes Act, 1947,

suggesting thereby that no relief could be accorded to a party by a Civil Court. It is admittedly barred. Civil Court is not an alternative or

supplementary forum but an excluded forum of a case of Industrial dispute. This well-founded submission of Mr. Ghosh finds support from the

case decided by the Supreme Court in Jitendra Nath Biswas v. Empire of India and Cylon Tea Co. and Anr. AIR 1990 S.C. 256 The Civil Court

cannot straightway ask for reinstatement by its order as personal contract for service is not enforceable. The law laid down in Puma Chandra Das

v. Warren Industrial Ltd. and Anr. 1991 (2) C.H.N. 145 still holds the field. The Court in Nandganj Sihori Sugar Co. Ltd., Rae Bareli and another

Vs. Badri Nath Dixit and others, endorsed the same view. It should not slip away from our mind nor it should be lost sight of that a Revisional

Court is not a Writ Court where reinstatement could be ordered. It is a Court of Revision which has the power to exercise Revisional jurisdiction,

only if the subordinate Court appears:

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested ; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

13. The Supreme Court, in the context, in D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, held

that it is not competent for the High Court to correct errors of fact, however, gross or even errors of law unless the said errors have relation to the

jurisdiction of the Court to try the dispute itself. Therefore, there is not even any microscopic material before the Court of Revision that the Courts

in passing the order had offended the provision of law or passed the order having founded on material defects of procedure affecting the ultimate

decision. The Revisional application even for a moment does not reflect that any jurisdictional error was committed by the learned Courts below

for which the revisional power could be exercised to aid the relief. The order complained of does not call for any interference from the Court of

Revision.

14. The points canvassed by Mr. Sarkar, therefore, do not survive as the contentions of Mr. Ghosh do. Before I depart, I leave on record that I

passed an order on October 13, 1993, in the above CO. where I directed for payment of salary to the Petitioner for 45 days without prejudice to

the rights and contentions of the parties. The amount, if paid, and found ultimately the Petitioner is not entitled to it, shall be adjusted against the

final payments. I make it clear that I have only decided the matter against which the Revision arose without deciding anything about the suit itself.

The present decision is confined to the order of the learned Asstt. District Judge being Order No. 2 dated May 14, 1993. In the premise, the

Revisional application fails; but considering the circumstances I do not award any cost.

15. Let xerox copies of this order be given to the learned Advocates for the parties on the usual undertaking.