

(2001) 10 CAL CK 0034

Calcutta High Court

Case No: M.A.T. No. 2452 of 2001

Transport Development
Corporation

APPELLANT

Vs

Jyotirmoy Gupta and Others

RESPONDENT

Date of Decision: Oct. 10, 2001

Acts Referred:

- Industrial Disputes Act, 1947 - Section 15(2)

Citation: (2005) 1 CHN 248

Hon'ble Judges: Altamas Kabir, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: N.K. Mehta, P.K. Bhaumick and Debjani Das, for the Appellant; Jayanti Dhar Quader, Lovely Dasgupta Saha and Swarup Pal, for the Respondent

Final Decision: Dismissed

Judgement

Altamas Kabir, J.

Having regard to the nature of the facts involved, on consent of the parties, the appeal itself is taken up for disposal along with the application for stay, being C. A. N. No. 7505 of 2001.

2. This appeal is directed against the order dated 11th June, 2001 passed by the learned Single Judge, dismissing the writ petition filed by the appellant herein on the ground that no interference was called for with the order passed by the learned Judge, Third Industrial Tribunal on 8th September, 2000, on the application filed by the workman u/s 15(2)(b) of the Industrial Disputes Act, 1947.

3. Admittedly, the respondent workman was appointed by the appellant Corporation with effect from 6th June, 1984 and he was confirmed in his post with effect from 1st October, 1986. While working at the Siliguri Branch of the Corporation, he made an application for leave from 9th January, 1993 to 22nd January, 1993, and thereafter for the reasons mentioned in the order of the learned Tribunal, he applied to the

appellant for extension of his period of leave. The appellant Corporation asked the respondent workman to file a Doctor's certificate indicating the nature of his illness. Despite the same being submitted, the appellant Corporation was not satisfied and without holding any disciplinary proceeding, terminated the service of the workman on the ground that he had voluntarily abandoned his service.

4. On an industrial dispute being raised, the matter was referred to the learned Tribunal on the question as to whether the termination of the service of the respondent workman was legal and proper. In the pending reference, the workman made an application u/s 15(2)(b) of the aforesaid Act which was allowed by the learned Tribunal. As indicated hereinbefore, the said order of the learned Tribunal was the subject-matter of challenge in the writ petition filed before the learned Single Judge.

5. Appearing in support of the appeal, Mr. N. K. Mehta, learned Advocate, urged that while arriving at a prima facie satisfaction for the purpose of granting interim relief, the learned Tribunal was required to go into the merits of the case and to come to a prima facie finding that there was a case to go to trial and that in the facts of the case, such interim relief could be granted in aid of the final relief. Mr. Mehta submitted that there could not be two standards of satisfaction on the merits of the matter at the stage of grant of interim relief and at the final stage and the learned Single Judge had erred in holding that the dispute relating to the question as to whether the workman left his service voluntarily or whether his service was wrongfully terminated, was to be determined in detail at the time of final hearing and not at the stage of granting interim relief.

6. In aid of his submissions Mr. Mehta referred to a Bench decision of this Court in *Webel Nicco Electronics Ltd. v. Anima Roy*, reported in 1 1997 CLT 243 and a Full Bench decision in *B. G. Sampat v. State of West Bengal and Ors.*, reported in 2000(1) CHN 1 where it was explained that in order to grant interim relief, the Court was required to look into the merits of the case.

7. Mr. Mehta submitted that instead of dismissing the writ petition, the learned Single Judge ought to have interfered with the order of the learned Tribunal which had been made without consideration of the merits of the case.

8. Mr. Mehta also referred to the evidence of the respondent workman which was recorded by the Labour Court to the effect that he used to draw Rs. 600/- per month at the time he left the Corporation. Mr. Mehta tried to impress upon us that the same amounted to admission on the part of the workman that he had left the service of the appellant Corporation voluntarily and as a result it did not entitle him to interim relief u/s 15(2)(b) of the aforesaid Act.

9. Opposing the application on behalf of the respondent workman, Mrs. Lovely Dasgupta Saha, learned Advocate, submitted that no interference was called for with the order of the learned Single Judge, having regard to the Full Bench decision

in the case of B. G. Sampat v. State of West Bengal and Ors. and also Webel Nicco Electronics Limited v. Anima Roy and Ors., which had been cited by Mr. Mehta.

10. Mrs. Saha urged that all the Tribunal was required to see was whether a prima facie case had been made out on the basis of the materials before it to pass an order for grant of interim relief, having regard to the intention of the legislature in enacting the aforesaid provision to provide subsistence to a workman during the pendency of the reference.

11. Mrs. Jayanti Dhar Quader, learned Advocate, appearing on behalf of the State, supported the order passed by the learned Tribunal as also the order of the learned Single Judge on more or less the same grounds as those taken by Mrs. Saha, and submitted that no interference was called for with the order of the learned Single Judge in the present appeal.

12. Having considered the submissions made on behalf of the respective parties, and after perusing the order passed by the learned Tribunal on the application u/s 15(2)(b) we are satisfied that the learned Tribunal did go into the merits of the matter in arriving at the conclusion that a prima facie case been made out for grant of interim relief. In our view, there is no infirmity in the order of the learned Single Judge and the conclusion arrived at by him that applying the test laid down in the decisions cited and in the facts and circumstances of the case, on other order could be passed because a prima facie case had been made out, does not require any interference.

13. The decisions of the Full Bench and the Division Bench cited on behalf of the parties indicate the position of law relating to grant of interim relief u/s 15(2)(b) of the Industrial Disputes Act, 1947, and the view taken by the learned Single Judge is in consonance with the views expressed in the said decisions, with which we respectfully agree.

14. We, accordingly, see no reason to interfere with the order passed by the learned Single Judge and the appeal and the application for stay are accordingly dismissed.

15. There will be no order as to costs.

16. If an urgent xerox certified copy of this order is applied for, the same is to be supplied to the applicant, expeditiously, subject to compliance with all the required formalities.

Alok Kumar Basu, J.

17. I agree.