

04.08.2023
DL-140
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20375 of 2022

M/s. Murlidhar Ratanlal Exports Limited
Vs.
The State of West Bengal & Ors.

Mr. Soumya Majumder,
Ms. Amrita Pandey

....for the petitioner.

Ms. Sikta Roy

....for the respondent no.3.

Mr. Ranjoy De,
Mr. Bhaskar Mukherjee

....for the added respondent.

Under challenge in this writ petition is an award dated June 29, 2022 passed by the First Industrial Tribunal. By the said award, the Industrial Tribunal directed payment of full back wages of the workman/respondent no.3 on and from the date of dismissal on December 31, 2006 till such time the petitioner was superannuated from service along with all consequential benefits being granted to the petitioner of illegal and unlawful dismissal.

Mr. Majumder, learned counsel appearing on behalf of the petitioner submits that the petitioner should not be saddled with the responsibility of paying full back wages of the respondent no.3 along with the compensation to the tune of Rs.1,00,000/- The petitioner was a workman of the added respondent no.4/M/s. Hooghly Mills Company

Limited. Prior to the taking over of the Company in June 21, 2007, the petitioner was dismissed from service.

Therefore, under the agreement dated June 20, 2007 between the petitioner and respondent no.4, the petitioner had no liability to pay the erstwhile dismissed employee of the respondent no.4. Attention of this Court is drawn to clause 12 of the said agreement in respect of the liabilities of the vendor and purchaser.

It is submitted that a sum not exceeding Rs.8.25 crores on account of gratuity was the only liability that the purchaser/petitioner had to shoulder in case of person, and/or dead and/or retired and/or superannuated employees. Any other claim in relation to pay of the erstwhile workman was required to be shouldered by the vendor/respondent no.4.

Mr. Majumder refers to the provisions of section 2(g), (k) and section 2A of the Industrial Disputes Act, 1947 to submit that the 'Employer' means the present 'Employer' and cannot be taken to mean the erstwhile 'Employer'. He also refers to the 5th Schedule of the said Act regarding the unfair labour practices. He submits that the 'Employers' are liable for unfair labour practices if they discharge or dismiss the workman under clause 5 of the said 5th Schedule.

Since the petitioner was not the 'Employer' of the respondent no.3, the petitioner has been illegally and arbitrarily saddled with the responsibility of payment of back wages and compensation by the impugned award.

Mr. De, learned counsel appearing on behalf of the respondent no.4 submits that the petitioner was well aware of the fact that it is the employer of the workman. He submits that in the title suit filed by the workman/respondent no.3 being T. S. 129 of 2005 before the Additional Civil Judge (Junior Division) at Serampore, the writ petitioner was substituted as a party. No appeal was preferred from the said order of substitution. Therefore, the writ petitioner acquiesced to the fact that it is the employer of the respondent no.3 and had the liability of payment of the dues of the respondent no.3. The said suit was decreed on contest in favour of the workman. However, the petitioner herein preferred an appeal from the said decree. The Appeal Court in Title Appeal No.54 of 2010 allowed the appeal on contest by adjudicating that the appropriate forum for redressal of the grievances of the plaintiff/respondent no.3 herein was the Industrial Tribunal under the 1947 Act. Hence, the proceedings were initiated under the 1947 Act.

He also placed on record the written statement filed by the writ petitioner before the Tribunal. He submits that only because the title appeal was pending, the writ petitioner refrained from appearing before the said Tribunal. He then draws the attention of this Court to the agreement between the writ petitioner and the respondent no.4 to contend that the effective date of the agreement was June 21, 2007. Under clause 3 (j) it was agreed between the parties that all the legitimate amounts payable on account of Provident Fund, Gratuity, ESI or that may become payable on any other account which may accrue after the effective date **shall** be borne by the purchaser. He also submits that the legitimate amounts accruing after the effective date on account of *labour dues* will have to be paid by the purchaser. He submits that the legitimate dues of the workman/respondent no.3 initially accrue on the date when the decree was passed on January 15, 2010 which was after the effective date of the agreement in June, 2007. Thereafter, the said decree was set aside. Again the liability on account of *labour dues* arose on the date when the Award was passed by the Industrial Tribunal on June 29, 2022, which was long after the effective date. Therefore, the petitioner cannot now seek to shrug off/disown its liability to

pay the *labour dues* which accrued after the effective date.

This Court has gone through the records. It finds that relevant papers with regard to the title suit/Appeal/written statement filed before the Tribunal/application for addition of parties in the suit as well as the Agreement between the parties were not brought on record in the writ petition. Such a conduct is not appreciated by this Court.

In the circumstances, this Court allows an Affidavit-in-Opposition to be filed by the respondent nos.3 and 4 for bringing on record the relevant documents relating to the issues that fall for adjudication in the present proceedings.

Let an affidavit-in-opposition be filed by 3 weeks from date. Reply, if any, within 2 weeks thereafter.

Parties will be at liberty to mention the matter for “Hearing” upon expiry of the period stipulated for exchange of affidavits.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon’ble Court.

(Lapita Banerji, J.)