

(2019) 07 JH CK 0168

Jharkhand High Court

Case No: Writ Petition (L) No. 2859 Of 2014

Employers in relation to the
management Of Mugma Area Of
M/s Eastern Coalfields Limited
through Sri Pawan Kumar Singh,
General Manager, ECL Mugma,
Dhanbad

APPELLANT

Vs

Their Workman Sri Badri Pandey

RESPONDENT

Date of Decision: July 9, 2019

Hon'ble Judges: Rajesh Kumar, J

Bench: Single Bench

Advocate: Amit Kr. Sinha, R.S. Mazumdar

Final Decision: Allowed

Judgement

Heard the counsels for the parties.

Present writ petition has been filed for quashing the award dated 16.09.2013 passed in Reference No.40 of 2010 by learned Presiding Officer, Central

Government Industrial Tribunal No.1, Dhanbad whereby and whereunder reference has been answered in favour of the workman with a direction for

reinstatement in service with 25% back wages.

From the pleading and argument, it appears that the concerned workman was a regular employee under the respondent Management (ECL). His

alleged date of superannuation was 16.09.2005, but before superannuation, he has been terminated vide order dated 22.04.1996 on the charge of

misconduct. The concerned workman has been charged for assaulting the General Manager. In the departmental enquiry, it has been held by the

Enquiry Officer that the charge stands not proved but it was recorded that he was present at the place of occurrence. On that basis, the order of dismissal has been passed.

Thereafter, the industrial dispute has been raised and referred vide Reference No.40 of 2010, which is quoted hereinbelow:

“Whether the action of the management of Shyampur Colliery of M/S ECL in dismissing Sri Badri Pandey from the services of the company w.e.f. 22.04.1996 is legal and justified? To what relief is the claimant entitled to?”

The said reference has been answered vide Award dated 16.09.2013 in favour of the workman by learned Presiding Officer, Central Government Industrial Tribunal No.1, Dhanbad.

Counsel for the petitioner has challenged the award dated 16.09.2013 mainly on two grounds. Firstly, award is totally unreasoned as the evidence led by the parties has not been discussed and secondly, it is settled law that if the departmental proceeding is found not fair or if there is absence of departmental proceeding, then the management has to be given an opportunity to defend his action.

In the present case, neither opportunity has been given to the management nor evidence led by the parties has been discussed.

On the other hand, counsel for the workman has submitted that as the concerned workman has not been found guilty of assault, for which he has been charged as such, order of dismissal was without finding of guilt and, therefore, rightly order of reinstatement has been passed.

It is admitted position that the concerned workman has been charged for assault for which enquiry has been conducted and the enquiry officer has found the charge stands not proved, but there was involvement of the workman in the incident of assault.

Counsel for the petitioner has relied upon the judgment reported in the case of Kranti Associates Private Limited and Another Vs. Masood Ahmed

Khan and Others (2010) 9 SCC 496 especially para-47, which is quoted hereinbelow:

“47. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial

Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a

component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University

of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and

intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of

giving reasons for the decision is of the essence and is virtually a part of "Due Process".

From perusal of the impugned award dated 16.09.2013, it is evident that the award is totally unreasoned order. Further, employer has not been given

opportunity as required in law.

It is trite that the reasoned order is sine-qua-non in the rule of law. Any unreasoned order is not acceptable in the rule of law. In view of above fact

and judicial pronouncement, the impugned award dated 16.09.2013 is hereby, quashed.

The matter is remanded to the concerned Central Government Industrial Tribunal (No.1), Dhanbad for taking a fresh decision, after hearing both

sides.

The entire exercise must be completed within six months from the date of receipt/production of a copy of this order.

It is expected that both the parties will co-operate with the concerned Tribunal.

With the above observations and directions, this writ petition stands allowed.

Pending, I.A. also stands disposed of.