

Durga Charan Mahato Vs M/s. Bharat Coking Coal Limited

Court: Jharkhand High Court

Date of Decision: Jan. 21, 2025

Hon'ble Judges: Anubha Rawat Choudhary, J

Bench: Single Bench

Advocate: Dr. M.K. Laik, Mohua Palit, Manjusri Patra, Manish Kumar

Final Decision: Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Heard the learned counsel appearing on behalf of the parties.

2. This writ petition has been filed challenging the Award dated 27.11.2013 passed in Reference Case No. 7 of 1999 by which the Central

Government Industrial Tribunal No. 2, Dhanbad has held that the management of Sudamdih Area office of M/s BCCL was justified in dismissing

Durga Charan Mahato from the service of the company w.e.f. 30.11.1994 and the workman has been held not entitled for any relief.

3. The terms of reference were as follows: -

THE SCHEDULE

“Whether the action of the management of Sudamdih Area of M/s BCCL in dismissing Sri Durga Charan Mahto from the service of company w.e.f.

30.11.1994 is justified? If not, to what relief the workmen is entitled.”

4. The case of the workman, Durga Charan Mahato, before the learned tribunal was that he was appointed in the year 1983 as Miner LoaderM /s

Bharat Coking Coal Limited (hereinafter referred to as the employer) and he was appointed after completing all the formalities under the Land

Looser Scheme due to the acquisition of land vide registered sale deed executed by his father Bishu Mahato which were purchased Lands of the

vendor by virtue of his three registered Sale Deeds Nos, 12899/1961, 3795/1967 and 20338/1973 which was mutated and rents were regularly being

paid.

It was the case of the workman that after expiry of 11 years, the employer issued a false charge sheet to the workman vide Letter dated 31.12.1992

for alleged misconduct on the ground that the land purchased by the employer did not belong to aforesaid Vendor Bishu Mahato (father of the

petitioner), rather it was Khas Land of the Government of Bihar. It was the case of the workman that the domestic enquiry was not conducted fairly,

properly and according to the rules of natural justice as the workman was neither given full opportunity nor was furnished with the documents of the

land showing to be Bihar Khas Land nor furnished a copy of the report of the Circle Officer concerned as demanded by the workman. It was the

case of the workman that the employer failed to prove the charges levelled against the workman, yet the workman was illegally dismissed. Since there

was no employer -employee relationship between the parties prior to his appointment, the workman had not committed any misconduct under clause

26.1.11 of the Certified Standing order as alleged by the employer and the action of the employer in dismissing the workman from the service w.e.f.

30.11.1994 was alleged to be illegal and unjustified. At last, the failure due to the adamant attitude of the employer in conciliation proceeding of the

Industrial Dispute raised by the Union resulted in the reference for adjudication.

5. On the other hand, the case of the employer before the learned Tribunal was that the workman fraudulently obtained employment by claiming

himself as a dependent of Bishu Mahato (father of the petitioner) with regard to owner of the plots of land which never belonged to Bishu Mahato

(father of the petitioner) and the land actually belonged to the Government of Bihar. The employer issued charge-sheet, but his reply was

unsatisfactory and accordingly, the enquiry officer was appointed who conducted the enquiry in accordance with the principles of natural justice and

submitted enquiry report holding that the charges were established. The employer also prayed that in case the domestic enquiry is declared as unfair at

preliminary enquiry, permission was sought for adducing afresh evidence to prove the charges. It was asserted by the employer that the onus was

upon the workman to prove that they had title and interest on the land.

6. The preliminary point about the fairness of the domestic enquiry was decided by the tribunal vide Order No. 31 dated 15.03.2011 and it has been

held that the enquiry was quite fair and proper and as per the principles of natural justice and the matter was put up for hearing on merits. The records

of the domestic enquiry proceedings were placed in the records of the tribunal for consideration. Ultimately, the award was passed against the

workman. The learned tribunal recorded the findings on the basis of the materials already available on record as follows: -

“9. After hearing the argument of workman, Durga Charan Mahato and Mr. D. K. Verma, Learned Counsel for the O.P./Management, and I have

minutely perused all the materials on the case record, I find the facts as under:

(i) There is no dispute in the fact that workman Durga Charan Mahato just as his brother Kedar Mahato with five other alleged relatives Bhola Nath, Kapil Pd.,

Bihar Pd. and Sateyandra Pd. as nephews and son-in-law of his father Siboo got employment in the colliery concerned under the Land Looser Scheme by virtue of

the sale of the total 5.85 lands in issue by aforesaid Siboo (Mahato) as his own lands to the B.C.C.L. & Co.

(ii) At the investigation into it by the Vigilance Authority concerned, as per the reports of the Circle Officer, Jharia out of total 5.85 acres of lands sold by Bisoo

to the company, 4.58 Acre comes under Gairabad, Khata no. 20 is Gairabad Malik (khas, not recorded in any tenant's name, but Area 70 dec. land under

Khata 12 in respect of which Revenue Receipt stands recorded in the name of Bhagatu Mahato (and others) from which Bisoo alleged to have purchased. So the

lands under the Khata Area 5.15 did not belong to Bisoo, the father of workman Durga Charan Mahato, so his employment at the imitation of Bisoo under the

said Scheme was fraudulent and on false information.

(iii) The present workman in collusion of his father Bisoo had fraudulently got his employment by furnishing false information about the lands concerned in

course of the said scheme.

In view of the grave nature of the misconduct as proved against the workman, his dismissal from the service of the Company was quite

proportionate to it. & Co.

Arguments of the petitioner [the workman]

7. While assailing the impugned Award it has submitted that the father of the the workman, namely, Bishu Mahato had transferred certain property in

favour of the respondent management vide registered sale deed no. 773, 774 and 7759 dated 30.1.1981, 30.01.1981 and 26.09.1980 and there was

total eight plots and total area was 6.95 acres. The learned counsel submits that on the basis of report of Circle Officer the employer came to a

conclusion that some portion of the property so sold did not belong to Bishu Mahto and it was government land and consequently a disciplinary

proceeding was initiated after expiry of 11 years from the date when the concerned workman was given employment under land looser scheme. He

has submitted that at the stage of enquiry the petitioner had demanded the copy of the certificate issued by the Circle Officer, Jharia in respect of the

purchased property and also the particulars of plot nos., khata nos. area purchased by employer from his father against which he was provided

employment, but these documents were not provided and in spite of that the petitioner was held guilty on the ground that the employment was

fraudulently obtained by giving false information about the ownership of the land.

8. The learned counsel has submitted that merely on the basis of report of the circle officer, there was no question of coming to a conclusion that the

land did not belong to his father.

9. He has also submitted that even as per the impugned order, it has been recorded that as per the report of the Circle Officer Jharia, out of 5.85

acres of land sold by Bishu Mahato to the respondent, 4.58 acres was coming under gair abad and 70 decimal of land under khata no. 12 was in

respect of which revenue receipts stood recorded in the name of Bhagatu Mahato and others from whom Bishu Mahato (father of the petitioner) is

said to have purchased. It was concluded that portion of the land did not belong to Bishu Mahato [the father of the petitioner] and therefore, the

employment of the petitioner at the instance of Bishu Mahato (father of the petitioner) under the land losers scheme was fraudulent and false.

10. The learned counsel has submitted that it is certainly not the case of the respondents that the entire land sold by Bishu Mahato (father of the

petitioner) to the employer did not belong to Bishu Mahato. He also submitted that it was the registered deeds on the basis of which the employer had

taken possession and registered deeds executed by Bishu Mahato (father of the petitioner) was never cancelled. He has submitted that the right, title

with respect to properties could have been decided only through title suit and no such conclusion could have been drawn on the basis of report of

circle officer, that the property did not belong to Bishu Mahato.

Arguments of the respondents [employer]

11. The learned counsel appearing on behalf of the respondents while opposing the prayer has referred to the record received from the concerned

tribunal and has submitted that the discussion with respect to Durga Charan Mahato is in page no. 171 which is a part of the enquiry report. He has

submitted that as per the enquiry report, total 6.95 acres of land was sold by Bishu Mahato to the respondent by way of registered sale deed dated

30.01.1981, 30.01.1981 and 26.09.1980 and the petitioner did not produce the sale deeds by virtue of which Bishu Mahato had purchased the property

and there was no entry in the name of Bishu Mahato in the revenue records and his name was not entered as tenant in the record.

12. The learned counsel has submitted that on the basis of the enquiry report there was no doubt that the property never belonged to Bishu Mahato

and he had sold the property to the employer fraudulently and therefore the employment given to the workman under land losers scheme was a

fraudulent employment and accordingly the Award passed by the learned court does not call for any interference.

13. The learned counsel submits that so far as violation of principles of natural justice and certain documents having not been supplied to the workman

is concerned, the same may not have any bearing in this case in view of the fact that the workman was not prejudiced by non-supply of one or the

other document and from the report of the circle officer it was clear that the property never belonged to Bishu Mahato (father of the petitioner). The

learned counsel has also submitted that the case has been decided on the basis of the principles of preponderance of probability and the petitioner

having not submitted the connected title deeds before the enquiry officer had no claim over the employment which was granted to the petitioner under

land losers scheme. He has relied upon the judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 7257 of 2022 (The State

of Punjab versus Nachhattar Singh (Dead) Thr. LR.) and has submitted that unless prejudice is shown to have been caused, the violation of

principles of natural justice has no role to play in the matter of disciplinary proceedings. The learned counsel has submitted that mere non supply of the

document which may not have resulted in any prejudice to the employee, the order passed by the disciplinary authority cannot be set aside.

Rejoinder of the petitioner [workman]

14. In response, the counsel for the petitioner has submitted that the petitioner was never served with the enquiry report also. The learned counsel for

the petitioner has submitted that non supply of documents caused great prejudice to the petitioner and the aforesaid judgment does not apply to the

facts and circumstances of this case.

15. He has also submitted that even as per the impugned order, only 5.15 acres out of 5.85 acres did not belong to Bishu Mahato (father of the

petitioner). So far as .70 decimal is concerned, it is not in dispute that the same belonged to Bishu Mahato (father of the petitioner) as per the

impugned order which he had purchased from one Bhagatu Mahato and others.

Findings of this court.

16. Vide order dated 15.03.2011 passed by the learned tribunal, the domestic enquiry was quite fair, proper and in accordance with the principle of

natural justice and fixed the case for hearing on merits. However, the learned tribunal while passing the impugned award again considered the point of

non-supply of enquiry report and show cause notice pursuant there to and rejected the plea by holding that non-furnishing of the enquiry report and

issuing show cause notice to the petitioner before imposing punishment as in the present case will not vitiate the proceedings as no prejudice has been

caused to the petitioner. The findings are as under: -

"Further the workman has to submit that the dismissal by the Appellate Authority, the Area General Manager as per the Certified Standing Order of the

Company in this case is illegal as it deprived the appellant of his right to appeal, as such the order of dismissal as an inherent defect is liable to be set aside as

held by the Hon'ble Apex Court in the case of Surjit Singh Vs. Chairman and Managing Director reported in FLR 1995 (SC)817. But the argument of the

workman in lack of any such pleading and evidence is also unsustainable. Every Ratio decidendi acts upon the factum of a particular case. So far as the non-

supply of enquiry Report and Show Cause Notice to the workman is concerned, non-furnishing of enquiry report to delinquent will not vitiate the enquiry as held

by the Hon'ble Supreme Court in the case of Debotosh Pal Choudhary Vs, Punjab National Bank, 2002 LLR 1169(SC). An enquiry will not be vitiated for non-

furnishing of enquiry report and issuing Show Cause Notice to the delinquent before imposing of punishment as in the present in which non prejudice to the

delinquent has been established at any moment.Ã¢â‚¬â€œ

(emphasis supplied)

17. Thus, the learned Tribunal while passing the final award has recorded that non-supply of enquiry report will not vitiate the enquiry and issuing

show cause notice to the workman before imposing punishment is not necessary where no prejudice to the workman has been established. Thus, non-

supply of the enquiry report and also non-issuance of show cause before inflicting punishment is an admitted position and the case of the employer is

that no prejudice has been caused by such non supply.

18. This court finds that serious allegation of committing fraud and furnishing false information was made against the father of the petitioner which led

to appointment of the petitioner under land losersÃ¢â‚¬â€œ scheme. The title of Bishu Mahato (father of the petitioner) with respect to portion of the land

transferred through three registered sale deeds by Bishu Mahato (father of the petitioner) to the employer was under cloud and this was solely on the

basis of the report of the circle officer. There was no dispute of title with regards to some portion of the land so transferred. Admittedly, no suit was

filed seeking setting aside of the registered sale deeds and the employer was the purchaser of the property and secured possession from the Bishu

Mahato (father of the petitioner) and gave employments under land losersÃ¢â‚¬â€œ scheme of the employer. The law is well settled that entry in record of

rights do not create or extinguish title. The title of the vendor Bishu Mahato (father of the petitioner) was disputed on the basis of the report of the

circle officer. Essentially the dispute was in connection with right and title of the father of the petitioner who transferred the land by virtue of

registered sale deeds and in return got employments of his family members including the petitioner. It is not in dispute that father of the petitioner gave

possession of the property to the employer and the employer remained in possession by virtue of such transfer. It is also not in dispute that some

portion of the land was rightly transferred to the employer by the Bishu Mahato (father of the petitioner) through the aforesaid sale deeds.

19. This court is of the considered view that non-furnishing of enquiry report of the departmental enquiry and non-issuance of show cause before

imposing punishment of dismissal on the allegation of fraud has caused serious prejudice to the petitioner and has deprived the petitioner to point out to

the disciplinary authority that report of the circle officer cannot be used to declare or extinguish the title of the property transferred through registered

sale deeds by Bishu Mahato (father of the petitioner) to the employer and also that there was no cloud with respect to some of the transferred land

and that the registered sale deeds have not been cancelled by any competent court of law. It is not in dispute and also submitted by the learned

counsel for the employer that the enquiry report reveals that the total 6.95 acres of land was transferred vide the three sale deeds and accordingly, it

has been wrongly recorded in the impugned award that the transferred land had an area of 5.85 acres. It has been recorded in the impugned award

that the circle officer claimed that the land to the extent of 5.15 of the transferred land did not belong to the Bishu Mahato (father of the petitioner) as

there was no entry of any tenant in the records. Thus, the finding of the learned tribunal in the impugned award holding that the petitioner was

not prejudiced by non-furnishing of the enquiry report and non-issuance of show cause prior to imposition of punishment of dismissal, is

perverse and cannot be sustained in the eyes of law.

20. The enquiry report has also been referred to by the learned counsel for the parties which reveal that father of the petitioner alienated the land total

6.95 acres by virtue of three sale deeds bearing Nos. 773 dated 30.01.1981, 774 dated 30.01.1981 and 7759 dated 26.09.1980. As per the enquiry

report, it was mentioned by the Circle Officer, Jharia that there was no entry of any tenant in the records with respect to portion of the land covered

by the three sale deeds and primarily on the basis of the report of the circle officer it was concluded that the employment as land losers was

fraudulently obtained on the basis of sale deeds.

21. This court finds that the Tribunal has recorded that some portion of the land, and not the entire land covered by the sale deeds executed by the

father of the petitioner, was alleged to be government land. The employer having taken possession of the land from the father of the petitioner by

virtue of registered sale deeds and having given appointment to the petitioner in the category of land losers, the title of the father of the petitioner with

respect to registered sale deeds cannot be decided on the basis of so-called report of the Circle Officer.

22. Even if the claim based on the report of the circle officer that the property belongs to the government is assumed to be correct, it was for the

buyer (employer) to make necessary enquiries from the circle office at the time of purchase of the properties through the sale deeds.

23. Admittedly, the employer has not challenged the sale deeds executed in their favour and rightly so, as they are the beneficiaries of the sale deeds

and are in possession by virtue of the sale deeds. There is nothing on record to show that even the state has filed any suit seeking declaration of their

title and recovery of possession. Admittedly, no criminal case was instituted alleging fraud and collusion of the petitioner with his father in the matter

of execution of the sale deeds. Admittedly the entire transfer was not bad and objection was raised in connection with portion of the transferred land.

This court is of the view that on the basis of report of circle officer no finding could have been recorded that there was fraudulent transfer of portion

of land covered by the sale deeds and consequently such an allegation could not have resulted in dismissal of the petitioner. The finding of the learned

tribunal is also based solely on the report of the circle officer which was exhibited by the vigilance authority in the domestic enquiry proceedings and

on the basis of the report of the circle officer it has been held that the father of the petitioner got employment for the petitioner by furnishing false

information. Finding of fraudulent transfer of land solely on the basis of report of the circle officer, who stated that there was no entry of tenant in the

records, is ex-facie perverse and cannot be sustained in law. Consequently, dismissal of the petitioner on the basis of aforesaid finding is also not

sustainable and accordingly, the award upholding the order of dismissal on the ground of allegation of fraudulent transfer of land is also not sustainable

and calls for interference. Further, the tribunal also lost sight of the fact that even as per the report of the circle officer and also the domestic enquiry

report, the title of the father of the petitioner was not disputed at least with respect of some portion of the land so transferred by the sale deeds. The

learned tribunal has incorrectly recorded the total area of the land transferred vide the three sale deeds which was correctly recorded in the domestic

enquiry report and the learned tribunal has also committed error of record. As per the domestic enquiry report, the total transferred land was 6.95

acres which has been wrongly recorded as 5.85 acres in the impugned award and as recorded in the impugned award the cloud with regards to the

title of the father of the petitioner was only to the extent of 4.58 acres which were alleged to be government land on the basis of the report of the

circle officer.

24. Considering the totality of the facts and circumstances of this case and the findings recorded above, the learned tribunal has committed grave

illegality in upholding the order of dismissal of the petitioner and has also committed grave illegality while holding that the petitioner was not prejudiced

by non-supply of the enquiry report and non-issuance of show cause before awarding punishment.

25. As a cumulative effect of the aforesaid findings, the impugned award dated 27th November 2013, passed by the Central Government Industrial

Tribunal No. 2, at Dhanbad upholding the order of dismissal of the petitioner is set-aside and the petitioner is directed to be reinstated in service with

continuity in service.

26. Admittedly the petitioner was appointed in the year 1983 and dismissed from service on 30.11.1994 and the date of reference is 16.12.1998. In the

written statement there is no plea that the petitioner remained unemployed during the period he remained out of employment and there is no such

statement made by the petitioner who was examined as W.W.-1 before the learned Tribunal. However, considering the totality of the facts and

circumstances as discussed above, the petitioner would be entitled for 50% back wages from the date of reference till today. In case the petitioner has

already attained the age of superannuation, he would be entitled to the aforesaid relief only till the date of superannuation as mentioned in his service

record.

27. This writ petition is disposed of in the aforesaid terms.