

(2002) 09 JH CK 0009**Jharkhand High Court****Case No:** C.W.J.C. No. 1097 of 1994 (R)

Employers in relation to the
Management of Katras Project
Area of Bharat Coking Coal Ltd.

APPELLANT**Vs**

Presiding Officer, Central Govt.
Industrial Tribunal (No. 2) and
Others

RESPONDENT**Date of Decision:** Sept. 6, 2002**Acts Referred:**

- Constitution of India, 1950 - Article 226

Hon'ble Judges: M.Y. Eqbal, J**Bench:** Single Bench**Advocate:** M.M. Banerjee and A.K. Das, for the Appellant; M.K. Laik, for the Respondent**Final Decision:** Dismissed**Judgement**

M.Y. Eqbal, J.

The petitioner who is employer in relation to Management of Katras Project Area of M/s B.C.C. Ltd. has prayed for quashing the Award dated 20th December, 1993 passed by Presiding Officer, Central Government Industrial Tribunal, Dhanbad whereby he alleged to have reviewed the earlier Award dated 11.6.93 and held that Management is liable to regularize the concerned workmen within two months from the date of publication of the Award.

2. It appears that in 1991 the following Industrial Dispute was referred to the Tribunal for adjudication vide notification dated 19.3.1991 "Whether Shri J.P. Srivastav and 39 others listed in the annexure are workmen of the management of Katras Project Area of M/s Bharat Coking Coal Ltd. and whether the demand of the Rashtriya Colliery Mazdoor Sangh that these persons be reinstated in the services of the said management is justified? If so, to what relief are these persons entitled?"

3. The aforesaid dispute referred to herein above was registered as Reference Case No. 29/91. The Management as also the concerned workmen represented by the Union filed their written statement and the Tribunal after hearing the parties passed the award dated 11.6.1993 holding that only 10 alleged workmen will be deemed to be the employees of the petitioner and if they have been stopped from working they shall be reinstated within two months from the date of publication of the Award.

4. Petitioner having dissatisfied with the aforesaid award moved this Court by filing CWJC No. 196 of 1994(R). It is stated that in the said writ petition notices were issued to the concerned workmen and the matter was pending. In the meantime, an application was filed by the concerned workmen before the Tribunal for recall of the award dated 11.6.93. The petitioner filed objection but the Tribunal after hearing the parties allowed the said application by order dated 24.11.93 and directed that the case would be heard on merit. Thereafter the concerned workmen proved certain documents which were not filed earlier in the said reference case and passed a fresh award dated 20.12.93 which was published on 21.2.94.

5. Mr. M.M. Banerjee, learned counsel appearing for the Management assailed the impugned award as being illegal and wholly without jurisdiction. Learned counsel submitted that the Tribunal once published the Award dated 11.6.93 it had no jurisdiction to review the said award and pass a fresh award after entertaining fresh evidence. Learned counsel further submitted that the Tribunal has committed serious illegality in allowing the concerned workmen to lead evidence for the purpose of reviewing of the award.

6. On the other hand, Mr. M.K. Laik, learned counsel appearing for the concerned workmen submitted that the Tribunal has not reviewed the earlier award and passed fresh award rather it is a case of correction of mistakes which crept in the Award dated 11.6.93. According to the learned counsel the Tribunal has jurisdiction to correct the mistakes that may occurred in the Award.

7. From perusal of copy of the award dated 11.6.93 which has been filed and annexed as Annexure-1 to the writ application, it appears that the terms of reference was whether Shri J.P. Srivastava and 39 others listed in the annexure are workmen of the Management of Katras Project Area of M/s Bharat Coking Coal Ltd. The tribunal in the Award dated 11.6.93 held as under : "Now the next important question for consideration is as to whether the concerned workmen were ever engaged by Shri Srivastava, Tyndal Contractor. The management has stated that none of the concerned workmen were ever engaged by Shri Srivastava. They also stated that 8 to surprisingly enough the management has not disclosed any name who worked under the contractor and in that view of the matter such statement merits no consideration. On the other hand Sri Srivastava stated in his evidence that he never issued any appointment letter to any workman. We have no other paper except Ext. W-4 to show that some of the concerned workmen worked under Shri Srivastava. Even Ext. W-4 contains the name of 12 to 13 persons. This is the photo

copy of the weekly wage register showing payment to the workmen which has been duly countersigned by the LEO(C). Of course it does not bear the signature of any authority of the management but the LEO(C) is also not a private person. He is one of the Govt. official and the payment to the workers are certified by him. I find that the weekly payment register starts from SI. No. 30 and lasts at SI. No. 42. In one of the weekly sheet the SI. Extent to 43 including the name of one Vinod Kumar Mishra. Out of these 14 names the names of Shri B.R. Ghosh, Jodhan Singh, Hoda and Vinod Kumar Mishra and Jalaluddin Khan do not agree with the names given out in the annexure of the order of reference. The remaining 9 names definitely are to be found in the annexure they are Joginder Singh, Uttam Pandey, Ramkripan Singh, Tribhuban Singh, Mithilesh Kumar Singh, Vijay Kumar Singh, Ravindra Kumar Singh, Ramnaresh Singh and Hararam Singh. We have no record to show that other concerned workmen ever worked under the contractors Shri J.P. Srivastava. Certainly J.P. Srivastava was the contractor and his name appears everywhere. Thus I am to hold that all the above 10 workmen including the contractor worked as Tyndel and since they were working in permanent nature of job, they will be deemed to be the employees of the management. It is held accordingly. If they have been stopped they be reinstated within 2 months from the publication of the Award. Their continuity of service will be maintained."

8. After the aforesaid award was published, the concerned workmen filed an application stating inter alia that Ext. W-4 Is not the whole document but it is only the page which bears the signature of Labour Enforcement Officer (Central) who is the Local Authority to supervise the relations between the employer and employees in the instant matter and there are other pages containing names from serial No. 1 to 29 and the last page shows serial No. 30 to 40 and thus the names of first 30 workmen has been left out. The concerned workmen therefore prayed for recall of the earlier award and for passing a final award in the matter. The tribunal while allowing the application for review/recall of the award has recorded following reasons :

"The next question for consideration is as to whether such review application can be entertained at this stage or not. Such review petitions are generally to be discouraged and it has to be allowed in exceptional cases when there is already been passed on merit after having heard parties. Prima facie no apparent error either legal or factual were pointed out in the judgment save and except the matter was dealt with regard to few of the concerned workmen. The question was that the Award was passed on the basis of the document filed by the parties. On behalf of the workmen Ext. W-4 was filed which was the photo copy of the weekly wage register showing SI. No. 30 to 42 and on that very basis the Award was passed. Actually the fault rested with the Union itself. It appears that the whole document was not filed and hence the order with regards to few of the concerned workmen.

As per schedule of the reference number of the concerned workmen were 40 including Shri J.P. Srivastava. The annexure also states all 40 persons. The learned counsel for the workmen submitted that only on account of mistake on the part of the workmen the register in its entirety could not be produced for appreciation by the Hon"ble Tribunal. From Ext. W-4 series the mistake appears to be quite apparent. This is not the whole document. SI. No. 1 to 29 is missing which could not be considered by the Tribunal for it was not brought on the record by the workmen. It must be borne in mind that the Industrial Dispute Act, 1947 is a piece of legislation calculated to ensure social justice to both the employers and the employees and to advance the progress of industry by bringing harmony and cordial relation between the parties. In other words the very purpose of the Act is to settle dispute between the workmen and the employers which if not settled would result in strike or lock outs entailing dislocation of work which are very essential for the life of the community. As point above the error though on the part of the workmen is quite apparent and if the same is not rectified at this stage the affected parties are likely to go to the Hon"ble Court which will amount to unnecessary dragging of the litigation. Keeping all these facts in view it looks very proper that the review application be allowed at this stage. It is ordered accordingly."

9. Accordingly, the concerned workmen was allowed to adduce evidence. The workman J.P. Srivastava was examined on recall and he proved photocopy of the wage register. The Tribunal thereafter passed the final award. The relevant portion of the impugned award passed by the Tribunal is worth to be quoted hereinbelow :

"In view of the application and the order passed by this Tribunal on 24.11.1993 the matter has been heard afresh. Sri J.P. Srivastava on recall stated that in the first hearing he had produced photocopy of the wage register which started from SI. No. 30. He has now produced the original weekly wage register in which the names of all the concerned workmen can be found. It has been marked Ext. W-5 to W-5/\$. The signature of this witness as also of the LEO (C) can be found in this register. In cross-examination he stated that these registers were prepared in his pen. He stated that prior to maintenance of this register the attendance register was maintained by the management of the Colliery. The learned counsel for the management had challenged the genuineness of this document but the photocopy of this register starting from SI. No. 30. Ext.-5 series has already been believed by this register under Ext-W-5 Series. I have perused this weekly register very carefully. The names of the concerned workmen appear in the register except Sri Uma Shankar Singh. Duryodhan Singh, Ajay Kumar Singh and Salauddin Khan for regularisation. The management is thus directed to regularize the concerned workmen except Uma Shankar Singh, Duryodhan Singh, Ajay Kumar Singh and Salauddin Khan within 2 months from the date of publication of the Award. However, the continuity of service will be maintained."

10. From perusal of the entire facts of the case and the relevant orders passed by the Tribunal it is clear that in the original reference itself the dispute was with regard to 39 workmen listed in the Annexure and the issue was whether all these 39 workmen are entitled to be reinstated in service or not. At the earlier stage the entire pages of the wage register was not produced before the Tribunal which led to the mistake in the Award. After the award was published this mistake was detected and the Tribunal allowed the application filed by the Union for the production of the entire wage register and after considering the evidences the Tribunal corrected its award by directing the management to reinstate all the concerned workmen whose name appear in the annexures of the reference. In my opinion it is not a case of publishing another award by the Tribunal rather it is in continuation of the earlier award correcting certain mistakes by including the names of all the concerned workmen on whose behalf reference was made to the Tribunal. I am also of the opinion, that the Tribunal has not inherent jurisdiction to correct the mistake which might have crept in the award. In the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, the Apex Court, while considering a question regarding the power of the Tribunal held as under :

"We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

11. Having regard to the facts and circumstances of the case and the law discussed hereinabove I do not find any reason to interfere with the award passed by the Tribunal. This writ application is dismissed.