(2010) 05 JH CK 0009

Jharkhand High Court

Case No: None

Employers in relation to the management of Akashkinaree Colliery of B.C.C.L.	APPELLANT
Vs	
The Presiding Officer, Central Government Industrial Tribunal No. 2 and Their Workmen represented by Rashtriya Colliery Mazdoor Sangh	RESPONDENT

Date of Decision: May 13, 2010

Acts Referred:

- Coal Mines (Nationalisation) Act, 1973 - Section 14
- Industrial Disputes Act, 1947 - Section 10(1), 25

Citation: (2010) 4 JLJR 645 : (2010) 124 FLR 327

Hon'ble Judges: Sushil Harkauli, J; Prashant Kumar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal is directed against the judgment of learned Single Judge dated 5.9.2002 passed in C.W.J.C. No. 3433 of 1992 (R) whereby and whereunder he dismissed the aforesaid writ application.

2. It appears that the workman, Shiv Shankar Prasad, claimed to have been appointed as general mazdoor in North Tetulia Colliery on 5.4.1971. However the manger of the said colliery illegally stopped him from doing work w.e.f. 25.4.1973. It further appears that on 1.5.1973 the North Tetulia Colliery was nationalized and merged with Akashkinaree colliery of B.C.C.L. Ltd. as per the provisions of Coal Mines Nationalization Act, 1973. Thereafter the workman gave several representations for allowing him to resume duty with full back-wages, but in vain. The workman also approached the management through Rashtriya Colliery

Mazdoor Sangh and demanded for his resumption on the duty but the same had also not been entertained, Thereafter the matter was brought to the notice of Conciliation Officer, who started Conciliation proceeding, which failed. Then the Government of India, Ministry of Labour in exercise of power conferred on it u/s 10(1)(d) of the Industrial Dispute Act, 1947 referred the following dispute to the Industrial Tribunal No. 2, Dhanbad for adjudication vide order No. L-20012(259)/86-D. III (A), dated, the December, 1986-.

Whether the demand of Rashtriya Colliery Mazdoor Sangh that the management of Akashkinaree Colliery of M/s. Bharat Coking Coal Limited should allow resumption of duty by Shri Sheo Shankar Prasad who claimed to have previously worked as a General Mazdoor in North Tetulia Section of the said Colliery is justified? If so, to what relief is this workman entitled?

3. After the reference, the notices were served upon the parties and in response to the said notice both the parties appeared before the Tribunal and contested the reference by filing separate written statement. It is stated on behalf of the workman that he has been duly appointed on the post of general mazdoor by the competent authority in Tetulia Colliery w.e.f. 5.4.1971 and was working continuously for more than 240 days. However the manager of the said colliery illegally stopped him from doing work w.e.f. 25.4.1973 on the allegation that he was an inductee. It is stated that the workman was not given any opportunity to defend himself before passing of the aforesaid order. It is further stated that before stopping him from doing any work, he had not been given any notice and compensation as provided u/s 25(f) of the Industrial Dispute Act, therefore, alleged action of the management in terminating the service of workman is illegal and void ab-initio.

4. The management has stated that before the nationalization of the aforesaid Tetulia Colliery, screening committee was constituted for screening the workmen of the said colliery and the said Committee screened the concerned workmen and found that he was en inductee and fraudulently managed to enter into the service of the colliery after take over. Accordingly, he had been stopped from working w.e.f. 25.4.1973. It is further stated that the concerned workman has not filed any appeal, against the order of stopping him from doing work, before the Deputy/Additional Custodian General. It is stated that since the workman is not an employee of the Akashkinaree colliery, therefore, it is not necessary to follow the provisions contained in Section 25(f) of the Industrial Dispute Act. It is further stated that Section 14 of the Coal Nationalization Act has been amended in the year 1986 and after the said amendment, the protection available under the original Section 14 of the Nationalization Act remained no longer available, therefore no relief can be given to the concerned workman. It is further stated that the reference made by the Central Government is Illegal because the same is state.

5. It appears that the parties adduced evidences before the Tribunal in support of their cases. After considering the evidence available on record, learned Tribunal

decided all the points in favour of workman and directed the management to re-instate the workman without back wages as general mazdoor in category-l within one month from the date of publication of the award.

6. The aforesaid award passed by learned Tribunal was challenged in C.W.J.C. No. 3433 of 1992 (R). It appears that before the learned Single Judge, it has been contended by the management that the tribunal has committed error of law in entertaining the reference and answering it in favour of workman because original Section 14 of the Coal Mines Nationalization Act, 1973 was substituted in the year 1986. Thus, on the date of reference rights available to the workmen under the original Section 14 of the Coal Mines nationalization Act, 1973 was not available to them. However, the said contention of the management has not been accepted by learned Single Judge in view of the decisions of their Lordships of Supreme Court in Emp., MGMT of Ramkanali Colliery of M/s. BCCL Vs. Workmen by Secy. Rasht. Colliery Mazdoor Sangh and Another, . Accordingly the writ application filed was dismissed.

7. It is submitted by Sri Anoop Kumar Mehta Learned Counsel for the appellant, that the amendment made in the Coal Mines Nationalization Act in the year 1986 is retrospective in nature because it substitutes the original provision. It is submitted that after the amendment no workman can claim absorption in the Nationalized Colliery w.e.f. the appointed date i.e. 1.5.1973. Accordingly, it is submitted that the award given by the Tribunal is a nullity because the protection available under original Section 14 is no longer available on the date of award. It is next submitted that the finding of the Tribunal that the workman was appointed on 5.4.1971 is incorrect in view of the fact that the concerned workman was not a member of CMPF and his name also does not figure in Form-B register. It is further submitted that there is a delay of about 14 years in making reference, therefore on the ground of delay, the reference is liable to be rejected.

8. On the other hand, Sri Ajit Kumar, Learned Counsel for the workman, submits that their Lordships of Supreme Court in aforesaid Ramkanali Colliery Case (Supra) considered the same argument and held that the aforesaid amendment is not retrospective and the employees including the former employees whose services were terminated, will continue to hold such employment as it nationalization had not taken place. Accordingly, it is submitted that the learned Single Judge rightly concluded that the aforesaid contention of management is squarely covered by aforesaid judgment of Apex Court. It is next submitted that after considering the documentary as well as oral evidence, learned Tribunal came to the conclusion that the concerned workman was appointed in the year 1971 and he has been wrongly stopped from doing work w.e.f. 25.4.1973. It is submitted that the aforesaid finding is a finding of fact. It then submitted that management had not alleged that the said finding is perverse. Hence the same cannot be interfered by this Court under the writ jurisdiction. It is further submitted that the Tribunal after considering the

various evidence available on record has concluded that the Industrial Dispute was raised as back as in the year 1975, therefore the same cannot be rejected on the ground of delay.

9. Having heard the submission, we have gone through the record of the case. The contention of Learned Counsel for management, that the amendment made in the Coal Mines Nationalization Act in the year 1986 will operate retrospectively, had no leg to stand in view of the decision of their Lordships of Supreme Court in Ramkanali Colliery Case (Supra). In the aforesaid decision their Lordships after considering the similar contention raised by the management had held that the aforesaid amendment will not affect the rights of the party. It has been further held that the Act come into force on 1.5.1973 and the employee (including the former employee whose services were terminated) will continue to hold such employment as if nationalization had not taken place. Under the said circumstance, we find no illegality in the finding of learned Single Judge that the case is squarely covered by the aforesaid decision of Hon''ble Supreme Court.

10. From perusal of the award, we find that the learned Tribunal after considering Ext.- W1, W3, W4, W5, W5/1, W6 and W5/2 and also taking into account the oral evidences come to the conclusion that the workman was appointed prior to the take over of the colliery. The learned Tribunal has stated that only on the ground that workman has not contributed in CMPF all the documents filed by the workman, showing that he was duly appointed by the erstwhile management of the colliery cannot be disbelieved. We find that the aforesaid finding of learned Tribunal is a finding of fact, based upon cogent evidence. It is no where alleged by the management that the said finding of fact is perverse and not based on evidence. It is well settled that under the writ jurisdiction, it is not open for the High Court to disturb the finding of fact, made by the Tribunal unless they are perverse.

11. From perusal of award of learned Tribunal, we find that the Tribunal had thoroughly dealt with the contention of delay in reference and after considering the evidence adduced before it had come to the conclusion that the dispute in the instant case has been raised in November 1975, therefore there is only delay of three years in raising the dispute. It is well settled that as to when a dispute can be said to be state would depend upon the facts and circumstances of each case. The workman and the Union of Workmen had made demand with the management for resumption of duty with full back wages, thereafter in the year 1975 itself conciliation proceeding started. Thus, in the instant case, we find that the Tribunal has rightly concluded that there is no delay in raising of the dispute. Moreover, We find that the Tribunal has given direction to re-instate the workman without back-wages. Therefore, Tribunal has taken care of delay.

12. In view of the discussion made above, we find no illegally in the impugned judgment and also in the award of the Tribunal, which requires any interference in this appeal.

13. In the result, there is no merit in this appeal, the same is accordingly, dismissed. In the facts and circumstances of the case parties shall bear their own cost.