(2009) 06 JH CK 0014

Jharkhand High Court

Case No: None

Fatik Mahto and Others		APPELLANT
	Vs	
Bharat Coking Coal Ltd. and Others		RESPONDENT

Date of Decision: June 30, 2009

Citation: (2011) 1 JCR 358

Hon'ble Judges: M.Y. Eqbal, J; Dilip kumar sinha, J

Bench: Division Bench

Judgement

1. Reference may be made to the order dated 5.2.2009 which reads as under:

This appeal under Clause 10 of the Letter Patent is directed against the judgment dated 31.08.2007 passed in WP(L) No. 5528 of 2005 whereby the learned Single Judge dismissed the writ petition by rejecting the claim of the appellants for their reinstatement pursuant to the award dated 03.03.1983 passed in Reference Case No. 58 of 1981.

The case has a very exchequer history. The appellant alongwith 36 other workmen working as contract labourer under the respondent-BCCL raised industrial disputes for their regularization in service. The matter ultimately decided by the Central Government Industrial Tribunal, Dhanbad in favour of the workmen and the award was published on 03.03.1983. The award was affirmed by the Supreme Court. Thereafter, the dispute with regard to the identification of these workmen for the purpose of reinstating them in service and the matter came to Ms Court and the Supreme Court on a number of occasions. With regard to the identification, the Supreme Court in Civil Appeal No. 3749 of 1990 while disposing of the appeal directed the Regional Labour Commissioner (Central) at Dhanbad to examine afresh the claims of all the rival claimants claiming reinstatement under the award in question after giving opportunity of hearing to the workmen. It was agreed by the respondent-company that it will appoint such labourers as are entitled to reinstate

as per the findings of the Regional Commissioner.

The contention of the appellants is that when they were not given employment they moved before the Ranchi Bench of Patna High Court in CWJC No. 3832 of 1996 (R). The said writ petition was disposed of on 18.08.1997 with a direction to the appellant to file representation before the Regional Labour Commissioner, who shall consider the same and pass an appropriate order in accordance with law after going into the merit of the claim of the appellants. In compliance of the aforesaid order, the Regional Labour Commissioner before whom the appellants appeared for their identification, prima facie found these appellants to be the genuine claimants under the award dated 03.03.1983. For better appreciation, the concluding portion of the letter dated 26th April, 1999 issued by the Regional Labour Commissioner (Central), Dharibad to the respondent-BCCL is reproduced hereinbelow:

From the documents submitted by the said persons and their oral statement and report of the District Magistrates, Aurangabad and Monghyr, I find that prima-facie S/Sri Fatik Mahato, Nagina Mahato and Narayan Biswas appears to be the genuine claimants in the Award dated 03.03.1983 in Ref. No. 58 of 1981. However, the management of M/s BCCL may verify the genuineness of the report of the District Magistrates, Aurangabad and Monghyr to further ensure satisfaction about the identity and bonafides of these three persons and reinstate them in employment as per direction dated 03.03.1983 of the Presiding Officer, CG.LT. No. 3, Dhanbad and order dated 18.08.1997 of the Hon''ble Patna High Court, Ranchi Bench, Ranchi in CWJC No. 3832 of 19% (R).

We have heard Mr. Kalyan Roy, learned Counsel appearing for the appellants'' workmen and Mr. Anoop Kumar Mehta, learned Counsel appearing for the respondent-BCCL. We have also perused the operative portion of the order passed by the Supreme Court and referred in the Judgment rendered in WP(L) No. 4888 of 2003. The Supreme Court issued direction to the Regional Labour Commissioner to identify the workmen and when the respondent-BCCL agreed before the Supreme Court to reinstate the workmen so identified by the Regional Labour Commissioner, then there was no occasion for the Regional Labour Commissioner to make further observation that the respondent-BCCL will verify the genuineness of the report of the District Magistrates, Aurangabad and Monghyr to further ensure satisfaction about the identity of the persons concerned. As a matter of fact, the dispute arises only when as against three claimants appeared before the Assistant Labour Commissioner, (Central) Dhanbad claiming to be the real person. This creates difficulty in identifying the genuine person.

After hearing learned Counsel for the parties and after perusing me orders time to time passed by the BCCL and me High Court, we are of the view that the matter needs to be referred to the Regional Labour Commissioner (Central), Dhanbad for identification and for taking a decision afresh as he has diluted his own identification by shifting life burden to the authorities of the BCCL in his order as

quoted hereinabove. We are further of the view that one of the Officers from the side of administration preferably Sub Divisional Officer, Dhanbad and one of the respondent''s Officer of the higher rank so nominated by the respondent-BCCL shall assist the Regional Labour Commissioner for identification of the genuine person. This exercise shall be done and completed within six weeks from the date of receipt/production of a copy of Ms order and the final report shall be submitted within 30 days before this Court and after receipt of the copy of the report, we shall pass appropriate order with regard to the claim of the concerned workmen regarding backwages.

Needless to say that on final identification made by the Regional Labour Commissioner, the respondent-BCCL, as agreed before the Supreme Court, shall immediately reinstate those three persons.

2. It appears that in compliance of the aforesaid order, the Regional Labour Commissioner (Central), Dhanbad after hearing the parties including the Officers of the B.C.C.L., Sub Divisional Officer and workman concerned came to the conclusion that all the three workmen are genuine workmen in whose favour award was passed in Reference Case No. 58/1981 and affidavit to that effect has been filed by the Regional Labour Commissioner annexing his final report as Annexure-1 to the said affidavit.

3. Mr. Kalyan Roy, learned Counsel appearing for the appellants submitted that even after the aforesaid decision taken by the Regional Labour Commissioner, appellants have not been reinstated in service rather their joining has been refused. At this juncture, reference may be made to the Hon''ble Supreme Court order where while directing the Regional Labour Commissioner to examine the claims afresh, it was agreed by the respondent - B.C.C.L. to reinstate them forthwith

4. Hence, we are of the view that non-compliance of the order of the Supreme Court as also of this Court quoted hereinabove amount to contempt of Court. However, we allow seven days'' time to the respondents to comply the direction, failing which the Chairman-cum-Managing Director and the Director (Personnel) , Bharat Coking Coal Ltd. shall appear in person and file show-cause.

5. Put up this case after one week.

6. Let a copy of this order be handed over to Mr. A.K. Mehta, learned Counsel appearing for the respondents.