Workmen of Nirsa Area of ECF Ltd. Vs Employers in relation to the Management of Eastern Coal Field Ltd. and Another

Court: Jharkhand High Court

Date of Decision: Oct. 4, 2002

Acts Referred: Industrial Disputes Act, 1947 â€" Section 10(2A)(1), 25F

Citation: (2003) 96 FLR 665

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: K.N. Prasad, G.N. Chandra and D. Roshan, for the Appellant; M.M. Banerjee and A.K. Das, for the Respondent

Final Decision: Partly Allowed

Judgement

M.Y. Eqbal, J.
This writ application is directed against the Award dated 10th December, 1994 passed by Presiding Officer, Central

Government Industrial Tribunal, No. 1, Dhanbad in Reference Case No. 59 of 1989 whereby the Tribunal declined to pass order of reinstatement

rather the tribunal passed an award for payment of compensation of Rs. 25,000/- to each of the workman together with interest at the rate of 12%

per annum from the date of the Award.

2. It appears that the Central Government in the Ministry of Labour has, in exercise of the powers conferred by Clause (d) of Sub-section (1) and

Sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication :

Whether the demand of the Rashtriya Colliery Mazdoor Sangh (INTUC) that S/Shri Asim Kumar Chatterjee and Nani Gopal Sen Gupta. Clerks

(Internal Audit) who were sopped from employment in 1976, be reinstated in Mugma and Badjna Sub-Area of M/s. Eastern Coalfields is

justified? If so to what relief are the workmen entitled to?

3. The case of the concerned workmen named above is that they were appointed in the year 1974 in the Accounts and Audit Department and

were being paid their salary and allowances. They were doing the work of verifying the stores and collecting store and worked continuously from

1974 to January, 1976. Thereafter, the Management stopped them from work in February, 1976 without complying the formalities as provided u/s

25-F of the Act.

4. The case of the respondent-Management is that the concerned workmen were appointed temporary for few months and on consolidated

remuneration. It was denied that within any 12 calendar months either of the two workmen had down duty for more than 240 days. Since there

was no requirement of additional clerks and the vacancies in the meantime have been filled up by promotion of the staff. The concerned workmen

were stopped from working.

5. The tribunal formulated the following points for consideration :

(i) Whether or not stoppage of work of the concerned workmen amounted to retrenchment.

(ii) If so, whether they were retrenched from service without complying with the requirements of Section 25-F of the Act, thereby making the

retrenchment illegal.

(iii) Whether the claim of the sponsoring Union as well of the concerned workmen is to stale without satisfactory explanation of the delay to entitle

them to any relief.

6. The Tribunal found that there was no documentary evidence on record to show as to from which date these workmen started working in the

office of the respondents. However, the Tribunal after considering the oral evidence adduced by the parties came to the conclusion that the

workmen Nani Gopal Sengupta had worked from 13.8.1974 to 31.3.1975 and Sri Asim Kumar Chatterjee had worked from 19.8.1974 to

31.3.1975 in the second, spell. The Tribunal further held that the Management had not fulfilled the conditions laid down u/s 25-F of the Act before

retrenching these two workmen with effect from 31.10.1975.

7. While deciding third point the Tribunal recorded a finding that the claim of the workmen became over-stale inasmuch as the dispute was raised

by the sponsoring Union in 1987, the failure report was made by the letter of the Assistant Labour Commissioner, Dhanbad dated 24.2.1988 and

the reference was made by the Government on 5.5.1989. The Tribunal further held that although cause of action arose in 1975 but the Industrial

Dispute was raised in 1987 and no cogent grounds has been stated for such belated reference. It was further held that notwithstanding the stale

claim made by the concerned workmen since they were illegally retrenched from service, proper order should be to direct the Management to pay

compensation to them instead of ordering their reinstatement.

8. I have heard Mr. K.N. Prasad, learned senior counsel appearing for the petitioner and Mr. M.M. Banerjee, learned counsel for the

Management.

9. So far first two issues are concerned, the Tribunal after considering the entire evidence came to a finding of fact that the concerned workmen

worked more than 240 days within 12 calendar months and therefore their retrenchment without compliance of Section 25-F of the Act was

illegal. I do not find any reason to differ with the finding of fact recorded by the Tribunal.

10. The only question that falls for consideration is as to whether the Award for payment of compensation instead of reinstatement in service on the

ground that the claim of the workmen was stale claim is justified. Admittedly, the dispute was raised by the sponsoring Union in 1987 and before

that several correspondences and representations were made by the Union to the Management. The failure report was submitted by the Assistant

Labour Commissioner, Dhanbad in 1988 and the reference was made by the Government on 5.5.1989. The concerned workmen also referred

Ext. W-5 which is letter dated 7.5.1992 issued by Chief General Manager (Personnel), addressed to the Working President of the sponsoring

Union referring various correspondences with regard to the concerned workmen and advising the Union to ask the concerned workmen to come

and see him. The Tribunal took the view that continuance of correspondences for long period cannot explain inordinate delay in raising dispute.

Rather it only shows laxity on the part of the concerned workmen. Because of unsatisfactory explanation for delay in raising dispute the Tribunal

held that any order of reinstatement would not be justified. In my opinion the Tribunal has not correctly appreciated the law.

11. As noticed above, after 1975 several correspondences were made and the dispute was raised in 1987. The failure report was submitted in

1988 and the reference was made in 1989. From these facts and also from Ext. W-5, which is letter written by the respondents in the year 1992

addressed to the Union to send the concerned workmen for some discussion shows that the dispute was alive till that date. In that view of the

matter the concerned workmen ought not to have been denied reinstatement when it was proved that their retrenchment was illegal. In the case of

Sapan Kumar Pandit v. U.P. State Electricity Board, AIR 2001 SC 2562, the Supreme Court considering the similar question held as under :

''There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long

interval it is reasonably possible to conclude in a particular case that the dispute cease to exist after some time. But when the dispute remained alive

though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In

this case when the Government have chosen to refer the dispute for adjudication u/s 4-K of the U.P. Act the High Court should not have quashed

the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating

authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of

reference made by the government for adjudication. Let the adjudicatory process reach its legal culmination.

12. Considering the facts of the case and the proposition of law laid down by the Supreme Court the concerned workmen is entitled to be

reinstated in service. However, so far point of consequential benefit is concerned the Labour Court is not justified by granting monetary benefits

when the concerned workmen were retrenched in 1975 but the dispute was raised after 12 years i.e. in 1987. The concerned workmen are

therefore not entitled to any monetary benefit during that period. Besides that, admittedly, the concerned workmen did not work for any period

from the date of retrenchment till date. There is nothing on the record that during that period the concerned workmen remained idle without any

job. In such circumstances proper award should have been to direct the concerned workmen either to join their service by way of reinstatement or

to accept compensation awarded by the Tribunal.

13. This writ application is therefore allowed in part and the impugned award is modified by directing the Management either to accept the joining

of the concerned workmen and reinstate them in service if they submits their joining or to pay a sum of Rs. 25,000/- to each of the concerned

workmen as directed in the Award.