

(2010) 09 JH CK 0072
Jharkhand High Court
Case No: Writ Petition (L) No. 4067 of 2005

The Tinsplate Company
of India Limited

APPELLANT

Vs

The State of
Jharkhand and S.K.
Roy

RESPONDENT

Date of Decision: Sept. 30, 2010

Citation: (2011) 1 JCR 256

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Pradeep Kumar, J.

Heard the learned Counsel for petitioner and learned Counsel for respondent - S.K. Roy.

2. It is submitted by learned Counsel for petitioner that the learned Labour Court, Jamshedpur in Ref. Case No. 3 of 1990 has wrongly come to a finding that charges were not proved and order of dismissal of workmen is bad in law and directed for reinstatement of the workman. He has further argued that no pleading on behalf of the workman has been placed to show that he was not gainfully employed during the period of his dismissal to the date of the award and as such the direction of full back wages was wrongly passed. He has relied upon the judgment of this Court reported in 2010(2) JCR 516 in the case of management of SAIL relying upon the judgment of the Hon'ble Supreme Court and as such the order passed for full payment is bad in law and fit to be quashed.

3. On the other hand, learned Counsel for the respondent- workman has submitted that it will appear that although charges were made against the workman that he allowed the lifting of TISCO material , but the Labour Court after considering the

management witnesses as also the document Ext.W came to a finding of fact that management has failed to prove that any misconduct was committed by any of the workmen rather the Labour Court found that Ext.W shows that the workman who was charged of misconduct only obeyed the direction of the superior officer present there who stated that material has been checked by the TISCO officers and on their direction he allowed the material to go out of the company and thus, finding of fact cannot be disturbed in the writ jurisdiction of the court. More so, there are other findings based on the evidences of the parties.

4. After hearing both the parties and after going through the evidences on record, I also find that the finding of the Presiding Officer, Labour Court, Jamshedpur is based on the evidence of both the parties and especially the management and Ext.W and on the basis of the evidence and documents, the Labour Court has come to a finding that the management has failed to prove that any misconduct was committed by the workman and rightly directed for reinstatement. I find no illegality, so far as reinstatement is concerned.

5. Further, there was no pleading placed on behalf of the respondent-workman that he was not gainfully employed anywhere else during the period from his termination till the date of award. In that view of the matter, relying on the judgment of this Court reported in 2010 (2) J.C.R. 508 in the case of Bhubneshwar Mallik on the basis of the judgment of the Supreme Court in the case of [J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another](#), the direction of payment of full back wages is not justified. Accordingly, the petitioner is directed to pay 25% of the wages to the respondent- workman within a period of one month from today.

6. With the aforesaid modification in the impugned order, the application is disposed of.