(2004) 05 JH CK 0025

Jharkhand High Court

Case No: CWJC No. 1654 of 1997 (R)

Employers in relation to the Management of Balihari Colliery of Bharat Coking Coal Ltd.		APPELLANT
	Vs	
Presiding Officer, Central Government Industrial Tribunal No. 2 and Others		RESPONDENT

Date of Decision: May 18, 2004

Citation: (2005) 104 ELT 7 : (2004) 3 JCR 496

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: Anoop Kr. Mehta, for the Appellant; S.N. Das, for the Respondent

Judgement

Amareshwar Sahay, J.

Since the facts and law involved in both the writ applications were similar, therefore the above two writ applications were heard together and are being disposed of by this common judgment.

2. The facts of CWJC no. 1655 of 1997 (R) are as follows :

The award, dated 16th July, 1996 passed by the Central Government Industrial Tribunal No. 2, Dhanbad in Reference Case No. 54 of 1993, is under challenge in this writ application by the Management of Kenduadih Colliery of M/s. Bharat Coking Coal Limited, whereby, the Tribunal has directed to make a panel of the concerned workman and according to their seniority as per the list to be submitted by the Sponsoring Union or available from the Contractor or from the records of Kenduadih Colliery and to absorb and regularise them, either in the work of the Tyndal or in any category suitable to the Management from time to time so that the list be exhausted within one year from the date of publication of the award.

3. The Government of India, Ministry of Labour in exercise of powers u/s 10(1)(d) of the Industrial Disputes Act, 1947, referred the following dispute to the Tribunal for adjudication :

"Whether the demand of Rashtriya Colliery Mazdoor Singh for employment of Shri Arjun Paswan and 87 others as per list attached, is justified? If so to what relief the workers are entitled?"

4. The case of the petitioner is that in course of time, the mining process has now changed/modified and altered to new systems of mining operations adopted from time to time and the manpower requirement is not the same as the nature of work has now changed by introduction of new machines, modern technology etc. There is already surplus workers in all the collieries of the area and there is no scope for providing jobs to the concerned persons at Kanduadih Colliery or any other colliery. The contract system was abolished in the year 1976. The Contractor''s workers who, offered for employment and who were selected by different Selection Committees were selected to fill up the new permanent post created by the Management after abolition of the contract system. It is further stated that the concerned persons claimed to have worked during the period 1974-75 as Contractor''s workers as Tyndals after abolition of the contract system in the area on 1976, the persons having worked as Contractor''s workers formed different co-operative societies were allotted works on contract basis as and when available and thus the Registered Co-operative Societies became the Contractors for carrying on contract job on the basis of work orders issued to them from time to time. All the workers who were working under the Contractor initially became member of such societies and they worked as Contractor''s workers from time to time whenever any contract job was available. The payment of such workers were being made out of the bills paid to the society. It is further stated that the concerned persons are not the genuine workers of the Contractors and the present case has been built up to get the strangers inducted into the employment of the Management. It is further stated that the concerned Colliery has already been closed down long back and that there was no relationship of employer and employee between the petitioner and the concerned workman, therefore, no industrial dispute could have been raised and referred for adjudication.

5. On the other hand, the case of the respondent No. 2 is that there is a relationship of employer and employees between the parties and these workers worked in 1976 when the Management announced the abolition of contract system but the Management did not care to absorb the concerned workman either as Tyndal or in any other suitable job and, therefore, since they worked for continuous period uptill 1976 and, therefore, they got the right to be absorbed in any work under the Management of BCCL.

6. After considering the relevant materials on the record, the learned Tribunal passed the impugned award and issued directions as stated in paragraph 2 above.

From the impugned award, it appears that the learned Tribunal has found that the concerned workman worked from 1.5.1972 to 1976 and further that Kenduadih Colliery was closed since 1988.

7. The facts of CWJC No. 1654 of 1997 (R) are as follows :

The Management of Balihari Colliery of M/s. Bharat Coking Coal Ltd has challenged the award dated 9.9.1996 passed by the Central Government Industrial Tribunal No. 2, Dhanbad in Reference Case No. 26 of 1993, whereby the learned Tribunal has directed to regularise the concerned workman as permanent employee as per National Coal Wage Agreement in Category 1 within three months from the date of publication of the award with the wages and other amenities to which they are entitled to. In this case the case of the workman is that they were by forming Cooperative Societies under the panel of Pragatisil Sahyog Samiti worked in the colliery up to 1994 and thereafter since 1995 they have been stopped from work and the finding of the learned Tribunal is that the concerned workman did not work after 1994.

8. Learned counsel for the petitioner has submitted that the impugned awards passed by the learned Industrial Tribunal No. 2, Dhanbad is absolutely illegal and without jurisdiction. It is submitted that the learned Tribunal has transgressed beyond the reference made to it. It is submitted that the reference was as to whether, the demand for employment of Shri Arjun Paswan and 87 others were justified or not, but the learned Tribunal has directed to absorb and regularise those workers and, therefore, the impugned award is bad in law. It has further been submitted that in view of the decision of this Court in the case of Bharat Coking Coal Ltd., through its employers v. Their Workman represented by the Bharat Coking Coal Ltd. Vs. Their Workman represented by the Secretary Bihar Colliery Kamger Union and Another and Their Workmen represented by Area Secretary Rashtriya Colliery Mazdoor Sangh and Another, that once there is stoppage of work and there is no material on record to suggest that the concerned persons are working on the date of the award, in absence of an order for reinstatement, no regularlsation of service can be directed.

9. It is further submitted that the learned Tribunal has based his award on the basis of the decisions in the case of Gujarat State Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha and Ors., reported in 1995 Lab IC 2207, which has subsequently been overruled by a Constitution Bench of the Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

10. Learned counsel for the petitioner has further submitted that exactly on similar facts and circumstances as in the present case, a Division Bench of this Court in LPA Nos. 297/298 of 2001 by an order dated 29.11.2002 has modified the award passed by the Tribunal to the extent that as and when M/s. Bharat Coking Coal Limited

intends to employ regular workman, it shall give preference to the persons who had worked and, if otherwise found suitable by relaxing the conditions as to the maximum age appropriately taking into considerating their age at the time of their initial appointment and also relaxing the condition as to the academic qualification and other technical qualification.

11. On the other hand, learned counsel for the respondent No. 2 has tried to support the impugned awards on the ground that the finding of fact arrived at by the Tribunal should not be disturbed by this Court in exercise of writ jurisdiction. It is further submitted that since the petitioner continuously worked up to 1976 and, therefore, they had a right to be absorbed and, therefore, the Tribunal had rightly issued directions in that regard.

12. Considering the rival contentions of the parties, the materials on record, I find that it is not disputed that there was stoppage of work and it is nobody''s case that the concerned workers worked till the date of the award and, therefore, in my view, the case is squarely covered by the decision of this Court in the case M/s Bharat Coking Coal Ltd. through its employers, (supra). Therefore, relying on the said decision and the order passed by the Division Bench in LPA Nos. 297/298 of 2002 (Annexure-6) to the supplementary affidavit filed on behalf of the petitioner, the impugned awards are modified to the extent that as and when M/s BCCL intends to employ regular workman, it shall give preference to these 88 plus 20 persons, if they are otherwise found suitable by relaxing the conditions as to the works age appropriately taking into consideration their age at the time of their initial appointment and also by relaxing the condition regarding academic/technical qualification.

13. With the above observation and modification in the impugned awards, both the writ applications are disposed of.