

(2012) 08 JH CK 0104

Jharkhand High Court

Case No: C.W.J.C. No. 3856 of 2000 (R)

Employers in relation to the
Management of Kedla Open Cast
Project of M/s Central Coal Fields
Ltd.

APPELLANT

Vs

The Presiding Officer, C.A.T. No.
1, Dhanbad, Their Workmen and
Union of India

RESPONDENT

Date of Decision: Aug. 2, 2012

Acts Referred:

- Constitution of India, 1950 - Article 227
- Industrial Disputes Act, 1947 - Section 17B

Citation: (2012) 4 JCR 424

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Ananda Sen and Amit Kr. Verma, for the Appellant; M.M. Pal and Mahua Palit
for the Workmen, for the Respondent

Final Decision: Dismissed

Judgement

Aparesh Kumar Singh, J.

Heard the counsel for the parties. The award dated 27.4.2000 passed in reference case no. 48 of 1992 (Annexure - 3) is under challenge by the petitioner - Employer, whereby the dismissal of the employee- workman on 10.10.1990 has been held to be unjustified and further it has been declared that the workman is entitled for reinstatement with full back wages. The reference before the learned Central Government Industrial Tribunal No. 1, Dhanbad is in the following terms:-

Whether the action of the management of Kedla Open Cast Project of M/s C.C.L, P.O. Kedla, Dist. Hazaribag in dismissing Md. Safi Mian, an A.S.K from service is justified?

If not, to what relief Md. Safi Mian is entitled to?

2. The short fact of the case are that the workman, Md. Safi Mian had been working as Permanent Assistant Store Keeper at Kedla Open Cast Project when he was issued charge-sheet dated 10.4.1989 alleging that on 1.3.1989 a store issue slip no. 9166 was issued in favour of Bir Mohan Prasad for 3 items namely (i) Hose 2 1/2 " in length (ii) Hose 2 1/4 " in length and (iii) Gasket 142234 6 pieces and the gate pass was also issued for these three items. However, after issuance of the said 3 items in the requisition slip a 4th item namely repairing kit - 4 pieces were also mentioned, which is alleged to have been done by the concerned workman with the motive to take away the said item from the store.

3. The workman was charge-sheeted and domestic inquiry was held wherein he participated and he was held guilty of the charges levelled against him for inserting 4th item mentioned in the requisition slip.

4. Based upon the aforesaid findings, workman was dismissed from the service vide letter dated 9/10.10.1990 under the signature of the agent cum project officer w.e.f 11.10.1990. In course of reference the workman defended himself by submitting that it is the case of no evidence; that charges were not issued properly and the punishment of dismissal was disproportionate. The management- petitioner defended its action submitting that on proving of charges of misconduct against the concerned workman, the order of dismissal has been passed and even the workman during the course of the proceeding conceded that the domestic inquiry was held in fair and proper manner.

5. The workman before the Industrial Tribunal vehemently pleaded that it is case of no evidence as neither the handwriting of the workman was compared with the handwriting in the requisition slip by any expert nor the alleged 4th item has been drawn out from the store nor it has been found stolen from the store. In view of the categorical stand of the workman, the Industrial Tribunal proceeded to reappraise the evidences and found after going through the deposition of the parties and exhibits that it was not even the case of the management that the 4th item was missing or stolen from the store and so far as insertion of the 4th item, alleged to had been made by the workmen in the requisition slip is concerned. Learned Tribunal after discussing the evidences of the parties including those introduced by the management came to a finding that this fact was also not established that the 4th item was actually inserted by this workman. It was also found that at the time the requisition slip was issued in the name of witness-Bir Mohan Prasad, the said witness also stated that there were other persons besides the workman - Md. Safi Mian, who are Ram Babu Singh, Bishwanath Ram and Ram Lakhan Singh along with 5 T.N. Workers were also present in the said store. The said witness - Bir Mohan Prasad in his deposition stated that he went to the store with the requisition slip of 3 items and handed it over to one Shiv Nath Babo i.e. the Sr. Store Keeper and the concerned workman only gave him the 3 items from the store. He has further stated

that Shiv Nath Babu prepared the gate pass. The said witness has also not stated anything about the writing of the 4th item in the requisition slip.

6. Learned Tribunal, after discussing the evidences in detail, came to a finding that the inference drawn in the domestic inquiry are based on surmises and conjectures without any material on record and he has based his finding only on the basis of suspicion expressed by the Sr. Store Keeper nor any persons acquainted with the writing of the concerned workman deposed to prove that the 4th item was mentioned by the delinquent workman and non-else. The said writings were not even got compared by any expert. Based upon the aforesaid categorical finding, learned Tribunal came to a conclusion that there is no evidence in the domestic inquiry to prove that the concerned workman had in fact inserted the 4th item with intention to steal the same from the store and further the management had not even proved that any theft of the said item from the store was detected. In view of the aforesaid categorical findings, learned Tribunal proceeded to answer the reference in favour of the workman by holding that his dismissal was not justified and he is entitled for reinstatement with full back wages and other consequential benefits.

7. Learned counsel for the petitioner has assailed the award submitting that the Tribunal ought not to have entered into the reappraisal of the evidences after the domestic inquiry was held to be just and proper and further the award of reinstatement with full back wages is also not proper for which he has relied upon the judgment reported in the case of [Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar](#) .

8. Learned counsel for the workman on the other hand has supported the award by submitting that the Tribunal being confronted with a case of no evidence on the part of the workman was fully justified in reappraisal of the evidences and on consideration of relevant material exhibits had come to a finding that it cannot be disputed that there was no evidence to connect this workman with the alleged act of insertion of 4th item in the requisition slip and moreover the 4th item itself was never found missing or stolen from the store. The action of the management for proving guilt of the workman is wholly unjustified and learned Tribunal has rightly answered the reference in his favour and in view of that the workman is fully entitled for reinstatement and back wages with other consequential benefits. Learned counsel for the respondent- workman has relied upon the judgment delivered by the Hon"ble Supreme Court in the case of [Union of India and another Vs. Babu Ram Lalla](#), as also in the case of Manorma Verma (Smt) Vrs. State of Bihar and others reported in (1994) 28 Administrative Tribunals Cases 709 in support of their stand that the workman in case of wrongful dismissal is entitled for full back wages.

9. I have heard the learned counsel for the petitioner as well as learned counsel for the respondent- workman at length and also carefully perused the record including

the impugned order. I find that the learned Tribunal is justified in coming to a finding that this is a case of no evidence, despite that the workman was held to be guilty of the charges and ultimately dismissed from the service by the management. The Tribunal has discussed the evidences in detail and there are no error apparent on the finding of the fact and there is error of law as well. The Tribunal has not misdirected itself in following the settled principle of law in case of no evidence. The Tribunal is fully justified in reappraisal of the evidences, which led to the impugned action by the management. The interference of this court in exercise of its power under Article 227 of the Constitution of India is also well settled that if the impugned judgment or award of a inferior Tribunal is not suffering from error on the face of record or any error of law, and is not beyond jurisdiction, no interference should be called for in exercise of statutory adjudicatory exercise of the inferior Tribunal. Learned Tribunal, in the circumstances, also found that the punishment itself is wholly disproportionate, as it is the case of no evidence and the order of reinstatement has been rightly passed. So far as the question of full back wages is concerned, it appears that by the earlier order dated 20.9.2001 this court, while staying the operation of the impugned order, directed the management to make payment of full back wages and to go on paying current wages at the rate lastly drawn by the workman. Although the management has preferred L.P.A against the said interim order, it was later on withdrawn for seeking modification in the order itself by the order dated 10.1.2003 passed in L.P.A no. 688 of 2001. However, as per the counsel for the respondent - workman, it is not controverted by the petitioner-management either, no modification of the said order was sought for by the management, after the L.P.A was withdrawn. It is submitted by the workman on the basis of the supplementary counter affidavit filed on 21.5.2009 that the back wages of arrears u/s 17B of the Industrial Dispute Act @ Rs. 2164.70 per month were being paid from the date of filing of the writ petition till April 2007, where after it has been stopped contrary to their own order contained in Annexure-E dated 1.7.2002 as also the, interim order of this court. However, it is also submitted by the counsel for the workman that the workman was never gainfully employed after his dismissal, which is also not controverted by the counsel for the petitioner. On the aforesaid ground learned counsel for the workman submitted that direction for full back wages is fully justified and does not call for any interference. In the facts and circumstances of the case the petitioner has failed to make out any grounds for interference in the impugned award and accordingly, this application is dismissed. The petitioner-management is directed to comply with the impugned order within a period of 8 weeks from the date of receipt of the copy of this judgment.