

(2002) 09 JH CK 0060

Jharkhand High Court

Case No: CWJC No. 1419 of 1994

Employees in relation to the
Management of Murulidih
Colliery under Mohuda Area of
BCCL

APPELLANT

Vs

The Presiding Officer, Central
Govt. Industrial Tribunal (No. 2),
BCCL and Others

RESPONDENT

Date of Decision: Sept. 16, 2002

Citation: (2003) 96 FLR 292

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: A.K. Mehta and A. Kumar, for the Appellant; M.M. Pal and I. Sen Choudhary, for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, J.

The petitioner-Management of Murulidih Colliery of M/s. Bharat Coking Coal Limited (BCCL for short) has challenged the award dated 6th January, 1994 passed by the Presiding Officer, Central Government Industrial Tribunal (No. 2), Dhanbad in Reference Case No. 13/89.

2. The Presiding Officer held that the concerned workmen were transferred from Bhatdih colliery to Murulidih colliery vide office order dated 1st August, 1969 but were not allowed to join their duty and they are entitled for reinstatement and directed the Management, accordingly.

3. At the instance of 2nd respondent, Bihar Colliery Mazdoor Sangh (Union for short), the Government of India, Ministry of Labour in exercise of powers conferred on them u/s 10(1)(d) of the I.D. Act, 1947 referred the following dispute to the

Tribunal for adjudication vide their order No. L-20012/38/88-D, 4(A)-I.R. (Coal-I), dated 9th May, 1989 :

THE SCHEDULE

"Whether the management of M/s. B.C.C. Ltd in relation to Murulidih Colliery, P.O. Mohuda, Dist. Dhanbad (Bihar) is justified in denying employment to 47 workmen detailed in the enclosed Annexure-I who are alleged to have reported for duty pursuant to office order No. GM/ARII/ID/(C)/79-2095-18 dated 1st August, 1979 by the General Manager, M/s. B.C.C. Ltd. Area No. II, P.O. Mohuda, Dist. Dhanbad."

In the Schedule of the reference, the names of Paramatma Singh and 46 others were shown who were claimed to have been working as Casual Wagon Loaders since the time of the erstwhile employer. The Union claimed that the work of 47 workmen aforesaid were stopped by the Management of Bhatdih Colliery without assigning any reason arbitrarily and illegally. Subsequently, when the workmen alongwith eight others (Total 55 in number) opted for work as underground loaders, the Management of M/s. BCCL placed their services by office order No. GM:AR:II:FD:00/79:2095-18 dated August 1st, 1979 (Exhibit M-6) in the Murulidih Colliery with stipulation that they will be on probation for three months from 1st August, 1969 to 1st November, 1979. It was alleged that the workmen, thereafter, were not allowed to resume their duty to the transferred place at Murulidih colliery without any reason. The Management denied the relationship of employer and employee between the Management and pleaded that the persons named in the Schedule are absolutely strangers for the Management and they never worked in the colliery. The maintainability of the reference was also challenged by the Management.

In respect of the office order dated 1st August, 1969 (Exhibit-M- 6) as referred above, specific plea has been taken by the Management that the document placed by the Union is forged and fabricated document. The Management also took plea of delay as neither persons named in the Schedule, nor the Union raised dispute for a long period of ten years since the co-called order dated 1st August, 1979 (Exhibit-M-6) was issued.

Before the Presiding Officer, the Management examined certain evidences on record. Shri B. Lakra, MW-3 proved the photo copy of the Form B Register; Shri D.B. Singh MW-4 appeared who had occasion to work as Personnel Manager under Mohuda Area for certain period.

A photo copy of statutory Form B Register was marked as Exhibit M-5. The Dak and Despatch register, abandoned notice in Form I under C.M.R. 6 etc. were also placed as evidence.

The Presiding Officer disbelieved the photo copy of Form B register as there was no signature of the Manager of clerk in the photo copy. The original copy or the original

Form B register was seized by C.B.I. was brought to the notice of the learned Presiding Officer by MW-3. However, the date of seizure of Form B register by C.B.I. having not brought on record, nor the seizure list. The aforesaid statement of MW-3 was also not delivered. The statement of other witness, such as MW-1, who made entry in the Dak and Despatch register, was not accepted in respect of order dated 1st August, 1979 (Exhibit-M-6), as the Union suggested that seven out of 55 persons named in the order dated 1st August, 1979 were allowed to join the transferred place i.e. Murulidih Colliery.

In absence of separate transfer order of seven persons on record, the learned Presiding Officer presumed that seven persons were transferred vide order dated 1st August, 1979 and on such presumption, treated the order dated 1st August, 1979 (Exhibit-M- 6), as genuine and answered the reference in favour of persons shown as workmen in the Schedule to the Reference.

In this context, the stand of the Management to be noticed. Their specific stand was that the so-called order dated 1st August, 1979 (Exhibit-M-6), photo copy of which was produced by the Union is forged and fabricated. It do not bear the real despatch number, nor the date. In support of their claim, the Management produced the Dak and Despatch registers (Exhibit-Mi series), wherein no reference has been given of such order dated 1st August, 1979. To show that the persons were not in the roll, the photo copy of the Form B register was produced, original having seized by C.B.I.

The Presiding Officer took into consideration the original order dated 1st August, 1979 (Exhibit, M-6) was never produced by the Union, nor at the stage, the original order dated 1st August, 1979 was ever filed.

It will also be evident from the award that the date of initial engagement of any of the persons named in the Schedule has been given, nor any evidence was brought on record to suggest that the persons named in the Schedule of Reference were in the roll of Management of Murulidih Colliery.

4. It is settled law that the burden of proof is on the person (say plaintiff), who claims a particular fact or incidence. It is not for the other side (say defendant) to dis-proof the claim of such claimant. It is for the workmen to establish the employer-employee relationship. An adverse inference cannot be drawn against the employer on the ground that the employer has not produced evidences to prove employer -employee relationship. In this context, one may also refer the decision of the Kerala High Court in N.C. John v. T.T.S. and C.E. Workers Union, reported in 1973 LIC 398.

Admittedly, no finding of fact can be given on presumption. The burden of proof initially lay on the person, who claimed any right or relies on a fact.

5. In the present case, the Union relied on a photo copy of an order dated 1st August, 1979 (Exhibit-M-6). The original was never produced before any authority or before the Tribunal. No evidence, such as pay-slip identity card, C.M.P.F. number or Form B number of any of the persons named in the Scheduled to the Reference were brought on record. No evidence was placed to suggest that 8 persons who were working at Murulidih Colliery were in the Bhatdih Colliery and they were transferred in pursuance of order dated 1st August 1979.

The language of the order dated 1st August, 1979 also creates doubt, as no order of transfer the sentence "I accept the terms and conditions" is mentioned. The Management is not supposed to accept any terms and conditions in the matter of transfer, nor any such terms and conditions mentioned in the order dated 1st August, 1979, as quoted hereunder :

"Bharat Coking Coal Limited (A subsidiary of Coal India Limited) Office of the General Manager, Mohuda Area No. II P.O. MOHUDA : DIST. DHANBAD

Ref:GM:AR-11:FD:00/79:2095-18 dated August 1, 1979.

Office Order

The following casual Wagon Loader of Bhatdee Colliery who have opted for work as Underground Loaders are offered work of U.G. Loader with immediate effect and they are posted as Murulidih Colliery. They will be on probation for 3 months i.e. from 1.8.1979 to 1.11.1979. If during this period their work as underground Loaders is not found satisfactory, they will be reverted back to their original jobs i.e. casual Wagon Loaders. They are to report for duty to the Supdt., Murulidih Colliery.

01. Parmatma Singh	x	x	x
02. Sujit Singh	x	x	x
x x x		54. Rallash Paswan	
x x x		55. Paltan Modi	

I accept the terms and conditions

SD/

(General Manager)

1. The AM(T), Mohuda Area

2. The P.M. Mohuda Area

3. Supdt., Bhatdee/Murulidih Colliery."

It will also be evident the order aforesaid was also not communicated to any of the so-called workmen.

6. In the facts and circumstances, the Union having failed to prove that order dated 1st August, 1979 (Exhibit M-6) was issued by the Management, the original being not on the record there being no entry of such document in the records of the Management, no reliance can be placed on photo copy of the order dated 1st August, 1979 (Exhibit-M-6) to give any benefit in favour of persons named in the Schedule to the Reference.

The Union having failed to place any other evidence on record to suggest that the persons named in the Schedule to the reference were in the roll of the Management of Bhatdih colliery, no relief can be granted in their favour.

The learned Presiding Officer having passed impugned Award dated 6th January, 1994 in Reference Case No. 13/89 on presumption, being not based on any evidence, is set aside.

7. The writ petition is allowed, However, in the facts and circumstances, there shall be no order, as to costs.