(2014) 09 JH CK 0022

Jharkhand High Court

Case No: W.P. (L) No. 4639 of 2011

Jharkhand State Food and Civil Supplies Corporation Limited		APPELLANT
	Vs	
Devendra Prasad Yadav		RESPONDENT

Date of Decision: Sept. 22, 2014

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33C(2)

Citation: (2014) 143 FLR 676 : (2015) 1 LLJ 146

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Mrinal Kanti Roy, Advocate for the Appellant; Sudarshan Srivastav and Sunil Singh, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Chandrashekhar, J.
The petitioner, Jharkhand State Food and Civil Supplies Corporation Limited (JSFCSCL) has challenged order dated 09.06.2011 in M.J. Case No. 74 of 2010 passed by the Presiding Officer, Labour Court, Dhanbad whereby the petitioner-Corporation has been directed to pay a sum of Rs. 9,28,140/- to the respondent namely, Devendra Prasad Yadav.

2. The brief facts of the case are that, initially the respondent was engaged as a daily wage employee by the Bihar State Food and Civil Supplies Corporation Limited on 10.10.1979 to work as a salesman. His service was terminated on 25.06.1983 and an industrial dispute was raised which was referred to the Labour Court for adjudication vide Reference Case No. 6 of 1991. Vide order dated 01.06.1994, the reference was answered in favour of the workman and the Corporation was directed to reinstate him

with full back wages and other consequential benefits. The award dated 01.06.1994 in Reference Case No. 6 of 1994 was challenged by the Corporation in C.W.J.C. No. 1839 of 1995 which was disposed of vide order dated 12.12.1995. The award dated 01.06.1994 was modified to the extent that instead of full back wages, the workman was to be paid wages for the period between 27.11.1988 and the date of award i.e., 01.06.1994 and from the date of the award till the date of his actual reinstatement. The respondent-workman was reinstated in service on 17.11.1999. The respondent filed M.J. Case No. 5 of 2001 for payment of pay-scale payable to the permanent employees. The said case was dismissed vide order dated 22.12.2004 holding that the said case was filed as an attempt to get more out of the award. Order dated 22.12.2004 in M.J. Case No. 5 of 2001 was challenged by the respondent in W.P.(S) No. 6 of 2006. The writ petition was disposed of on 12.04.2006 observing that if the award has not been implemented the workman may bring this to the notice of the authorities or move the appropriate forum for implementation of the award. A review application being Civil Review No. 82 of 2007 was filed by the workman which was dismissed vide order dated 02.11.2007. The respondent-workman again moved the High Court in W.P.(L) No. 5893 of 2008 for payment of entire arrears of salary as a permanent employee of the Corporation. The writ petition was disposed of vide order dated 12.08.2010 with liberty to the workman to raise the claim before the appropriate authority. Thereafter, the workman filed M.J. Case No. 74 of 2010 for payment of full back wages in the light of award dated 01.06.1994 in Reference Case No. 6 of 1991. By the impugned order dated 09.06.2011, the Labour Court, Dhanbad allowed the prayer of the workman.

3. A counter-affidavit has been filed stating that the respondent joined the Corporation as salesman at Sales Centre, Munidih, Dhanbad. Subsequently, he was transferred to Maithan where he worked continuously till 24.06.1983 and thus, he acquired status of permanent employee after working for 240 days continuously. When the respondent demanded wages at par with the permanent employees, the management of the Corporation terminated his service illegally on 25.06.1983, without giving any notice or conducting a proceeding. The award dated 01.06.1994 became final after the challenge of the petitioner-Corporation failed before the High Court in C.W.J.C. No. 1839 of 1995. When the award was not implemented by the management, the respondent filed M.J.C. Case No. 103 of 1997 however, during the pendency of the contempt case, the management issued order dated 17.11.1999 reinstating the respondent. In the writ petition W.P.(L) No. 5893 of 2008 filed by the respondent for grant of permanent status by regularizing his service, the Hon''ble High Court has observed that "since the claim of regularization has nothing to do with the monetary benefit, the same cannot be treated as res judicata and liberty was given to the workman to raise his claim before the appropriate forum''. Since the award was not fully implemented and the High court permitted the workman to approach appropriate forum, M.J. Case. No. 74 of 2010 was filed by the respondent. In these facts, the application filed by the respondent under Section 33-C(2) of the Industrial Disputes Act has been allowed.

4. The learned counsel appearing for the petitioner-Corporation has submitted that when the service of the respondent was terminated, he was working as a salesman on daily wages and he was not a permanent employee as on 25.06.1983. The award dated 01.06.1994 in Reference Case No. 6 of 1991 directing the petitioner-Corporation to reinstate the respondent cannot be construed as a direction to reinstate the respondent as a permanent employee or to grant him wages at par with permanent employees. In an application under Section 33-C(2) of the Industrial Disputes Act, the power has been given to the Labour Court to implement the award and the Labour Court cannot adjudicate a fresh claim or a claim not flowing from the award. However, in the present case, the Labour Court has adjudicated the claim of the respondent for confirming status of permanent employee and passed a direction for grant of wages at par with permanent employees which is beyond jurisdiction of the Labour Court under Section 33-C(2) of the Industrial Disputes Act.

5. Mr. Sudarshan Srivastav, the learned counsel appearing for the respondent has submitted that when the application filed by the respondent was dismissed vide order dated 22.12.2004, the respondent preferred W.P.(S) No. 6 of 2006. The writ petition was disposed of vide order dated 12.04.2006 observing that the petitioner was declared by the Labour Court that he had attained the permanent status and award has been confirmed by the High Court in C.W.J.C. No. 1839 of 1995 in so far as, the reinstatement of the respondent is concerned. In W.P.(L) No. 5893 of 2008, the Hon"ble High Court directed the respondent to approach the competent authority for redressal of his grievance. Referring to paragraph-6 of the award dated 01.06.1994, the learned counsel for the respondent has submitted that the Labour Court has recorded a finding that the concerned workman acquired permanent status after completing 240 days of continuous service and the challenge to award by the management has failed and therefore, the Labour Court has rightly ordered payment to the respondent in application filed under Section 33-C(2).

6. I have carefully considered the submission of the learned counsel appearing for the parties and perused the documents on record.

7. There is no dispute that the award dated 01.06.1994 has attained finality in so far as, the reinstatement of the respondent in service, is concerned. Vide order dated 12.12.1995 in C/W.J.C. No. 1839 of 1995, the direction with respect to grant of full back wages was modified. The learned counsel for the respondent has referred to paragraph-6 of the award dated 01.06.1994 and contended that the finding recorded by the Labour Court holding that the respondent-workman would be deemed to have acquired permanent status, has not been set-aside by the High Court. From order dated 12.04.2006 in W.P.(S) No. 6 of 2006, it appears that this Court observed as under:

"From the writ petition and its enclosures, it appears that in a Reference Case No. 6 of 1991, the award was answered in favour of the workmen including the petitioner and it was declared that the petitioner had attained the permanent status, which was affirmed

by the Patna High Court in C.W.I.C. No. 1839 of 1995".

8. In so far as, the plea of res judicata taken by the management is concerned, I find that in W.P.(L) No. 5893 of 2008 vide order dated 12.08.2010 this Court has observed that, since the claim of regularisation has nothing to do with the monetary benefit, the same cannot be treated as res judicata. This Court granted liberty to the respondent to raise his claim before appropriate forum. It further appears that the claim of as many as 67 workmen has been accepted by the management however, the respondent only had been singled out. The employment of the respondent-workman with the petitioner-Corporation confers a pre-existing right in the respondent to claim wages from the petitioner-Corporation. In State Bank of India Vs. Ram Chandra Dubey and Others, , the Hon"ble Supreme Court has held that, the jurisdiction of Labour Court under Section 33-C(2) extends to computation of a pre-existing benefit or one flowing from a pre-existing right.

9. In U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, , the Hon"ble Supreme Court has reiterated that "the benefit which can be enforced under Section 33-C(2) is a pre-existing benefit or one flowing from a pre-existing right."

10. The learned Labour Court has carefully examined the previous orders and the materials on record and allowed the claim of respondent. It further appears that the calculation chart submitted by the respondent marked as Ext. A-1 was not controverted or denied by the management before the Labour court. I find no illegality in order dated 09.06.2011 passed by the Labour Court, Dhanbad and accordingly, the writ petition is dismissed.