(2016) 07 JH CK 0147

JHARKHAND HIGH COURT

Case No: L.P.A. No. 756 of 2015 with I.A. No. 743 of 2016.

Ram Chandra Ram, S/o Late Somar Bhuiyan, resident of: at and P.O. Sounda 'D', P.S. Patratu, District- Ramgarh - Appellant @HASH Employer in relation to the Management of M/s Central Coalfields Limited, Barkakana Area, P.O. Barkakana, P.S. Patratu, Distric — APPELLANT

Vs

RESPONDENT

Date of Decision: July 27, 2016

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, Section 2(s)

Citation: (2016) 4 AIRJharR 671 : (2017) 152 FLR 692 : (2016) 4 JBCJ 617 : (2016) 4 JCR 635 : (2016) 4 JLJR 213 : (2017) LabLR 552

Hon'ble Judges: D.N. Patel and Amitav K. Gupta, JJ.

Bench: Division Bench

Advocate: Mr. A.K. Sahani and Mr. Ajit Kumar, Advocates, for the Appellant; Mr. Anoop Kumar Mehta, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mr. D.N. Patel, J.(Oral) - I.A. No. 743 of 2016

This interlocutory application has been preferred under Section 5 of the Limitation Act for condonation of delay of 71 days in preferring this Letters Patent Appeal.

2. Having heard learned counsels for both the sides and looking to the reasons stated in this interlocutory application especially in paragraphs 6 and 7, there are reasonable reasons for condonation of delay. We, therefore, condone the delay of

71 days in preferring this Letters Patent Appeal.

3. Accordingly, I.A. No. 743 of 2016 stands allowed and disposed of.

L.P.A. No. 756 of 2015

4. This Letters Patent Appeal has been preferred by the original petitioner whose W.P.(L) No. 5200 of 2013 has been dismissed by the learned Single Judge, whereby, the award passed by the Central Government Industrial Tribunal No. 1 at Dhanbad in Reference Case No.31 of 1994, award dated 21st October, 2008 has been held as a valid one. Against this decision of the learned Single Judge, the original petitioner has preferred this Letters Patent Appeal.

5. Factual Matrix:

Industrial dispute was raised in the year 1991 and reference was made on 21st February, 1994 under Section 10 of the Industrial Disputes Act, 1947 by the appropriate Government and the terms of the reference are as under:

"The Schedule

Whether the demands of the workmen of Sayal ''D'' Colliery, Bhurkunda Colliery, Central Saunda Colliery and Saunda Colliery of Barkakana Area of M/s. Central Coalfields limited, Dist. Hazaribagh that management should treat 133 Clay Cartridges Mazdoors (as detailed in Annexure) as their workmen and that they should be paid Category-I wages is justified? If so, to what relief are the said workmen entitled and from what date?"

(emphasis supplied)

It appears that on the basis of the evidence given by Workman Witness-1, Workman Witness-2 and Workman Witness-3, Central Government Industrial Tribunal No.1 at Dhanbad has dismissed the reference and the relief, as prayed for, has not been granted to the workman mainly on the ground that the appellant was never engaged by the respondent-Company and no appointment letter was ever given to him and his name was also not mentioned in the attendance register and there was no direct supervision and control of the Management. The leaves etc. were also not granted by the Management to this appellant. Thus, there was no direct supervision and control by the Management and, hence, it has been held by the Central Government Industrial Tribunal No.1 at Dhanbad that there is no employer-employee relationship and, therefore, this appellant is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

Being aggrieved and feeling dissatisfied by the award passed by the Central Government Industrial Tribunal No.1 at Dhanbad in Reference Case No. 31 of 1994 dated 21st October, 2008, W.P. (L) No. 5200 of 2013 was preferred by this appellant, which was dismissed by the learned Single Judge vide judgment and order dated 27th August, 2015.

Being aggrieved and feeling dissatisfied by the judgment and order passed by the learned Single Judge in W.P.(L) No. 5200 of 2013 dated 27th August, 2015, original petitioner has preferred this Letters Patent Appeal mainly on the ground that he has worked with the respondent-Management since last 20 to 25 years as on date of raising industrial dispute in the year 1991 and also on the ground that other similarly situated workers were treated as workmen of the respondent-Management.

6. Arguments canvassed by the learned counsel for the appellant:

Learned counsel for the appellant submitted that the appellant along with 132 workmen was engaged by the respondent and when the industrial dispute was raised in the year 1991, they were working from last 20 to 25 years as Clay Cartridge Mazdoors.

It is further submitted by the learned counsel for the appellant that on the basis of the evidence given by Workman Witness-1, Workman Witness-2 and Workman Witness-3, it is already proved by this appellant that he was working for the respondent-Management and he was preparing clay cartridges and he was also paid wages by the respondent-Management. Thus, there was direct supervision and control of the respondent upon this appellant. This aspect of the matter has not been properly appreciated by the Central Government Industrial Tribunal No. 1 at Dhanbad as well as by the learned Single Judge and, hence, the award passed by the Central Government Industrial Tribunal No.1 at Dhanbad and the judgment delivered by the learned Single Judge in W.P.(L) No. 5200 of 2013 deserve to be quashed and set aside.

It is also submitted by the learned counsel for the appellant that similarly situated other workmen were treated as workmen of the respondent- Management and they have referred in paragraph no.8 of the award passed by the Central Government Industrial Tribunal No. 1 at Dhanbad. This aspect of the matter has also not been properly appreciated by the learned Single Judge while dismissing W.P.(L) No. 5200 of 2013, preferred by this appellant and, hence also, the judgment delivered by the learned Single Judge in W.P.(L) No. 5200 of 2013 dated 27th August, 2015 deserves to be quashed and set aside.

7. Arguments canvassed by the learned counsel for the respondent:

Learned counsel for the respondent submitted that there is no employer-employee relationship between the respondent and this appellant. There is no evidence on record which proves the factum of the supervision and control by the respondent upon this appellant.

It is further submitted by the learned counsel for the respondent that looking to the evidences on record, it appears that this appellant was mere supplier of clay cartridges for which he was paid. The Management has purchased clay cartridges by

giving sale price of the clay cartridges. Thus, there was relationship like vendor and purchaser in stead of employer and employee. Moreover, as stated by the Workman Witness-1, in his cross examination, the leaves etc. were given by the Headman mate of this appellant. There was no attendance register in which the name of this appellant was mentioned, on the contrary, the so called attendance register which is at Ext.-W 1 was concocted document, prepared by this appellant himself, after the reference is filed by the appropriate Government in the Central Government Industrial Tribunal No.1 at Dhanbad. There was no signature of the Management upon the said attendance register. Moreover, there is no evidence on record that the respondent-Management has paid salary to this appellant. Thus, there is no evidence worth the name in favour of this appellant which makes him workman of the respondent. This aspect of the matter has been properly appreciated by the Central Government Industrial Tribunal No. 1 at Dhanbad while dismissing Reference Case No. 31 of 1994 as well as by the learned Single Judge while dismissing W.P.(L) No. 5200 of 2013 vide order dated 27th August, 2015. Even otherwise also, while exercising power under Article 227 of the Constitution of India, the finding of the facts will not be altered by this court and, hence, this Letters Patent Appeal may not be entertained by this Court.

Reasons:

8. Having heard learned counsels for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons:

(i) Industrial dispute was raised in the year 1991 by this appellant before the appropriate Government and ultimately reference was made on 21st February, 1994 under Section 10 of the Industrial Disputes Act, 1947 by the appropriate Government which was registered as Reference Case No. 31 of 1994 before the Central Government Industrial Tribunal No. 1 at Dhanbad. The terms of the reference has already been mentioned here in above to the effect that whether this appellant was working as Clay Cartridge Mazdoor and he was workman and, therefore, he was entitled to get the wages as per Category-I.

(ii) On the basis of the evidences on record of the Workman Witness-1, Workman Witness-2 and Workman Witness-3 as well as Management Witness-1 and also looking to the documents on record, this appellant has failed to prove the relationship between employer and employee. Looking to the evidences on record, it appears that the respondent-Management was purchasing clay cartridges at Rs. 4-5 for 1000 clay cartridges prior to 1991. Looking to the evidences of the Workman Witnesses, name of this appellant was never mentioned in the attendance register maintained by the Management. The leaves etc. were also sanctioned by the mate and not by the Management. In fact, this appellant was preparing clay cartridges and he was selling the same to the respondent. Thus, there is no direct supervision and control of the respondent upon this appellant.

(iii) It further appears that one so called attendance register which is at Ext. W-1 is nothing, but, a document prepared by this appellant. There is no signature of the Assistant Manager or Supervisor or Overman in the Mines, on the attendance register. The so called attendance register was prepared by the appellant that too after the year 2000 i.e. after the reference was made in the present case. Thus, it appears that this appellant has very cleverly concocted the document just to misguide the Central Government Industrial Tribunal No. 1 at Dhanbad. In fact, his name was never mentioned in the attendance register maintained by the Management.

(iv) This appellant has failed to prove that appointment letter was given to him by the respondent on the post of Clay Cartridge Mazdoor. Thus, there is no appointment letter on record.

(v) This appellant has also failed to prove that the respondent was paying salary to him. Bare assertion has got no value in the eye of law.

(vi) Thus, there is not a single document presented by this appellant nor there is any evidence on record which proves that this appellant was workman of the respondent. Hence, no error has been committed by the Central Government Industrial Tribunal No. 1 at Dhanbad in deciding Reference Case No. 31 of 1994 as there is no evidence in favour of this appellant as well as no error has been committed by the learned Single Judge in dismissing W.P.(L) No. 5200 of 2013, preferred by this appellant, vide order dated 27th August, 2015.

(vii) It has been held by the Hon''ble Supreme Court in the case of **Mohd. Yunus v. Mohd. Mustaqim, reported in (1983) 4 SCC 566** in paragraph 7, which reads as under:

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

(emphasis supplied)

(viii) It has been held by the Hon''ble Supreme Court in the case of **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd., reported in (1984) 3 SCC 5** in

paragraphs 4 and 5, which read as under:

"4. Under Section 11-A of the Act, advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior court, it is vested with the right of superintendence. The High Court is indisputably entitled to scrutinise the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it could in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it. In this case, the Tribunal had directed reinstatement, the High Court vacated the direction of reinstatement and computed compensation of Rs. 15,000 in lieu of restoration of service. We are not impressed by the reasoning of the High Court that reinstatement was not justified when the Tribunal in exercise of its wide discretion given under the law found that such relief would meet the ends of justice. The Tribunal had not recorded a finding that there was loss of confidence of the employer. The job of a librarian does not involve the necessity of enjoyment of any special confidence of the employer. At any rate, the High Court too did not record a finding to that effect. Again, there is no indication in the judgment of the High Court as to how many years of service the appellant had put in and how many years of service were still left under the Standing Orders. The salary and other service benefits which the appellant was receiving also did not enter into the consideration of the High Court while computing the compensation. We are, therefore, of the view that the High Court had no justification to interfere with the direction regarding reinstatement to service and in proceeding to substitute the direction by quantifying compensation of Rs. 15,000 it acted without any legitimate basis.

5. Mr. Prasad for the first respondent invited our attention to the fact that the High Court was cognizant of the necessity of a remand but taking into consideration the delay involved and the fact that a remand was unnecessary in view of the nature of the order it was going to make took upon itself to give a final decision. We reiterate that ordinarily it is not for the High Court in exercise of the jurisdiction of superintendence to substitute one finding for another and similarly one punishment for another. We may not be understood to have denied that power to the High Court in every type of cases. It is sufficient for our present purpose to hold that on the facts made out, the approach of the High Court was totally uncalled for and the manner in which the compensation was assessed by vacating the order of reinstatement is erroneous both on facts and in law."

(emphasis supplied)

(ix) It has been held by the Hon''ble Supreme Court in the case of **Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd., reported in (2014) 6 SCC 434** in

paragraphs 15 and 16, which read as under:

"15. We find the judgment and award of the Labour Court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

16. It is relevant to mention that in Shalini Shyam Shetty v. Rajendra Shankar Patil, with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that: (SCC p. 348)

"49. (m) ﬠ The power of interference under [Article 227] is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court."

It was also held that: (SCC p. 347, para 49)

"49. (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it."

Thus it is clear, that the High Court has to exercise its power under Article 227 of the Constitution judiciously and to further the ends of justice.""

(emphasis supplied)

(x) It has been held by the Hon''ble Supreme Court in the case of **Pepsico India Holding (P) Ltd. v. Krishna Kant Pandey, reported in (2015) 4 SCC 270** in paragraphs 13 and 14, which read as under:

"13. Considering the entire facts of the case and the findings recorded by the Labour Court, prima facie we are of the view that the High Court has exceeded in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India in interfering with the finding of facts recorded by the Labour Court. It is well settled that the High Court in the guise of exercising its jurisdiction normally should not interfere under

Article 227 of the Constitution and convert itself into a court of appeal.

14. While discussing the power of the High Court under Articles 226 and 227 of the Constitution interfering with the facts recorded by the courts or the tribunal, this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, held as under: (SCC pp. 458-59, para 17)

"17. In case of finding of facts, the Court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and re-appreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at AIR p. 1301 of the Report as follows: (SCC p. 864, para 7)

`7. The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath (AIR p. 217, para 14) that the

"power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee, to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors".

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bora v. Commr. of Hills Division and it was pointed out by Sinha, J., as he then was, speaking on behalf of the Court in that case: (AIR p. 413, para 30)

"30. ﷺ It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."'''

(emphasis supplied)

(xi) It has been held by the Hon''ble Supreme Court in the case of **K.V.S. Ram v. Bangalore Metropolitan Transport Corpn., reported in (2015) 12 SCC 39** in paragraph 10, which reads as under:

"10. In the writ petition, while setting aside the award of the Labour Court, the learned Single Judge placed reliance upon the judgment of this Court passed in Punjab Water Supply Sewerage Board v. Ram Sajivan and also another judgment of the High Court and observed that a person who practices fraud for securing employment cannot perpetuate on the ground of delay and the learned Single Judge faulted the Labour Court for exercising discretion under Section 11-A of the Industrial Disputes Act and interfering with the punishment of dismissal from service. In our considered view, in exercise of its power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the tribunal, only, when there has been a patent perversity in the orders of tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted. In our view, when the Labour Court has exercised its discretion keeping in view the facts of the case and the cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court."

(emphasis supplied)

9. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we see no reason to interfere with the order passed by the learned Single Judge. We also see no reason to take any other view than what is taken by the learned Single Judge. We are in full agreement with the view taken by the learned Single Judge for the reasons for which W.P.(L) No. 5200 of 2013 has been dismissed.

10. There being no substance in this Letters Patent Appeal and, hence, the same is, hereby, dismissed.