
(2013) 01 JH CK 0085

In the Jharkhand High Court

Case No : Criminal Revision No. 1010 of 2006

A.B. Singh @ Azir Bihari Singh

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2013) 2 AJR 715 : (2013) 138 FLR 742 : (2013) 4 JLJR 669

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the State, as also learned counsel for the complainant opposite party No. 2. The petitioner is aggrieved by the Judgment dated 20th November 2003 passed by the learned Special Judge, Economic Offences, Jamshedpur, in Case No. C1-540 of 2000/T.R. No. 208 of 2001, whereby, the petitioner was found guilty for the offence u/s 630 of the Companies Act and was convicted for the same. Upon hearing on the point of sentence, the petitioner was sentenced to pay a fine of Rs. 500/- and in default of making the payment of fine, he was to undergo simple imprisonment for one month. The petitioner was further directed to vacate the quarter in question and hand over the vacant possession of the same to the complainant Company within a period of two months from the date of Judgment, failing which, the petitioner was to undergo imprisonment for a term of one year. The appeal preferred against the said Judgment was also dismissed by learned Addl. Sessions Judge, Fast Track Court-II, Jamshedpur, by Judgment dated 22.4.2006 passed in Criminal Appeal No. 83 of 2003.

2. The facts of this case lie in a narrow compass. The petitioner was an employee of M/s. T.R.F. Ltd., Jamshedpur, (herein after referred to as the "Company"), and due to his employment in the said Company, he was allotted a residential quarter bearing No. T-2/23, Ashok Road, T.R.F. Housing Colony, (T.R.F. Nagar), Telco, Town, Jamshedpur belonging to the Company. It appears that there was some

dispute between the employee and the Management and a reference of the Industrial Dispute was made to the Industrial Tribunal, Ranchi, and the same was pending as Reference Case No. 5 of 2000. During the pendency of the reference case before the Industrial Tribunal, the petitioner was discharged from service by the Management with effect from 1st March 2000, and the Management moved for approval of its action before the Industrial Tribunal under Proviso of Section 33(2)(b) of the Industrial Disputes Act, which was registered as Misc. Case No. 2 of 2000. The order dated 25.2.2004 passed by the Industrial Tribunal, Ranchi, in Misc. Case No. 2 of 2000 has been brought on record as Annexure-1 to the supplementary affidavit filed on behalf of the petitioner, to show that the action of the Management was found to be "not fair, proper and valid". However, it appears from this order that no order for reinstatement of the petitioner was passed by the Industrial Tribunal, and it further appears that the said Misc. Case No. 2 of 2000 was subsequently withdrawn by the Management vide order dated 22.10.2008 passed in the said Misc. Case No. 2 of 2000. It is the case of the petitioner that since the action of the Management of the Company, discharging the petitioner from service was not approved by the Industrial Tribunal under the Proviso to Section 33(2)(b) of the Industrial Disputes Act, the petitioner shall be deemed to be in service and he shall be deemed to be entitled to the quarter in question.

3. It appears that the officer (Vigilance) of T.R.F. Ltd., filed the complaint before the Court below for the offence u/s 630 of the Companies Act against the petitioner as he was not vacating the quarter allotted to him by the Company in spite of termination of his services. The petitioner was ultimately put to trial for the said offence before the Court of Special Judge, Economic Offences, Jamshedpur, in Case No. CI-540 of 2000/T.R. No. 208 of 2001. During the trial two witnesses were examined by the Management and the Management also proved the documents. One witness was examined on behalf of the petitioner, who was the petitioner himself. The sole point taken by the petitioner was that till date, the action of the Management, discharging the petitioner from service was not approved by the Industrial Tribunal under the Proviso to Section 33(2)(b) of the Industrial Disputes Act, and as such the petitioner shall be deemed to be in service and he cannot be directed to vacate the quarter in question. However, on the basis of the evidence on record, it was found that the petitioner had seized to be the employee of the Company and still the petitioner had not vacated the quarter of the Company. Accordingly, the petitioner was found guilty for the offence u/s 630 of the Companies Act and was convicted and sentenced for the same. The appeal filed against the said Judgment was also dismissed by Appellate Court below.

4. Learned counsel for the petitioner has submitted that the impugned Judgments passed by the Courts below are absolutely illegal, inasmuch, as the approval for termination of the petitioner from service was not accorded under Proviso to Section 33(2)(b) of the Industrial Disputes Act, and such, the petitioner shall be deemed to be in service of the Company. In this connection,

learned counsel has placed reliance upon a decision of the Supreme Court of India in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , wherein the law has been laid down as follows:-

14. Where an application is made u/s 33(2)(b), Proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. ----- This being the position there is no need of separate or specific order of his reinstatement.-----.

(Emphasis supplied).

5. Learned counsel has also placed reliance upon a decision of Madras High Court in The Management of Cheran Transport Corpn, Coimbatore 43 and another Vs. Mr. G. Balasubramaniam and another, , wherein also a similar view has been taken by the Madras High Court. Placing reliance on these decisions, learned counsel for the petitioner has submitted that the impugned Judgments passed by the Courts below cannot be sustained in the eyes of law.

6. Learned counsel for the State, as also learned counsel for the complainant O.P. No. 2, on the other hand, have submitted that there is no illegality and/or irregularity in the impugned Judgments worth interference in the revisional jurisdiction.

7. After having heard learned counsels for both the sides and upon going through the record, I find that the question involved in this application is not as to whether the termination of the petitioner was illegal, or it was rendered invalid in view of non-approval of the same under Proviso to Section 33(2)(b) of the Industrial Disputes Act, and this being the position there was no need of separate or specific order for his reinstatement, and the petitioner shall be deemed to be reinstated in service. Rather the pure and simple question involved in this case is, as to whether on the date when the complaint petition was filed against the petitioner, the petitioner was in active service of the Company or not. If his services were terminated by the Company and he was not in active service of the Company, he was not entitled to retain any property or the quarter of the Company. In the present case, I find that the petitioner was discharged from the service of the company with effect from 1st March 2000. It is stated in the supplementary affidavit filed on behalf of the petitioner that the date of his superannuation was 2.1.2003. The order was passed on 25.2.2004 by the

Industrial Tribunal, Ranchi, in Misc. Case No. 2 of 2000 that the action of the Management was "not fair, proper and valid". In this view of the matter, the petitioner was not in service of the Company and as a matter of fact he was never reinstated in service and in that view of the matter, there was no employee and employer relationship between the petitioner and the Company, thus entitling the petitioner to retain the quarter in question. Even if the employer and employee relationship between the Company and the petitioner shall be deemed to remain inchoate until the order was passed by the Industrial Tribunal, but in the present case this relationship remained incomplete and inchoate until the petitioner reached the age of superannuation and the order of the Industrial Tribunal was passed much thereafter. Even if it is accepted that there shall be deemed reinstatement of the petitioner in service, in that case the petitioner may be entitled to his wages/salary and other admissible emoluments, including the HRA if admissible, for the remaining period of his service, but he cannot claim to keep in his possession any property of the Company, including the quarter of the Company.

8. It may be stated that in course of argument in this case, the petitioner was also given an opportunity to give a specific averment whether the petitioner was in active service on the date of filing of the complaint or not and the case was adjourned for giving an opportunity to the petitioner to bring the relevant facts on record. Pursuant thereto, the petitioner has filed another supplementary affidavit, in which, it is only stated that the termination order of the petitioner was illegal and cannot be sustained in the eyes of law, but it finds admitted in the supplementary affidavit in paragraph-6 that though it was held that the Domestic Enquiry was not fair, proper and valid, but the Tribunal did not pass any order of reinstatement of the petitioner. It is also stated in this supplementary affidavit that the date of superannuation of the petitioner was 2.1.2003. Thus, it is apparent that petitioner was never in the active service of the Company after the termination of his service with effect from 1st March 2000 till reaching his age of superannuation.

9. From the record I find that the Courts below have given the specific finding on the basis of the evidence on record that the petitioner had seized to be the employee of the Company and still the petitioner had not vacated the quarter of the Company. In that view of the matter, I find that the petitioner was rightly convicted for the offence u/s 630 of the Companies Act and sentenced for the same. I do not find any illegality and/or irregularity in the impugned Judgments passed by the Courts below worth interference in the revisional jurisdiction. There is no merit in this revision application and the same is, accordingly, dismissed. Let the Lower Court Record be sent back forthwith.