
(2019) 03 JH CK 0007

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 66 Of 2017

Anguri Khatoon

APPELLANT

Vs

Central Coalfield Limited And Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Citation : (2019) 03 JH CK 0007

Hon'ble Judges : Shree Chandrashekhar, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Rishi Raj Verma, Saurabh Shekhar, A.K. Das, Pooja Kumari

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J

1. The appellant- writ petitioner is aggrieved of that part of the order dated 10.01.2017 passed in W.P.(S) No.830 of 2011 by which she has been held not entitled for back-wages for the interregnum period. The appellant is the wife of the original writ-petitioner.

2. Briefly stated, on an allegation that he has secured employment falsely declaring himself nephew of the employee- Md. Yunus who opted for VRS, a charge-memo was served upon the husband of the writ-petitioner who has died on 12.10.2014. The enquiring officer submitted a report finding the charges framed against him not proved and after issuing a second show-cause notice dated 30.07.2008 the disciplinary authority inflicted punishment of dismissal from service vide order dated 11.02.2009. His appeal filed against the penalty order dated 11.02.2009 was dismissed on 15.10.2009. He came to this Court in W.P.(S) No.830 of 2011 challenging the aforesaid orders dated 11.02.2009 and 15.10.2009. During pendency of the writ petition, he died on 12.10.2014 and his wife- Anguri Khatoon has been substituted in his place.

3. Mr. Rishi Raj Verma, the learned counsel for the appellant submits that once

the penalty order is quashed the consequence thereof would be that the employee becomes entitled for back-wages.

4. Back-wages to an employee has been a vexed issue before the Courts for long. There is no straight-jacket formula for awarding back-wages to an employee for the period during which he has remained out of service. It is also true that there is no absolute rule that when the order of dismissal/removal of service is quashed the employee becomes entitled for back-wages automatically. There are few cases in which the employee has been held entitled for full back-wages. In one of the earliest cases, in "M/s. Hindustan Tin Works Private Limited Vs. The Employees of M/s Hindustan tin works Private Limited & Ors." (1979) 2 SCC 80, it has been held, thus;

17."There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether " continuity of service" and /or "consequential benefits" should also be directed"

5. The law on the subject has been again lucidly illustrated in "U.P. State Brassware Corporation Ltd. & Anr. Vs. Uday Narain Pandey" (2006) 1 SCC 479. The decisions on grant of back-wages widely indicate that ultimately it turns on the facts of each case. In some cases the employee can be paid full back-wages, in some 50% and in other nothing at all. Recently, in "Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors." (2013) 10 SCC 324, it has been held that before an employee makes a claim for payment of back-wages he must plead that during the period he has remained out of service he was not gainfully employed elsewhere. Before the writ Court, such was not the case pleaded by the writ-petitioner. In absence of the foundational facts, the learned writ Court has rightly denied back-wages to the employee for the period between 11.02.2009 and 15.10.2009.

6. In view of the aforesaid facts, we find no merit in the Letters Patent Appeal and, accordingly, L.P.A. No.66 of 2017 is dismissed.