
(2019) 10 JH CK 0079

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 34 of 2002

Baleshwar Kandu

APPELLANT

Vs

Baleshwar Kandu

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 306, 498(A)
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2019) 10 JH CK 0079

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Aprajita Bhardwaj, Sardhu Mahto

Final Decision : Allowed

Judgement

Heard counsel for the parties.

The present writ petition has been filed for quashing the decision dated 22.01.2016 passed by Deputy Chief Labour Commissioner (Central), Dhanbad and the Appellate Authority in P.G.A. No. (51)/2015-DY.CLC., whereby appeal filed by the workman, has been allowed and consequence thereof, the management has been directed to make payment of Rs. 4,85,358.25/- to the workman.

From the pleading, it appears that respondent-workman has been appointed on 05.10.1978 under the Petitioner-BCCL. Subsequently, the respondent-employee along with 53 workmen were terminated from the service w.e.f. 18.06.1981. Such termination has been challenged by raising industrial dispute through the Union vide application dated 17.09.1981.

On failure of conciliation, industrial dispute has been referred to the C.G.I.T. No.2, Dhanbad for adjudication in Reference No. 48 of 1982 vide order dated 12.05.1982. This reference has been answered in favour of the workman directing for reinstatement in service. Thereafter, petitioner-management has

filed Reference Misc. Case No. 01 of 1982 before the Tribunal for setting aside the ex-parte Award, but the same has been rejected vide order dated 31.03.1983.

The Award passed in above case, has been challenged by filing a writ petition being CWJC No. 85 of 1984 (R) which has been disposed of vide order dated 09.05.1988 in favour of the workman directing the petitioner-management to reinstate the workman. In pursuance of order, the petitioner-management has constituted a screening committee for identification purpose. The present respondent no. 2 as well as other workmen were declared unidentified by the screening committee.

This finding of the screening committee has been challenged by workman by filing a writ petition being CWJC No. 833 of 1994 (R) and the Hon'ble Court vide order dated 07.09.1995 has directed the Tribunal to identify the workmen.

In pursuance of above direction, a Misc. Case No. 03 of 1995 has been instituted in which seven persons including the respondent no. 2 were found genuine and the petitioner-management has been directed to reinstate respondent no.2.

Against the above order, the petitioner-management has preferred a writ petition being CWJC No. 4256 of 1996 (R) and the same has been dismissed vide order dated 03.09.1997 and as such the genuineness of the respondent no.2 stands proved.

Being aggrieved, L.P.A. has been preferred being L.P.A. No. 131 of 1998 (R) which has been disposed of vide order dated 11.11.1999. The operating portion of the order reads as under:-

"In view of the fact that the Tribunal had a very limited scope to verify the persons except oral evidence and documents filed by respective parties, on the ratio of decision of the apex court in *Bharat Coking Coal Ltd. vs. Raghunath Balmiki* (1991) 1 S.C.C. 177), the parties agree that by way of abundant caution the workers concerned shall obtain the relevant performa from the management within a week and submit the same within a week thereafter with certificate of birth and thereafter within a month services of those workmen shall be regularized and their wages with effect from 20.6.1981 and other emoluments as per award as well as the impugned order dated 19.3.1998, passed by this Court for idle period shall be calculated and paid by the management. However, they shall not be entitled to any interest. Accordingly, direction for payment of 9% interest given in the impugned order dated 19.3.1998 is set aside.

This appeal is, accordingly, disposed of with the aforesaid modification and direction."

In spite of above order, there was some confusion between the parties and as such the workman has approached this Court by filing being C.M.P. No. 598 of 2001 and which has been disposed of by giving further direction. The direction given vide order 13.02.2002, is quoted hereinbelow:-

"i. All the five workmen shall be reinstated. They shall report for duties on 18.2.2002 and their duties shall start from that date. From that day they shall be paid their current wages as well;

ii. Whatever documentary evidence the workmen have produced already or may additionally produce in four weeks from today with respect to their ages, the Management shall consider the same and if satisfied shall record their ages accordingly. Otherwise, the Management shall be at liberty to subject these workmen to examination by a Medical Board and the Medical Board shall record its assessment of their ages which shall be duly entered in their Service Record; and

iii. The Management has submitted before us that because of economic crunch it is not in a position to pay the back wages and the matter has been taken up with the B.I.F.R. It is up to the Management to obtain any appropriate orders from B.I.F.R., but in the meanwhile by way of interim measure each of the five workmen shall be paid Rs. 50,000/- (Rupees fifty thousand). This amount shall be paid latest by 28.02.2002."

Ultimately, the respondent no. 2 has been allowed to join in service of the company w.e.f. 18.02.2002 and he served and got wages till the age of superannuation i.e. 31.10.2012. But, the present dispute has arisen as respondent-workman has claimed gratuity treating his service w.e.f. 1982 but the respondent no.2 paid the gratuity from the date of reinstatement i.e. 18.02.2002. The claim of the petitioner-management has not been accepted by the Appellate Authority under the Payment of Gratuity Act, 1972, and being aggrieved the present writ petition has been filed.

From the marshaling of fact and sequence of different orders, as discussed above, it is evident that the petitioner has been reinstated in service w.e.f. 18.02.2002. But, even the order of the L.P.A. Court is clear that the respondent-workman is entitled for continuity of service from 20.06.1981. This order of the Division Bench has attained finality and this cannot be agitated again between the parties.

It is trite that the issue raised and decided between the parties cannot be re-agitated even in subsequent proceeding.

In view of above discussion, this Court finds that the impugned order dated 22.01.2016 passed by the Appellate Authority in P.G.A. No. (51)/2015-DY.CLC., is perfectly justified and in accordance with direction of this Court (Supra). Accordingly the same is, hereby, upheld.

Resultantly, present writ petition stands dismissed.