
(2012) 01 JH CK 0027
In the Jharkhand High Court
Case No : L.P.A. No. 173 of 2010

Basudeo Bhuiya

APPELLANT

Vs

Bharat Coking Coal Limited, Dhanbad and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 01 JH CK 0027

Hon'ble Judges : Prakash Tatia, J; P.P. Bhatt, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. The petitioner earlier approached this Court by filing CWJC No. 923 of 2000(R), which was decided vide order dated 9th October, 2001, wherein learned Single Judge of this Court observed that services of total seven workmen were terminated, out of which six workmen named in the FIR and alleged to have assaulted the informant, have been reinstated in the services and the petitioner is the only person who has been singled out. Therefore, the writ petition of the petitioner has been allowed and award passed by the Labour court was set aside and it has been held as follows:

...It is held that the petitioner/workman is entitled to be reinstated in service with effect from the date when the other six workmen have been reinstated in service on the same terms and conditions.

3. The said order was alleged to have not been complied with, therefore, the writ petitioner submitted contempt petition before this Court, which was finally disposed of on 4th December, 2002, with a direction to the respondents that the petitioner will be allowed to join duty unconditionally. Then only the petitioner was allowed to join the duty on 21st January, 2003. However, while allowing the petitioner to join duty, a stipulation was made that no payment of back wages will be made to the petitioner for the period from the date of dismissal till the

date of resumption of duty and the total period will be treated as dies non. The petitioner being aggrieved against the condition imposed in that order with regard to denial of back wages, preferred the writ petition being W. P. (S) No. 1995 of 2004 , which has been dismissed by the learned Single Judge vide impugned order dated 29th January, 2010.

4. Learned counsel appearing for the writ petitioner-appellant vehemently submitted that the petitioner was entitled to be reinstated with effect from January, 1994, in view of the direction given for the other six workmen and so has been held by the learned Single Judge. Then it is submitted that the writ petitioner should have been paid wages from 1st January, 1994 and the condition No. 2 imposed , as referred above, regarding non payment of the wages of the period declaring it to be "dies non" , cannot be enforced. In alternative, it has been submitted that the petitioner was, at least, entitled to back wages from the order of this Court passed in earlier writ petition being CWJC No. 923 of 2000(R), which was decided on 9th October, 2001. It is submitted that the petitioner was not allowed to join duty and for that the petitioner cannot be made to suffer and not only this, petitioner has to file contempt petition and thereafter only the respondents permitted the petitioner to join the duties.

5. Learned counsel for the respondents vehemently submitted that condition which has been agreed by the petitioner in writing and which has been noticed by the learned Single Judge in the impugned order, showing the signed memorandum of settlement, then petitioner cannot resile from his agreement which has denied the back wages. It is also submitted that admittedly the petitioner did not do the work before 21st January, 2003 as he joined the duties on 21st January, 2003 , therefore, the principle of " no work no wages" can well be applied in the case of the writ petitioner.

6. We have considered the submission of the learned counsel for the parties and perused the facts of the case. It is not in dispute that the order of termination of service of the petitioner has been set aside by the order of this Court in writ petition vide order dated 9th October, 2001 and the respondents were directed to give same treatment to the writ petitioner as has been given to six other workmen. Therefore, petitioner was entitled to the reinstatement from the date from which other six workmen were reinstated. Petitioner's effort to join his duties is apparent, as petitioner had to move a contempt petition before this Court, which clearly indicate that petitioner was not allowed to join the duties and he has to submit the contempt petition, wherein this Court directed the respondents to allow the petitioner to join duty unconditionally, then also after order dated 4th December, 2002 passed in Contempt petition the petitioner was allowed to join duties on 21st January, 2003.

7. In that fact situation, the respondents are liable to pay the back wages to the writ petitioner from the date of order passed by this Court as they did not comply with the order firstly and secondly they allowed the petitioner to join the duties only when the order was passed in contempt petition.

8. So far as contention of learned counsel for the respondent that there is a memorandum of settlement between the parties wherein the writ petitioner's agreed to forego the back wages. However, such type of memorandum of settlement, apparently from a oppressed person, cannot be given effect to when on the face of it, it appears that the benefit has been taken off from an oppressed workman by the employer. It is also relevant to mention here that the petitioner denied that no such settlement was ever taken place.

9. Be that as it may, on the reasons mentioned hereinbefore, it is held that the writ petitioner-appellant is entitled to the back wages from the date of the order passed by this Court in C.W.J.C. No. 923 of 2000(R) dated 9.10.2001 and principle of " no work no wages" cannot be applied because in the present case the petitioner was prevented from joining the duties by the respondents. Therefore, the Letters Patent Appeal is allowed and the respondents are directed to pay back wages from the date of order dated 9th October, 2001 till 21st January, 2003 to the writ petitioner within a period of one month from today.

It is also held that the reinstatement shall be relegated back to 1st January, 1994 and same treatment be also given to the writ petitioner for other purposes except than the back wages.