

(2010) 01 JH CK 0081
In the Jharkhand High Court

Basudeo Bhuiya

APPELLANT

Vs

Bharat Coking Coal Limited, General Manager, BCCL, Dy.
Chief Personnel Manager, BCCL and Personnel Manager (IR),
BCCL

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Citation : (2010) 126 FLR 89

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

With the consent of the parties, this application is taken up for disposal at the stage of admission.

2. The petitioner in this writ application has prayed for the following relief (s).

(a) For quashing the terms and conditions of the petitioner's reinstatement, as contained in the order dated 21.1.2003 (Annexure-7) issued by the General Manager, BCCL, Eastern, Jharia Area (Respondent No. 2).

(b) For directing the respondents not to give effect to the terms and conditions of the petitioner's reinstatement as mentioned in the impugned order and, to treat the petitioner as reinstated in service on and from January 1994 at par with the six other co-employees and to pay arrears of salary to the petitioner from January 1994 as given to the other six employees.

(c) To direct the respondents to treat the period from the date of the petitioner's dismissal, till the date of resumption of duty, as on continuous service.

3. The petitioner's case in brief is as follows:

The petitioner was in the permanent employment of the respondent BCCL and was posted as Coal Hooper Mazdoor at Bhowra Coke Plant.

By Office Order dated 23rd March 1992, he was dismissed from service. Similar order of dismissal was also passed on the same day against six other workmen.

4. On the ground that the dismissal order was illegal since it was passed without serving any charge sheet and without conducting any departmental inquiry or domestic inquiry, the dismissed workmen raised an industrial dispute through their Union. The dispute was referred by the Central Government to the Central Government Industrial Tribunal No. 1 for adjudication.

The Reference was answered by the Tribunal in favour of the Management by its Award dated 20th December 1999, holding the order of dismissal as valid.

5. Being aggrieved, the petitioner through his Union, filed a writ application before this Court vide CWJC No. 923 of 2000 (R).

Meanwhile, the other workmen filed representation before the concerned authorities of the respondents and upon reconsideration of the entire matter, the respondent authorities themselves withdrew the order of dismissal and reinstated the workmen in service with effect from January 1994 and upon joining their duties, they were paid their salary every month.

The petitioner however did not file any such representation and had pursued his writ application. By order dated 9.10.2001, this Court allowed the writ application after setting aside the impugned Award of the Tribunal and directed that the petitioner is entitled to be reinstated in service with effect from the date when six other workmen were reinstated in service, on the same terms and conditions.

6. Being armed with the order of this Court, the petitioner made several representations before the concerned authorities of the respondents, requesting them to accept his joining with effect from the date when six other workmen were reinstated, but when his requests were not acceded, he filed a contempt application vide Cont. (C) Case No. 319 of 2002 before this Court.

7. During the pendency of the contempt application, the respondent issued a letter dated 15/16.4.2002 annexing therewith a draft copy of Memorandum of Settlement and directed the petitioner to appear at the office of the respondents along with the Memorandum of Settlement duly signed, to enable his acceptance in duty.

8. The petitioner raised objection against the terms of Memorandum of Settlement by filing his representation on 22.4.2002, before the Personnel Manager (IR), BCCL, demanding that the same treatment, as given to the co-employees, be given to him and demanded salary from January 1994.

9. The Contempt Application filed by the petitioner, was finally disposed of on 4.12.2002 by this Court with a direction to the respondents that the petitioner be allowed to join duty unconditionally. The petitioner was allowed to join duty on 21.1.1003. However, while allowing the petitioner to join duty, a stipulation was

made that no payment of back wages whatsoever 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".

10. Assailing the conditions as imposed in the order of petitioner's reinstatement, Ms. . M.M. Pal, learned Counsel for the petitioner submits that the imposition of the impugned conditions are malafide, arbitrary, discriminatory and contrary to the orders and directions passed by this Court, both in the writ application as also in the contempt application.

Learned Counsel explains that after the Award was passed by the Tribunal, the case of the workmen was taken up by their Union with the concerned authorities of the Management at the CMD level and a decision was finally taken which was notified by office order dated 19/20.1.1994 whereby six workmen were reinstated in service though with certain terms and conditions mentioned therein and on the basis of such decision, all the six workmen were allowed to join duty in January 1994 and since the date of their joining, they are being paid their salary regularly. The petitioner was however singled out, though his case stood on the same footing as the six other workmen. This aspect of the petitioner's case was considered by this Court while disposing of the writ application and directions accordingly were issued to the respondents declaring that the "the petitioner is entitled to be reinstated in service from the date when other six workmen have been reinstated in service on the same terms and conditions".

Learned Counsel explains further that the terms and conditions on which the other six workmen were reinstated in service, stipulates that for the period between the date of their dismissal and the date of their reinstatement in service, they shall be not paid any salary and the period shall be treated as "Dies-Non". The same condition does squarely apply to the petitioner also and he ought to have been reinstated in service with effect from the same date when other six workmen were reinstated i.e. from January 1994 and should have been paid his salary accordingly. Learned Counsel adds that under the aforesaid circumstances, the petitioner is entitled for his reinstatement in service with effect from January 1994 and also to be paid his salary from that date and not from the date when he was finally allowed to join duty.

11. Per contra, the stand taken by the respondents is that the petitioner is not entitled to the relief (s) claimed by him in this writ application and that the conditions as imposed in the letter of reinstatement, are fully justified as because, the same are in consonance with the terms and conditions as imposed upon reinstatement of the six other workmen and is in accordance with the directions contained in the order passed by this Court dated 9.10.2001 in the petitioner's writ application vide CWJC No. 923 of 2000 (R).

12. Elaborating the grounds, learned Counsel for the respondents explains that none of the reinstated workmen have been paid back wages and as such, the petitioner is also not entitled for any back wages claimed with effect from

January 1994. It is explained that the other workmen namely, Sarju Pandey, Dillu Beldar, Rajendra Beldar and Ram Narayan Prasad had submitted their appeal before the Chairman-cum-Managing Director, BCCL on 10.3.1993 for their reinstatement in service and after the decision taken on their appeal, they were allowed to be reinstated in service on the terms and conditions inter-alia that no payment will be made to the workmen for the period from the date of dismissal, till the date of resumption of duty and this period will be treated as "Dies-Non" and an agreement between the above named workmen represented by their Union, was entered into with the Management at the local level, where-after the workmen were allowed to resume duty. Decision on the appeal of the 5th worker namely, Babulal Bhuiya was taken and in the light of Memorandum of Settlement which was executed between him and the Management, he was reinstated in service on 28.4.2004 on the same terms and conditions as applied in the case of the four other workmen. The petitioner however did not submit any mercy appeal before the Management, although, the other five similarly situated workmen had submitted their respective appeals before the competent authority for their reinstatement.

13. Upon hearing the rival submissions, the following facts emerge:

In the order passed by this Court in its order dated 9.10.2001 passed in CWJC No. 923 of 2000 (R), observations were made in the following manner:

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

14. The terms and conditions, as essentially applied in the case of one of each of the workmen, a sample of which is annexure-6 to the writ application, are as follows:

Terms and Conditions

1. Shri Sarju Pandey will be reinstated and allowed to join his duty at Bastacolla Area in his existing capacity and scale of pay. Sri Pandey will accordingly report for his duty to the General Manager, Bastacolla Area, within 3 (three) days from the date of signing this agreement.

2. No payment of wages or whatsoever will be made to him for the period for idleness i.e. from the date of his dismissal to the date of resumption of his duty and the total period will be treated as "Dies-Non".

3. Shri Pandey shall withdraw the Court cases of whatsoever filed against the Management of M/s BCCL within a week's time.

4. No dispute shall be raised by Sri Pandey or by any Union in future regarding the payment of his wages or whatsoever for the period of his idleness. The dispute is resolved once for all.

15. As per the order of this Court passed in the earlier writ application, the same

terms and conditions were to be applied to the petitioner's case also. On perusal of the impugned terms and conditions, as contained in the letter of the petitioner's reinstatement, it appears that the same terms and conditions have been stipulated for the petitioner also. It also appears that the petitioner had signed on the Memorandum of Settlement. As per the terms of Settlement, the petitioner had undertaken not to raise any dispute either himself or through Union in future regarding payment of back wages or whatsoever for the period of idleness.

16. Learned Counsel for the petitioner emphasizes that as per the terms and conditions as stipulated in the case of the six other workmen, the period from the date of dismissal till the date of their reinstatement in January 1994, is alone be treated as the period of idleness and not beyond and therefore, the Management by applying the same standard, may, at best, refuse payment of salary to the petitioner for the aforesaid period only.

17. The argument of the learned Counsel for the petitioner does not appeal to reason. Admittedly, while the other workmen had preferred their mercy appeal before the Management and the same was considered and acted upon with the benefit of reinstatement extended to them, the petitioner did not choose to prefer any mercy appeal. Rather, he chose to pursue with the writ application filed by him awaiting the results of the writ application which came to be disposed of only on 9.10.2001. Pursuant to the observations contained in the order passed in his writ application, the respondents offered reinstatement the service of the petitioner on the same terms and conditions as applied to the six other workmen. The terms and conditions stipulated in the order of the petitioner's reinstatement, are parameteria the same as applied in the case of other six workmen. One of the essential conditions of reinstatement, as given to the six other workmen, was that no payment or wages whatsoever will be made for the period of idleness i.e. from the date of dismissal till the date of resumption of duty and the period will be treated as "Dies-Non". It also appears that one of such workmen namely, Babulal Bhuiyan had submitted his mercy appeal much later, upon which the decision for his reinstatement was taken and he was accepted in duty in the month of April 2004 and by applying the same terms and conditions as applied in the case of other workmen, the period of idleness was computed from the date of dismissal, till the date of their resumption of duty.

18. Admittedly, the petitioner by failing to submit his mercy appeal along with the other workmen, he could not avail the opportunity of his case being considered along with the six other workmen. Admittedly, the petitioner did not resume duty till the date of his joining on 21.3.2003. Admittedly, the other workmen were allowed to join duty without payment of back wages, as per the terms of settlement, for the period of their idleness i.e. from the date of their dismissal, till the date of their joining duties. Even as per the observations of this Court, as contained in the order passed in the earlier writ application, if the

petitioner is deemed to be entitled for reinstatement with effect from 1994, yet in absence of any further observation regarding payment of back wages, it has to be deemed that discretion was left with the Management and under the terms of settlement, no back wages was to be paid for the period of idleness to any of the reinstated employees. The petitioner cannot certainly claim back wages from January 1994 even though he had never worked during the period from January 1994 till the date of his reinstatement. Such period has to be treated as the period of idleness.

19. In the light of the above discussions, I do not find any illegality or infirmity in the impugned terms and conditions of settlement, as contained in the letter of the petitioner's reinstatement in service. The petitioner's claim for payment of arrears of salary from January 1994, till the date of his reinstatement, is misconceived and the relief claimed in this regard, cannot be accepted.

However, the only benefit which the petitioner may draw from the observation contained in the order of this Court passed in the earlier writ application, is that he should be treated as in continuous service from the date of his dismissal till the date of his reinstatement for the purpose of enabling him the benefit of computing his pension and other consequential benefits, except the payment of back wages.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the counsel for the respondents.