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**(2008) 12 JH CK 0109**  
**In the Jharkhand High Court**  
**Case No : L.P.A. No. 628 of 2002**

Bharat Cocking Coal Ltd. and Others

APPELLANT

Vs

Gopal Singh

RESPONDENT

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**Date of Decision :** 13-12-2008

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10

**Citation :** (2009) 57 BLJR 2697

**Hon'ble Judges :** Gyan Sudha Mishra, C.J;Ajit Kumar Sinha, J

**Bench :** Division Bench

**Advocate :** A.K. Mehta, for the Appellant; S.N. Das, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. This appeal has been preferred by the appellant-management of M/s. Bharat Coking Coal Ltd. (B.C.C.L. for shod) against the order dated 03.10.2002 passed in CWJC No. 1058 of 1995(R) by which the learned Single Judge had been pleased to remand the matter to the Managing Director of M/s. B.C.C.L. to pass appropriate order on the order of dismissal of the petitioner/respondent herein who had assailed the same by filing the writ petition referred to hereinbefore.

2. The petitioner/respondent in the writ petition had prayed for quashing the order dated 23.09.1994 passed by the Agent of Barari Colliery with approval of the Chairman cum Managing Director of M/s. B.C.C.L., by which the petitioner/respondent had been dismissed from service summarily relying upon Clause 28 of the Certified Standing Order applicable to the employees of the said Colliery. The order of dismissal had been passed against the petitioner-respondent in view of the fact that he had committed misconduct by willfully damaging in the property of the employer while the work was in progress. It was also alleged that he had committed theft and fraud and acted dishonestly in connection with the Company business while he was posted as a security guard at Bhulan Bararee Check post. The specific charge leveled against the petitioner/respondent was that on 22.09.1994 at 12 in the mid night during 3rd shift he was assigned the

job of not allowing any truck to pass through the check post without checking the challan papers and without making proper entry of the number of the truck in the register maintained for the purpose. The petitioner/respondent was charged for the allegation that he allowed one truck loaded with coal to pass through the check post without checking the challan and also without making proper entry in the relevant register. Besides this, two trucks were also found Standing at the check post loaded with coal but no entry was made in the register. Thus, those trucks were allowed to pass through the check post without checking the challans which were subsequently found to be forged.

3. Admittedly, no enquiry was conducted in regard to the charges levelled against the petitioner/respondent but in view of Clause 28 of the Certified Standing Order which envisages that a workman may be removed or discharged from service without initiating due proceeding if he was found to be convicted of a criminal offence by a court of law or where the Chairman cum Managing Director of the Company was satisfied for reasons to be recorded in writing that it was expedient and in the interest of security to discontinue an employee/workman from discharging duty the petitioner/respondent was summarily dismissed from service but the Chairman cum Managing Director of the Company had also recorded reasons in this regard.

4. Thereafter an order appears to have been passed by the Agent of the Company with the approval of the Chairman cum Managing Director of M/s. B.C.C.L. dismissing the respondent and the same was challenged by the petitioner/respondent by filing the writ petition bearing CWJC No. 1058/1995 on several grounds. The writ petition was filed in the year 1995 but during the pendency of the writ petition, the Union through the petitioner/respondent/workman filed an application before the Central Government for initiating a dispute and referring the same before the Industrial Tribunal u/s 10 of the Industrial Disputes Act, 1947. The competent authority under the Ministry of Labour passed an order in the year 1989 referring the dispute to the Tribunal framing the question of reference as to "Whether the action of the management of Barari Colliery of M/s. Bharat Coking Coal Ltd. in dismissing Gopal Singh, Ex-Security Guard from the service of the Company w.e.f. 23.09.1994 is Justified? If not, to what relief the workman is entitled."

5. A communication in this regard was sent to all the concerned parties which included 1. Presiding Officer, Central Industrial Tribunal No. 2, Dhanbad; 2. Project Officer, Barari Colliery of B.C.C.L. and 3. Secretary, Rashtriya Colliery Mazdoor Sangh, Dhanbad through whom the petitioner/respondent had moved for initiating reference of the dispute. As already stated, this order was passed on 18.08.1999 i.e. before the learned Single Judge decided the writ petition on 3rd October, 2002. The learned Single Judge disposed of the writ petition by remitting the dispute in regard to the dismissal of the petitioner/respondent to the Chairman cum Managing Director of B.C.C.L. to pass appropriate order in regard to the challenge of the order of punishment, in accordance with law taking

into consideration the nature of misconduct alleged to have been committed by the petitioner/respondent. However, on the day of passing of the order by the learned Single Judge, neither the appellant/management nor the petitioner/respondent informed the Court that an order has already been passed by the Ministry of Labour referring the dispute to the Industrial Tribunal and if this information had been passed on to the Court, there would have been no occasion for the learned Single Judge to remit the matter to the Chairman cum Managing Director. But the contesting parties did not furnish this information to the Court as a result of which the order of remand had been passed by the learned Single Judge remitting the matter, as already indicated hereinbefore which has been assailed by the appellant-management in this appeal.

Learned Counsel for the appellant-management has assailed the order of remand passed by the learned Single Judge and justified the order of dismissal on the ground that the authority was within was power to issue such order.

6. The question now emerges as to why this Court should interfere with the order of remand when the order of dismissal had been passed merely on the basis of a summary order. But in the process it cannot be overlooked that the petitioner/respondent had already moved the Ministry of Labour for initiating reference before the authority although he had filed a writ petition before the High Court assailing the order of dismissal which is still sub Judice before this Court. Once the order initiating reference was passed in the year 1999, then it was surely the duty of the petitioner/respondent to inform the Court that the order of remand was not required to be passed since an order referring the dispute to the Tribunal has already been passed by the competent authority who was authorized to initiate reference. As this information was not furnished to the Court, the order of remand was passed which, in our view, cannot be held sustainable once the matter had been referred to the Tribunal for adjudicating the question referred to it.

7. Under the aforesaid circumstance, we are of the view that in order to evolve a just and equitable solution, it would be appropriate to grant opportunity to the contesting parties to approach the Industrial Tribunal for adjudication of the dispute which had been referred to it by order dated 18.08.1999 and apprise the Tribunal in this regard. Thereafter, when the matter is brought to the notice of the Tribunal, the Tribunal is directed to adjudicate the dispute expeditiously but not later than a period of six months from the date of receipt of the application from the parties concerned.

8. Thus, while we set aside the order of the learned Single Judge remitting the matter to the Managing Director, B.C.C.L., we grant liberty to the respondent-workman as also the appellant-management, for taking steps for adjudication of the dispute in pursuance to the reference made by the Ministry of Labour, as already indicated hereinbefore.

9. The appeal thus is allowed in part but there shall be no order as to costs.