

(1997) 12 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2205 of 1989 (R)

Bharat Coking Coal Limited

APPELLANT

Vs

Tahal Sao and Another

RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33C

Citation : (1998) 2 BLJR 834 : (1998) 1 PLJR 767

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ petition, the petitioner has challenged the order dated 14.9.1989 passed by respondent No. 2, Presiding Officer, Labour Court, Dhanbad, in M.J. Case No. 30 of 1987 (D) whereby and where under the application filed on behalf of respondent No. 1 u/s 33C(2) of the Industrial Disputes Act, 1947, (hereinafter to be referred to as "the Act" for short), has been allowed and it was held that the applicant-respondent No. 1 is entitled to get payment of dues amounting to Rs. 95,664.64 from the petitioner.

2. The aforesaid M.J. Case No. 30 of 1987 (D) arose out of the application filed by respondent No. 1 u/s 33C(2)(a) of the Act claiming full back wages for the period 15.2.1982 to October, 1987. The case of the respondent No. 1, claimant was that he was originally appointed as permanent Miner/Loader in Bagdigi Colliery and he remained absent in his duty from February, 1974, due to mental imbalance and was under treatment at Ranchi. It is stated that a charge-sheet was issued on 24.11.1980 by the petitioner and after enquiry he was dismissed from service with effect from 15.2.1982. Subsequently, the petitioner-management filed an application u/s 33(2)(b) of the Act in the Court of the Central Industrial Tribunal for approval of the said order of dismissal. The Tribunal rejected the application and refused to grant approval of dismissal of the applicant from service. The applicant thereafter approached and represented to

the petitioner-management for allowing him to resume duty with full back wages. However, the applicant-respondent No. 1 was re-instated in his service by the petitioner-Management in November, 1987. The applicant thereafter filed an application u/s 33C(2) of the Act claiming full back wages and other benefits from 15.2.1982 till he was re-instated in service. The management opposed the said application stating, inter alia, that the Labour Court constituted by the State Government had no jurisdiction to entertain such applications, before notification dated 23.3.1987 and it has no retrospective effect where cause of action arose long before 23.3.1987 and as such the claim of the applicant was barred by limitation and estoppel. It was further stated that the application filed by the management u/s 33(2)(b) of the Act seeking approval of dismissal order of the applicant was dismissed for default and it was not decided on merit, and, therefore, the applicant cannot take advantage of the said order of rejection.

3. The Labour Court framed various issues and after considering the evidence and after hearing the parties came to the conclusion that since the order of dismissal of the applicant from service was not approved by the Tribunal and the application filed by the management u/s 33(2)(b) of the Act was rejected the applicant shall be deemed to be in service and he is entitled to get back wages.

4. Mr. M.M. Banerjee, learned Counsel for the petitioner, assailed the impugned order of the Labour Court as being contrary to law and wholly without jurisdiction. The learned Counsel submitted that merely because the application filed by the management u/s 33(2)(b) of the Act was dismissed for non-filing the relevant documents without deciding the validity of the order of dismissal, the petitioner cannot be entitled to get back wages. According to the learned Counsel rejection of the application filed by the management u/s 33(2)(b) of the Act shall not in any way effect the order of dismissal of the applicant from service. Learned Counsel relied upon the decision in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, .

On the other hand Mrs. Pal, learned Counsel for the respondent-applicant, argued that after the application for grant of approval was rejected by the Tribunal, the management re-instated the applicant in service in November, 1987, and thereafter application u/s 33C(2) of the Act was filed by the applicant. Learned Counsel submitted that it was only because illegal and irregular dismissal of the applicant from service by the management was not approved by the Tribunal, the management re-instated the applicant in service and did not challenge the order of disapproval before any Court of law. In that view of the matter, the respondent No. 1 is entitled to get all back wages.

5. Admittedly, on account of absence of the applicant the management dismissed him from service by initiating an ex-parte enquiry. The management then moved before the Tribunal u/s 33(2)(b) of the Act and the Tribunal refused to approve the order of dismissal and rejected the application. The only question, therefore, falls for consideration is as to what would be the effect of disapproval of the order of dismissal by the Tribunal. This question is no longer res-integra. The

apex Court in the case of Strawboard Manufacturing Co. Vs. Gobind, , held as under:

If the Tribunal does not approve the action taken by the employer, the result would be that the action taken by the employer would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in service of the employer. In such a case no specific provision as to re-instatement is necessary and by the very fact of the Tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense the order of discharge or dismissal passed by the employer does not become final and conclusive until it is approved by the Tribunal u/s 33(2).

6. The decision in Punjab Beverages Put. Ltd. (supra) upon which Mr. Banerjee put reliance does not apply in the facts and circumstances of this case. In the instant case, admittedly, the management filed an application u/s 33(2)(b) of the Act before the Tribunal for approval of dismissal and the said application was rejected, when the management failed to produce necessary documents. The Labour Court, therefore, correctly held that the application u/s 33(2)(b) of the Act was filed for approval and it was dismissed for want of relevant documents. I am, therefore, of the opinion that in view of the principles laid down by the Apex Court in the case of Straw Board Manufacturing Company (supra), the applicant shall be deemed to be in service.

So far the amount of back wages is concerned, the management has not disputed the calculation of the said wages or disputed the entitlement of the applicant to get the said amount on any other ground including that the applicant was gainfully employed during that period. I do not find any reason to disturb the said findings of the Labour Court.

7. Having regard to the facts and circumstances of the case, I do not find any reason to interfere with the order passed by the Labour Court. This application is accordingly dismissed.