

(2003) 09 JH CK 0037

In the Jharkhand High Court

Case No : Writ Petition (L) No's. 3375 and 5440 of 2001

Bharat Coking Coal Ltd.

APPELLANT

Vs

Their Workman represented by the Secretary Bihar Colliery
Kamger Union and Another and Their Workmen represented
by Area Secretary Rashtriya Colliery Mazdoor Sangh and
Another

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 408

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Anoop Kumar Mehta, for the Appellant; R.S. Mazumdar, (In 3375/2001) and Kalyan Roy, (In 5440 of 2002), for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In both the cases, as common question is involved, they were heard on the same date and are being disposed of by this common judgment.

2. In the first case, WP (L) No. 3375 of 2001, the petitioner M/s Bharat Coking Coal Ltd. (for short BCCL) has challenged the Award dated 26th March, 2001 passed by the learned Presiding Officer, Central Government, Industrial Tribunal No. 1, Dhanbad in Reference No. 204 of 1997, whereby and whereunder, the learned Tribunal directed for regularization of services of concerned person.

In the other case i.e., WP (L) No. 5440 of 2001, the petitioner M/s BCCL has challenged the Award dated 28th March, 2001 passed by the same Presiding Officer in Reference No. 111 of 1990, wherein the learned Tribunal directed for regularization of service of one Gopal Banerjee and 11 (eleven) others.

3. So far as the first case WP (L) No. 3375 of 2001 is concerned, the following

reference was made by the Central Government, vide Notification No. L-20012/338/96-IR(Coal-1) dated 25th November, 1997 :--"Whether the claim of the union that Sri Aloke Bhattacharjee Sri Sahabuddin Khan, Sri Paltu Modak, Sri Dilip Odak, Sri Santosh Roy, Sri Meghnath Ghosh, Sri Ashok Supekar, Sri Sonjay Supakar, Sri Ranjit Supakar and Sri Rajendra Saw were working as a permanent plant clearing mazdoors and their demand for regularization is legal and justified ? If so, to what relief are these persons entitled ?"

4. According to the petitioner, the first Respondent, Bihar Colliery Kamgar Union, Dhanbad earlier raised an industrial dispute demanding regularization of Plant and Cleaning Mazdoors and a Reference No. 66/99/90 was registered. The Central Government Industrial Tribunal No. 1, Dhanbad by earlier Award directed the Management to regularize the workmen working as Plant Cleaning Mazdoors through Contractors, the Central Government having issued Notification u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970 prohibiting engagement of contract labour on the job of Plant cleaning in Washery. After publication of Award, a settlement was arrived at on 29th September, 1992 relating to mode of implementation of the Award which was implemented in toto.

Further case of the petitioner is that the 1st Respondent Mazdoor Union with a view to induct several persons into the employment took the advantage of the earlier Award and again raised an industrial dispute in the year 1996-97 contending therein that the workmen have been stopped from working w.e.f. 1990. Conciliation proceeding having ended in failure Reference, in question, was made on 25th November, 1997.

Before the Tribunal, the petitioner Management disputed the claim and took plea that all the Plant Cleaning Mazdoors pursuant to Award in Reference No. 67/90 had been regularised after entering into settlement on 29th September, 1990. But the Tribunal answered the Reference in favour of Alok Bhattacharjee and others with direction to the Management to regularize them as permanent employees of Sudamdih Coal Washery in General Mazdoor Category No. 1, within thirty days from the date of publication of the Award.

5. So far as the second case, WP (L) No. 5440 of 2001 is concerned, the Reference was made by the Government of India, Ministry of Labour, New Delhi, vide Order No. 20012 (BS)/89-IR (Coal-1) dated 8th May, 1990, as quoted hereunder :--

"Whether Shri Gopal Banerjee and 11 others are employees of the management of Kendwadih Colliery of M/s. Bharat Coking Coal Ltd., and whether their demand for regularization in the services of the management is justified ? If so, to what relief the concerned workmen are entitled to ?

6. In the said case, the 1st respondent. Rashtriya Colliery Mazdoor Sangh, Dhanbad took plea that all the 12 persons were workmen working as a Cooperative Team, on contract, for various jobs since 1978 and had completed more than 190 days of attendance in the year. 1982 and 1983.

As per Circular No. BCCL No. D(P)/P.S/86/2649-946(H) dated 8th/9th May, 1986 of the Director (Personnel,) BCCL, the Cooperative workers who had completed 190 days of attendance during the period of Block year 1982-85, were entitled for employment as Miner/Loader. In view of the Circular, all the Cooperative Workers who had completed 190 days of attendance, had been given direct employment under the Management barring the 12 (twelve) Workmen of the said Reference case.

7. The learned Tribunal after hearing the parties and appreciation of records, held that the concerned persons worked during the year 1982-1983 for more than 190 days in the calendar year, therefore, as per Circular of the Director (Personnel) dated 8th/9th May, 1986 they should have been employed as Miner/Loader. The Management of BCCL was directed by impugned Award dated 28th March, 2001 in Reference No. 111 of 1990 to regularize their services as permanent employees of Kenduadih Colliery, within thirty days from the date of publication of the Award.

8. From the Award dated 26th March, 2001 passed in Reference No. 204/97, it will be evident that the persons, namely. Alok Bhattacharjee and others were working as Plant Cleaning Mazdoors right from the year 1980 till 1988.

9. There is nothing on the record to suggest nor the Tribunal held that the aforesaid persons, namely Alok Bhattaeharjee and others were in the Role/or working after 1988 including the date on which the Award was passed. If the persons were not on the Role and were not working in absence of any order of reinstatement, there was no occasion for the Presiding Officer to direct regularization of services of persons not in employment. The question of regularization of services arises only in respect to these already on the Role, working under the Management, but not being paid the regular scale of pay or not being appointed against a regular post. The Award dated 26th March, 2001 passed in Reference No. 204 of 1997 has been passed on the basis of decision of Supreme Court given in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , which has been overruled prospectively by the Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

10. Therefore, as the question of regularization of services of those who are not on the Role does not arise, the Award dated 26th March, 2001 passed in Reference No. 204 of 1997, as challenged in WP (I) No. 3375 of 2001 cannot be upheld. The said Award is, accordingly, set aside.

11. So far as the Award dated 28th March, 2001 passed in Reference No. 111 of 1990 as challenged in WP (L) No. 5440 of 2001 is concerned, it will be evident that the first respondent on behalf of the Workmen claimed regular appointment as per Circular No. D(P)/PS/86/2649-949(H) dated 8th/9th May, 1986 of the Director (Personnel), BCCL. No prayer was made for regularization of their

services, which is distinct and different than the regular appointment.

This is also apparent from the pleading made by the respondent before the Tribunal, as contained in Anenxure-1 to WP (L) No. 5440 of 2001.

12. In the aforesaid background, there was no occasion for the learned Tribunal to hold that the demand of the sponsoring Union for regularization of Gopal Banerjee and 11 (eleven) others as justified nor there was any occasion for the learned Tribunal to direct the Management of petitioner to regularize their services as permanent employees of Kenduadih Colliery. At best, the Tribunal could have directed the Management of BCCL to consider the cases of Gopal Banerjee and eleven others for regular appointment as per their Circular No. D(P)/PS/86/2649-949(H) dated 8th/9th May, 1986 against regular vacancy, if any, as per the requirement of the Management. It should have been left open to the Management to determine whether the regular appointment was to be made on temporary or substantive basis. The permanent appointment which amounts to confirmation of a person, could have been looked into only on satisfactory completion of period of probation.

13. For the reasons aforesaid, this Court has not other option, but to set aside the Award dated 28th March, 2001 passed in Reference No. 111 of 1990, as challenged in WP (L) No. 5440 of 2001. But the petitioner, Management of BCCL is directed to consider the cases of Gopal Banerjee and eleven others for regular appointment, as per their Circular No. D(P)/PS/86/2649-949(H) dated 8th/9th May, 1986 against the appropriate vacancy, if any, as and when they required to fill up such post(s) and in terms with the observations, as made above.

14. The writ petition, WP (L) No. 3375 of 2001 is allowed, in full, whereas the writ petition, WP (L) No. 5440 of 2001 is allowed with certain observations and directions, as made above. Petition allowed.