

(2003) 03 JH CK 0046
In the Jharkhand High Court
Case No : L.P.A. No. 9 of 2003

Bharat Coking Coal Ltd.

APPELLANT

Vs

Their Workmen represented by the Secretary Bihar Colliery
Kamgar Union and Another

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17B

Citation : (2004) 2 LLJ 713 : (2003) 3 JCR 393

Hon'ble Judges : P.K. Balasubramanyan, C.J.; Gurusharan Sharma, J

Bench : Division Bench

Advocate : A.K. Mehta, for the Appellant; S.K. Laik, for the Respondent

Final Decision : Allowed

Judgement

1. The Management of the Bharat Coking Coal Limited, the petitioner in W.P.(L) No. 3015 of 2001, is the appellant in this appeal. At the instance of the workmen, represented by Respondent No. 1 herein, the dispute, "whether the demand of the Bihar Colliery Kamgar Union for regularization of Shri Sunder Dusadh and 26 others on the roll of Loyabad Coke Plant of M/S BCCL is justified ? If so to what relief the workmen are entitled ?", was referred to the Industrial Tribunal. According to the workmen, they were really workmen under the Management of M/S BCCL and they were entitled to be treated as such. The Management took the stand before the Tribunal that they were not their workmen. The Tribunal, after discussing the relevant aspects passed an Award to the following effect:

"That the demand of the sponsoring union for regularization of Shri Sunder Dusadh and 26 others as per list annexed to the reference order on the roll of Loyabad Coke Plant of M/S BCC Ltd. is justified and the concerned persons are entitled to wages prescribed under NCWA. But considering the financial condition of M/S BCC Ltd, there will be no order as to back wages. The management is

directed to regularize the concerned persons within 30 days from the date of publication of the award failing which they shall be entitled to claim wages as per NCWA."

2. It is submitted that the writ petition was filed by the Management challenging the above Award and it had obtained a stay of implementation of the Award. In that writ petition, Respondent No. 1 herein made an application u/s 17B of the Industrial Disputes Act claiming that in terms of that section, the workmen are entitled to payment of current salary in the regular scale of pay. This application was opposed by the Management by pointing out that Section 17B of the Industrial Disputes Act was not applicable to the case as the Award was not one for reinstatement, rather, it was only one directing absorption and regularization of the workmen and that there was no question of directing payment of full wages last drawn by the workmen in terms of that section.

3. On behalf of the workmen, an order of the Supreme Court in Petition for Special Leave to Appeal (Civil) No. 8382 of 1998, was relied on in support of their claim. It was pointed out that an order passed u/s 17B of the Act by this Court in a similar situation, was not interfered with by the Supreme Court in that case. The Supreme Court observed that even if Section 17B of the Industrial Disputes Act had no application, the principles underlying that section could still be invoked and the direction for payment of salary to the employees in the regular scale of pay issued by this Court need not be interfered with.

4. The learned Single Judge taking inspiration from the above order of the Supreme Court took the view that the concerned workmen are entitled to salary in the regular scale of pay during the pendency of the proceeding. The Interlocutory Application filed by the workmen in the pending writ petition was allowed with a direction to the Management (the appellant herein) to make payment to the concerned workmen, at least the current salary at the regular pay scale. Feeling aggrieved by this order of the learned Single Judge dated 14.11.2002, his appeal has been filed by the Management.

5. Learned counsel for the appellant submitted that since the case on hand was not a case of reinstatement but an award for regularization, no question of applying Section 17B of the Industrial Disputes Act or its principles arises in this case. Counsel submitted that the expression "reinstatement" is a well-known expression and no reinstatement was involved in the case on hand. It is also pointed out that there is no question of payment of full wages last drawn by the workmen. In this case, especially in the context of the dispute that was referred to the Industrial Tribunal. Counsel further submitted that the order of the Supreme Court relied on by the learned Single Judge could not be considered as the law declared by that Court in terms of Article 141 of the Constitution of India since in the case before the Supreme Court, their Lordships only declined to interfere with the order challenged in a Petition for Special Leave to Appeal to that Court.

6. Learned counsel for Respondent No. 1, the workmen, submitted that the order of the Supreme Court provides the guideline in such matters and even if Section 17B of the Industrial Disputes Act has no application, the learned Single Judge can not be said to have acted without jurisdiction in passing the impugned order. He submitted no interference was called for.

7. It is clear from the terms of the reference and the nature of the Award passed by the Tribunal that it is not a case of reinstatement. It is a case where the workmen claimed that they were not the employees" of an independent contractor or of an intermediary and they were to be treated as regular employees of the Management. The Tribunal accepted this plea of the workmen and passed the Award. The correctness of that decision is pending adjudication in the writ petition filed by the Management. It is clear from the Award that this was not a case of reinstatement so as to attract the Section 17B of the Act. The golden rule of interpretation is the literal interpretation and only when that interpretation leads to absurdity or an ambiguity that the Court should jettison that rule and adopt an interpretation to avoid such a result. Here on a reading of Section 17B it is clear that it has application to a case where the Award directs reinstatement and not otherwise. The concept of reinstatement in Industrial Law is well known and it can not be said to be ambiguous. In that situation, it is clear that Section 17B of the Act has no application since the Award in question is not an Award directing reinstatement. Then, the question is whether inspite of that conclusion and the finding that Section 17B of the Act has no application, the Court would be justified in directing payment of not full back wages but of current salary in the regular pay scale. A purposive interpretation cannot also lead to that result. The purpose is to bring relief to a workman who is out of employment, who had been, directed to be reinstated but the Award had not yet been implemented. Is it proper for the Court to adopt a course of directing payment of current salary though the case is not covered by Section 17B of the Act ? We think not. The refusal of the Supreme Court to interfere in a SLP seeking to challenge an interim order passed by the High Court cannot be said to create a binding precedent. That such a course was adopted in a case where a similar situation arose cannot be understood as laying down the law on the question. In that view, we feel that we would be justified in looking at the relevant award and the provision invoked to come to a conclusion strictly on the merits of the application moved before the learned Single Judge. After all, the Parliament in its wisdom while enacting such a law has expressed its intention in clear terms and has specified the contingency when such a relief can be granted. Since the present case is not one covered by the provision and in the circumstances we see no compelling reason to depart from the intention expressed by the Parliament, we are satisfied that the learned Single Judge was not justified in passing the impugned order. 8. We, therefore, allow this appeal and set aside the order of the learned Single Judge and dismiss the Interlocutory Application filed by Respondent No. 1. Considering the nature of the dispute, we direct that W.P. (L) No. 3015 of 2001 be listed for hearing at an early date before

the appropriate Single Bench. We order that the writ petition be posted for hearing on 9.6.2003.