
(2003) 06 JH CK 0078

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3523 of 2002

Bihar State Pollution Control Board

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 181

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

Bench : Single Bench

Advocate : Rajeev Sharma, for the Appellant; Mahua Palit, J.C. to G.A. and A.R. Choudhary, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioner Bihar State Pollution Control Board (for short-Board) has challenged the award dated 22nd January. 2002 passed by the learned Presiding Officer, Labour Court, Jamshedpur in Reference Case No. 3/96, whereby the Labour Court directed the petitioner Board to reinstatement the workman 2nd respondent in its service with full back wages.

2. As the case can be determined on a short question of law, it is not necessary to discuss and the facts, except the relevant one as mentioned hereunder.

3. The 2nd respondent was employed by the Management of the Board at Jamshedpur as Sample Taker on 15th December, 1983. He was given the additional job of Typist. The Management of the Board issued a latter on 3rd September, 1991 to the 2nd respondent informing him that his services were no longer required.

Being aggrieved and dissatisfied with the order of termination dated 3rd September, 1991, the 2nd respondent challenged the termination order before Ranchi Bench of Patna High Court in C.W.J.C. No. 2948 of 1991 (R).

In the said case, the Board brought to the notice of the High Court that though the workman was initially appointed as a Sample Taker, but in the year 1990, vide Annexure-4 to the said writ petition, he was appointed as a Typist for six months with one of the conditions that he must improve in typing job. The workman failed to improve the typing job inspite of many extension of service given to him. Subsequently, when the typing test was taken by a Committee comprising of five members, he failed in the said test. Which was the reason, no further extension of service given to him and he was not retained in service.

4. One of the plea as was taken by the workman petitioner before the High Court was that one Alok Prakash also failed in the typing test, but was retained in the service and thus a discrimination had been meted out to him. But the aforesaid plea was not accepted by the Division Bench of this Court.

By its order and judgment dated 30th March, 1992, the Division Bench while observed that there was no merit in the said writ petition, inasmuch as, workman had accepted the appointment with the conditions attached thereto, without any demur whatsoever, disposed of the writ petition allowing the workman to file a representation before the Chairman of the Board to continue him in service keeping in view the fact that he had worked for about eight years or at least allow him to continue as a Sample Taker. The Court refrained to express any opinion in that regard as the workman failed to file such representation before the appointing authority.

5. It appears that for more than two years, no representation was filed by the workman for his continuance in service. A representation seems to have been filed on 2nd July, 1994 which was rejected by the Senior Law Officer by letter No. 934, dated 25th July. 1994.

6. So far as the issue whether the termination of service of the workman-2nd respondent herein is proper or not was decided by the Division Bench of this Court vide order and judgment dated 30th March, 1992 in C.W.J.C. No. 2948 of 1991 (R). This Court specifically held that there was no merit in the writ petition so far as it relates to order of termination, the workman having accepted the appointment with the conditions attached thereto and having failed in typing test.

Inspite of such finding of this Court, on a representation filed by the workman, the Government of Bihar, vide its Notification No. 4/D2-19025/95 Land-E-15 dated 5th January, 1996 made the following terms of reference to the Labour Court, Jamshedpur for decision :--

"Whether the termination of service of Shri Ram Ballabh Sharma, Typist. Jamshedpur which is an unit of Bihar State Pollution Control Board, Beltron Bhawan, Shastri Nagar, Patna is proper? If not, what other relief the workman is entitled to?"

7. By the impugned award dated 22nd January, 2002, in Reference Case No. 3/96, the Presiding Officer, Labour Court, Jamshedpur held the order of

termination as illegal, null and void and directed to reinstate the workman-2nd respondent in the services of the Board with full back wages and other consequential benefits.

It has already been pointed out that the order of termination, in question, was upheld by a Division Bench of this Court by order and judgment dated 30th March, 1992 in C.W.J.C. No. 2948 of 1991(R).

The question arises whether after finding of the High Court on merit, upholding the order of termination, there was any occasion or the State of Bihar to refer the dispute for determination of the same issue i.e. "whether the termination of service of the workman was proper or not".

8. Almost a similar question fell for consideration before the Supreme Court in the case of *Gulab Chand v. State of Gujarat*, reported in AIR 1965 SC 1153. The Supreme Court in the said case, on the general principle of *res judicata*, held that a decision of High Court on a writ petition under Article 226 on the merits of a matter after contest, will operate as *res judicata* in a subsequent regular suit between the same parties with respect to the same matter.

9. The aforesaid view was reiterated by the Supreme Court in the case of *State of Punjab v. B.D. Kaushal*, reported in AIR 1971 SC 1676, wherein the Supreme Court held that the decision in the writ petition operate as constructive *res judicata* in subsequent suit on the same matter.

10. In view of the aforesaid pronouncements of the Supreme Court, the legality and propriety of order of termination of the workman 2nd respondent herein having decided on merits by a Division Bench of this Court, upholding the termination order, there was no occasion for the State of Bihar to refer the same matter for adjudication by a Labour Court nor it was open for the Labour Court to decide the same issue.

11. For the reasons aforesaid, the impugned award dated 22nd January, 2002 passed, by the learned Presiding Officer, Labour Court Jamshedpur in Reference Case No. 3/96 cannot be upheld. It is, accordingly set aside.

12. The writ petition is allowed.