
(2008) 02 JH CK 0062
In the Jharkhand High Court

Binay Kumar Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2008) 2 JCR 525

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard the parties.

On being raised an Industrial dispute by the petitioner Binay Kumar Prasad, a reference was made for adjudication of the dispute u/s 10(1) of the Industrial Dispute Act as to whether the termination of the petitioner as Accounts Clerk, Road Division, Chaibasa was proper, if not? Whether he should be reinstated on work and should get compensation?

2. The said industrial dispute was registered as Reference Case No. 12 of 1994 by the Labour Court, Jamshedpur. The Presiding Officer, Labour Court, Jamshedpur vide his award dated 25th February 2004 as contained in Annexure-5 to the with petition, held that the termination of the petitioner was illegal and accordingly, he set aside the termination of the petitioner from service and directed to reinstate him with full back wages and continuance of service with consequential benefits.

3. Pursuant to the said order when the petitioner was not being allowed to join, he moved this Court in W.P.S. No. 254/2005. This Court after hearing the parties passed an order dated 31/01/2005 as contained in Annexure-1 to the writ petition, which is quoted herein below:

The grievance of the petitioner is that pursuant to the award given by the Labour

Court, the petitioner submitted his joining but the same has not been accepted by the Respondents.

From the correspondence, made between the respondents, it appears that one authority is seeking direction from the other authorities.

In that view of the matter, I direct the Superintending Engineer, Road Construction Department, Path Circle. Jamshedpur to take final decision in the matter of joining of the petitioner and pass appropriate order within two weeks from the date of receipt/production of a copy of this order.

This writ petitioner is disposed of with the aforesaid direction.

4. It appears that the State of Jharkhand by filing a review petition being Civil Review No. 58/2005, sought to review the said order dated 31/01/2005, passed in W.P.S, No. 254/2005. The said review petition was dismissed by order dated 21/01/2008. A certified copy of the order dated 21/01/2008 passed in Civil Review No. 58/2005 has been produced before me at the time of argument., which is kept on the record.

5. Prior to the dismissal of the review petition by this Court, the Superintending Engineer, by order dated 04/08/2006 as contained in Annexure-10, passed an order refusing to accept the joining of the petitioner. From the aforesaid order of the Superintending Engineer, contained in Annexure-10 it appears that the Superintending Engineer has stated in the order that the award of the labour Court suffers from error on facts and it also suffers from legal lacuna and thereby on that ground the Superintending Engineer refused to accept the joining of the petitioner. The said order contained in Annexure-10 to the writ petition has been challenged in this writ petition by the petitioner.

6. When this matter was taken up on the last date, i.e. on 21/02/2008, the learned Counsel appearing for the State on the basis of the statement made in the Counter Affidavit submitted that the order of the Labour Court has been challenged by the State in WPS No. 254/2005. When it was pointed out by the learned Counsel for the petitioner that the case number of the writ petition, which has been mentioned in para-10 of the counter affidavit, is the case number of the writ petition, which has been filed by the petitioner himself and not by the State and then the learned Counsel for the State submitted that he shall file a supplementary counter affidavit stating the correct number of the writ petition by which the award of the Labour Court has been challenged by the State.

7. Today, when the case is taken up Mr. R.N. Sahay, learned senior S.C.-II made categorical statement informing that the statements made in para-10 of the counter affidavit was incorrect and in fact the award in question has not been challenged by the State by filing any writ petition. Therefore, it is apparent that such incorrect statement was made in the counter affidavit only to mislead the Court.

8. It is really surprising that even after the award was passed by a competent

Labour Court, which specifically directed for reinstatement of the petitioner, the Superintending Engineer instead of reinstating him, has the audacity to pass an order as contained in Annexure-10 stating that the award of the Labour Court suffers from legal lacuna and error of facts and, therefore, question for accepting the joining of the petitioner does not arise. In my view, the Superintending Engineer either has no knowledge at all about his jurisdiction, authority and his limits.

9. Mr. R.N. Sahay, learned senior S.C. (sic) very fairly submitted that when once the Labour Court has passed the award in favour of the petitioner then unless and until the same is set aside by any higher court, the Superintending Engineer has no authority or jurisdiction to say that the award was wrong or that it cannot be implemented.

10. In view of the discussions and findings made above, this writ application is allowed. The order as contained in Annexure-10 to the writ petition is hereby quashed and the Superintending Engineer is hereby directed to accept the joining of the petitioner and to implement the award within a period of one week from the date of receipt/production of a copy of this order.