

(2010) 09 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (L) No. 3629 of 2006

Central Roller Flour Mills Pvt. Ltd.

APPELLANT

Vs

Bihar Flour Mills Mazdor Sabha, Paras Rai and Manager Rai

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 32(C)2, 33(2)C

Citation : (2011) 1 LLJ 493

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for petitioner and learned Counsel for the respondents.

2. The instant writ application is directed against the judgment dated 23.3.2006 passed by the Presiding Officer, Labour Court, Ranchi in M.J. Case No. 5 of 2004 whereby the application of respondent No. 2 and 3 have been allowed by directing the petitioner to make payment of Rs. 2,22,378/(which includes Leave Encashment & bonus) to each of them.

3. It is submitted by learned Counsel for petitioner- employer, Central Roller Flour Mills(Pvt.) Ltd, Ranchi that it is admitted case that after 14 years the workmen filed this case u/s 33C(2) of the Industrial Dispute Act claiming back wages from 1990 to 2004 and as such the claim itself was stale. He has further submitted that finding of the Labour court is perverse in view of the evidence of the respondent No. 2, who admitted that since last seven years he is residing at Chapra and doing agricultural work at home and he has filed this case after seven years and as such it is absolutely clear that he was gainfully employed since last seven years. Learned Counsel has relied upon the judgment reported in the case of North East Karnataka Road Transport Corporation Vs. M. Nagangouda, . He has further submitted that the finding of the labour court is

perverse in view of the fact that respondent No. 3, Manager Rai himself admitted in his evidence that he is now aged about 60 years and also admitted in para 4 that age of retirement is 55 years and now admitted that he was not working for the last 14 years. The management gave evidence that he was plying taxi at Kolkata. Hence, the finding arrived at by the Labour court is wholly illegal, perverse and only fit to be quashed.

4. On the other hand learned Counsel for the respondents submitted that respondent- workmen services were illegally terminated by the petitioner for which a reference was made in reference case No. 1 of 1991. Learned Labour Court while passing the judgment dated 14.6.1997 held that the dismissal of the service of the workmen was not justified and accordingly, they were directed to be reinstated with full back wages and consequential benefits. Thereafter, they challenged the award in writ application before the Hon'ble High Court in C.W.J.C. No. 2664 of 1997 and by virtue of the order dated 12.9.2002 Hon'ble High Court upheld the award and refused to interfere and in that view of the matter, respondents-workmen will be deemed to be in service continuously without any back wages. When the petitioner- management did not allow the respondents to join their service, they made application to the Deputy Labour Commissioner, Ranchi and Dy. Labour Commissioner, Ranchi by its letter No. 1241 dated 23.3.2004 called upon the management and the workmen to the office on 29.3.2004 at 1 p.m. for implementation of the award. In spite of the letter of the Dy. Labour Commissioner, the management instead of appearing on that date gave letter that they are ready to accept, but never allowed them to join their service. Lastly having no other option in 2004 they filed this writ application claiming back wages since, 1992 to 2004 and as such, the Labour Court has rightly allowed them back wages and it requires no interference by this Court.

5. After hearing both parties and going through the evidences on record, I find that while deciding this application u/s 33C(2) of the I.D Act, 1947 the Labour Court has examined the two respondents as witnesses and evidence of Respondent No. 2, Paras Rai has been filed in this writ application as annexure- at page 61 and in para 10 of his evidence he has stated as follows:- "Hum Saat Baras Se Chapra Me Rah Kar Kheti Bari Kar Rahe Hain". He has also admitted that he has filed this application after 7 years. He cannot give answer for such a long delay. The second workman, Manager Rai, in his evidence, also filed in this case, has stated in annexure-4 that he is aged about 60 years on the date of his examination and date of his examination is on 5.7.2005. He has also admitted in para 4 of his evidence that the age of retirement is 55 years. In that view of the matter, admittedly, the workman Manager Rai had crossed the age of superannuation, 5 years back i.e. in year 2000. In that view of the matter, after considering the case of the parties and going through the evidences, it is amply clear that the finding of the Labour court is not correct and perverse since, admittedly, the respondent No. 3 Manager Rai has crossed the age of superannuation in the year 2000. In that view of the matter, the direction of the

labour court for making payment of wages with all other consequential benefits till 2006 is only fit to be set aside. Moreover, respondent No. 3 has admitted in his evidence that he was working and earning at his village at Chapra since last 7 years and as per the judgment of the Hon''ble Supreme Court in the case of North East Karnataka Road Transport Corporation Vs. M. Nagangouda, now it is incumbent upon the workman to lead evidence and prove that he was not gainfully employed during the period i.e. Manager Rai was not gainfully employed from 1990 to 2000 i.e. the date on which he admitted that he has crossed the age of superannuation, similarly the other witness, respondent No. 2 , Paras Rai also admitted that he is working and gainfully employed at Chapra since last 7 years. In that view of the matter, it was also incumbent upon the Labour Court to give finding as to whether the workman is gainfully employed, he will be entitled to full back wages for that period or not? It is important to note that the Hon''ble Supreme Court in the case of North East Karnataka Road Transport Corporation Vs. M. Nagangouda, gave a conclusive finding at para 17 which is as follows:

Since, the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in gainful employment

6. In that view of the matter, the entire finding of the Labour court is bad in law, illegal and fit to be quashed.

7. Accordingly, the impugned judgment dated 23.3.2006 passed by the Presiding Officer, Labour Court, Ranchi in M.J. Case No. 5 of 2004 is quashed. The matter is remanded back to the Labour Court for fresh judgment after hearing both the parties and the workmen will be allowed to lead evidences in accordance with law to prove that they were gainfully employed or not and management may rebut the same by evidence.

8. The writ application is accordingly, allowed.