

(2015) 05 JH CK 0090
In the Jharkhand High Court
Case No : Writ Petition (L) No. 5719 of 2010

Dara Singh

APPELLANT

Vs

BCCL, Dhanbad and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(8), 11, 11-A, 15

Citation : (2015) 146 FLR 321

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Sarvendra Kumar, for the Appellant; Amit Kumar Sinha, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J—Seeking quashing of order dated 27.8.2009 and award dated 9.9.2009 in Reference No. 86 of 1990, the present writ petition has been filed. The brief facts of the case are summarized thus:

The father of the petitioner was appointed as Munshi (under ground) on 5.3.1968 at Bhatdee Colliery in Mahuda Area No. 11 of M/s. Bharat Coking Coal Limited. He was dismissed from service on 20.2.1988. A dispute was raised by the father of the petitioner and the same was referred for adjudication vide Reference No. 86 of 1990. While the reference was pending before the Industrial Tribunal, the father of the petitioner died on 5.9.2008. An application for substitution was filed by the petitioner on 4.1.2009. On 27.8.2009 when the matter was listed before the Industrial Tribunal, the petitioner was not represented and thus, application dated 4.1.2009 was not pressed. Consequently, the application for substitution of the deceased-workman was dismissed and an award was passed on 9.9.2009. The petitioner preferred application dated 11.9.2009 for recall of order dated 27.8.2009 however, the same has been dismissed on 9.6.2010. Constrained, the petitioner has approached this Court.

2. The learned Counsel for the petitioner submits that on 27.8.2009, no one appeared on behalf of the petitioner however, the Industrial Tribunal dismissed the application dated 4.1.2009 erroneously in as much as, reference has been made by the Appropriate Government for adjudicating the proprietary and validity of dismissal of the workman which was required to be adjudicated. The petitioner has vital interest in prosecuting the reference pending before the Industrial Tribunal and thus, one opportunity should have been granted by the Industrial Tribunal to the petitioner. It is further submitted that immediately after the petitioner came to know that the Industrial Tribunal has passed award dated 9.9.2009, an application was moved on 11.9.2009 for recalling order dated 27.8.2009 however, the same has also been dismissed vide, order dated 9.6.2010. Assailing order passed by the Industrial Tribunal and the award dated 9.9.2009, the learned Counsel for the petitioner submits that the Industrial Tribunal has passed the aforesaid orders, ignoring the mandate of Industrial Disputes Act, 1947.

3. As against the above, Mr. Amit Kumar Sinha, the learned Counsel for the respondents submits that once an award has been made, the Industrial Tribunal has no power under the Act to recall its own order. The only remedy to the aggrieved person is to approach the High Court by filing appropriate petition. Supporting order dated 27.8.2009 and award dated 9.9.2009, the learned Counsel for the respondents submits that in view of absence of a specific provision in the Act, no infirmity can be found with orders/award impugned in the present writ petition.

4. The Lower Court record has been received in this Court.

5. The Preamble to the Industrial Disputes Act, 1947 makes it abundantly apparent that the Act makes provision for the "investigation and settlement of industrial disputes", and for certain other purposes. Section 11 of the Act deals with procedure, powers and duties of the authorities which includes, Courts and tribunals. Section 11-A of Industrial Disputes Act, 1947 provides power of Labour Court/Tribunals and National Tribunals to give appropriate relief to the discharged/dismissed workmen. Section 15 provides duties of the Labour Court/Tribunals and National Tribunals and besides, devising its own procedure, the Court, tribunal, conciliation officer etc. have been vested with wide powers. Keeping in view the object behind the Industrial Disputes Act, the Industrial Tribunal was required to consider the evidence produced by both the parties. Section 10 sub-section (8) provides as under:

"(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government."

6. Industrial Disputes Act, 1947 is a beneficial piece of legislation is not in doubt.

Section 10(8) mandates that the Tribunal shall adjudicate the dispute referred to it notwithstanding the fact that during the pendency of the proceeding the concerned workman has died. Sub-section (8) to section 10 has been inserted by an amendment in the year, 1982. The said provision mandates that no proceeding before a Labour Court/Industrial Tribunal shall lapse merely by reason of the death of any of the parties to the dispute and the Court/Tribunal/National Tribunal is required to "complete proceedings" and submit its award. The facts disclosed in the present proceeding indicate that the father of the petitioner died on and the substitution petition was filed on 4.1.2009. The petitioner produced the Death Certificate on 18.3.2009. Merely because no one appeared on 27.8.2009 when the matter was listed before the Industrial Tribunal, the application seeking substitution in place of deceased-workman was dismissed. I am of the opinion that even after dismissal of the application dated for substitution, the Industrial Tribunal was under a statutory duty to proceed in the matter and complete the proceeding of Reference No. 86 of 1990 and an award in the said reference case should have been passed by the Industrial Tribunal only after completing the proceeding that is, after considering the evidence produced before the Industrial Tribunal. However, the Industrial Tribunal has passed award of "no dispute" on 9.9.2009. Considering the above facts, I am of the opinion that the Industrial Tribunal committed a serious error in law in dismissing the substitution application dated 4.1.2009. Award dated 9.9.2009 cannot sustain the scrutiny in law. The said award has been passed by the Industrial Tribunal in gross violation of the mandatory statutory requirement under the Industrial Disputes Act, 1947. In the result, the writ petition is allowed. Reference No. 86 of 1990 is restored to its original file. The Industrial Tribunal is ordered to proceed in the matter in accordance with law.

7. I.A. No. 1405 of 2014 stands disposed of. Let the Lower Court Record be transmitted to the Central Government Industrial Tribunal No. 1, Dhanbad, forthwith.