

(2023) 08 JH CK 0018

In the Jharkhand High Court

Case No : Writ Petition (L) No. 6991 Of 2012

Dilip Kumar Verma

APPELLANT

Vs

Employer

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2023) 08 JH CK 0018

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Saurav Arun, Sharon Kerketta, Indrajit Sinha, Prerna Jhunjunwala

Final Decision : Allowed

Judgement

Anubha Rawat Choudhary, J

1. Learned counsel for the parties are present.

2. This writ petition has been filed for the following reliefs:

“(i) For issuance of an appropriate writ(s)/order(s)/or direction(s) particularly a writ in the nature of Certiorari for quashing of order dated 4.8.2012 as contained in Annexure – 5 to this writ application, passed in Reference Case No.10 of 2005 by which the claim of the petitioner for reinstatement with all consequential benefits has been rejected without considering the settled law that one should be posted as per their status and qualification and for such a minor thing the petitioner has been terminated from the service and as such it is apparent from the face of the order that it is illegal, void and without jurisdiction.

(ii)Petitioner further prays for staying the impugned order dated 4.8.2012 as contained in Annexure – 5 to this writ application, till the matter is sub judice before this Hon'ble court.

(iii) For issuance of a appropriate writ(s)/order(s)/and/or direction(s) particularly

a writ in the nature of Certiorari for quashing of termination order dated 7.6.2004 as contained in Annexure – 4 to this writ application, and after quashing the termination order dated 7.6.2004 which is illegal, void and without jurisdiction and excessive punishment has been imposed upon the petitioner only because he has not jointed to the transferred place as per the transfer order but without considering the settled law that one has to be transferred and posted as per the qualification and status and petitioner being the Electrical Engineer, he has been transferred to the Accounts Department and against that he also preferred appeal and all this aspect has not been considered and order of termination has been passed without serving any show cause before issuance of the impugned termination order, hence the same is highly illegal void and without jurisdiction.

(iv) Petitioner further prays for any other relief/reliefs, as Your Lordships may deem fit and proper in the facts and circumstances of this case for doing conscionable justice to the petitioner.”

3. This writ petition has been filed challenging the order dated 4 th August 2012 as contained in Annexure-5 passed in Reference Case No. 10/2005, whereby the claim of the petitioner for reinstatement with all consequential benefits has been declined. During the course of arguments, it is not in dispute that no domestic enquiry was held in the present case. The terms of reference were as follows: -

“Whether the dismissal of Shri. D. K. Verma, the staff of M/s. Lafarge India Cement Plant, Jojobera, Jamshedpur by the management is justified? If not, what relief he is entitled to?”

4. The case of the management as per written statement was that the instant case is not a case of dismissal but is a case of termination in accordance with the contract of employment. It was asserted that the present petitioner was not a workman within the definition of workman under Industrial Disputes Act and hence the reference was not maintainable. Further case was that the petitioner was employed in the Cement Division of TISCO Ltd. which was transferred to M/ s. Lafarge India Ltd; with effect from 01st November 1999; thereafter Lafarge India Ltd employed the petitioner with the continuity of service, and the petitioner voluntarily accepted such employment; thereafter the petitioner was transferred to Accounts and Control department office as Ware House Auditor vide letter dated 10th April 2004; he represented against his transfer, and after discussion with the management he was directed to assume his duty as auditor w.e.f. from 02nd June 2004 but he did not join on the transferred post and had stopped attending his duty since 28th May 2004. In such circumstances, the management terminated his service in accordance with the contract of employment by offering one month’s pay in lieu of notice pay vide letter dated 07th June 2004 under the signature of Chief Operating Officer, and the petitioner was paid one month’s pay vide a cheque.

5. As per written statement, case of the petitioner was that he joined TISCO Ltd.,

Jamshedpur in the year 1976 on the basis of his B.E. and M. Tech Degree, and in the year 1992 he was posted in Cement Plant of TISCO Ltd. which was sold to M/s. Lafarge India Ltd. The petitioner was placed under Lafarge India Ltd. on the same terms and condition without his consent. The petitioner worked with the management but his designation and grade was reduced, and the workman made an appeal to Chief Operative Officer in this regard who assured him to look into the matter. Instead of considering his grievances, the Chief Operative Officer transferred him as Auditor in Accounts and Control department which is a non-technical post. The petitioner made representation against his transfer to the Chief Executive Officer, Mumbai on 18th April 2004 a copy of which was given to D.L.C. Jamshedpur but the services of workman was terminated with effect from 07th June 2004 under the signature of Chief Operative Officer. It was asserted that the petitioner was a workman within the meaning of I.D. Act and his termination was not justified. The petitioner prayed for setting aside of the termination order with relief of reinstatement in the service with full back wages.

Arguments on behalf of the Petitioner

6. The learned counsel for the petitioner, while assailing the impugned order/Award, has submitted that the petitioner could not have been dismissed without holding any domestic enquiry and the action of the management was totally illegal and could not be justified. The learned counsel has submitted that the petitioner was transferred to a post, which was totally non-technical in nature, against which the petitioner had represented before the higher authorities, but without taking the grievance of the petitioner to a logical end, the petitioner was terminated. He has also submitted that the representation was filed before the higher authorities of the management on 18th April 2004 and the petitioner was terminated with effect from 07th June 2004.

7. The learned counsel has relied upon the judgments passed by the Hon'ble Supreme Court in the case reported in (1973) 1 SCC 813 (Workmen Of Firestone Tyre & Rubber Company of India Private Limited vs Management) and also the judgment reported in (2022) 3 SCC 190 (Uttar Pradesh State Road Transport Corporation vs. Gajadhar Nath), (para 5) to explain the scope of Section 11A of the Industrial Disputes Act. He submits that the scope and the nature of amendment has been considered in the judgment reported in (1973) 1 SCC 813 (supra), which has been consistently followed by the Hon'ble Supreme court even in the year 2022. The learned counsel has further referred to the judgment passed by the Hon'ble Supreme Court reported in (2013) 5 SCC 136 (Assistant Engineer, Rajasthan Dev. Corp. & Another vs. Gitam Singh) paragraphs 16, 17 and 22.

The learned counsel submits that the Hon'ble Supreme Court in the judgment reported in (2021) 3 SCC 108 (State of Uttarakhand and others Vs. Sureshwati" has held at paragraph 14 that in a catena of decisions, the Hon'ble Supreme Court has held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action

before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.

8. The learned counsel has also submitted that the learned court below, while considering the matter, has not acted properly in terms of Section 11A of the Industrial Disputes Act and accordingly, the impugned order/Award calls for interference.

9. The learned counsel has also submitted that it is not in dispute that the petitioner was employed by TISCO Limited, Jamshedpur as back as in the year 1976 and in the year 1992, he was posted in Cement Plant of TISCO Limited in Jojobera and the petitioner was an engineer having M-Tech degree, but without his consent, he was placed under M/s. Lafarge India Limited. He has submitted that the action of TISCO Limited in placing the workman of Cement plant of the TISCO under the employment of Lafarge India Limited is itself subject matter of another reference case before the learned labour court. The learned counsel submits that the other reference itself was under challenge before this Court in the judgment dated 15th September, 2006 reported in 2007 (1) BLJR 333. The challenge was made by Tata Iron and Steel Company. The relief sought for was declined by the writ court, which was subject matter of appeal in L.P.A. No. 492/2006 with L.P.A. No. 511/2006 wherein Tata Iron and Steel Company was the appellant in both the cases. The appeals were also dismissed vide order dated 22nd June, 2011. The learned counsel submits that the Civil Appeal No. 8246/2013 and Civil Appeal No. 8247 of 2013 against the judgment passed in L.P.As were allowed by the Hon'ble Supreme Court and the judgment passed by the High Court was set-aside and the references were quashed. However, at the same time, direction was given to appropriate government to make fresh reference, incorporating real essence of the dispute as discussed in the judgment, within a period of 2 months. A copy of the judgment passed by the High Court as well as the Hon'ble Supreme Court has been placed on record by virtue of supplementary affidavit filed by the petitioner dated 14th September 2021.

Arguments on behalf of the Respondent

10. Learned counsel appearing on behalf of the respondent, on the other hand, while opposing the prayer of the petitioner has submitted that the petitioner did not join his transferred post and his grievance was duly discussed as recorded in the impugned order itself. She has submitted that merely because there was no domestic enquiry that itself will not entitle the petitioner for reinstatement. She has submitted that in terms of the judgment relied upon by the petitioner itself, it clearly states that the evidence is to be adduced before the learned labour court. She submits that the evidences were adduced before the learned labour court by both the parties and the learned labour court after considering the materials and evidences on record has passed the impugned award.

11. The learned counsel has referred to the order of termination, which has been annexed by the petitioner in the writ petition and was also exhibited before the learned court below, and has submitted that the order of termination was in terms of the employment and the petitioner was simpliciter terminated and in lieu of one month notice, the amount was already paid but the petitioner returned the same after one and a half years, which has been recorded by the learned labour court and by that time, the cheque itself had become stale. The learned counsel has also submitted that the scope of interference in case of award is very limited and considering the award, the same does not call for any interference.

12. The learned counsel has submitted that so far as the references and the orders which have been brought on record by supplementary affidavit are concerned, the same has no bearing in the present case. The issue as to whether the employees of TISCO were rightly placed under the employment of Lafarge India Limited or not is a distinct issue and the same has no bearing, once the parties had contested the case before the learned labour court. The scope of enquiry in the present case be confined to the award passed which is under challenge.

Findings of this Court

13. Before entering into the merits of the case, it is relevant to refer to the arguments of the learned counsel for the petitioner by referring to the materials brought on record in this writ proceedings by filing supplementary affidavit. It has been submitted that on 10th July 2004, the Government of Jharkhand referred the dispute regarding transfer of employees of TISCO management to M/s. Lafarge India Limited for adjudication by learned labour court, Jamshedpur. The case was registered as Reference Case No. 14 of 2004. M/s. TISCO filed a writ petition before this High Court being W.P.(L) No. 752 of 2005 challenging the reference. Similar matter of 102 workmen was also pending in another writ petition filed by TISCO being W.P.(L) No. 3683 of 2005 and therefore, common order was passed with respect to W.P.(L) No. 3683 of 2005 and W.P.(L) No. 752 of 2005. The matters travelled up to the Hon'ble Supreme Court where M/s. TISCO filed Special Leave Petitions numbered as SLP No. 20494 of 2011 and SLP No. 21086 of 2011. The Hon'ble Supreme Court vide judgment dated 16th September 2013 directed the government to make fresh reference incorporating the real essence of dispute as discussed in the judgment passed by the Hon'ble Supreme Court. Consequently, the Government of Jharkhand on 26th August 2014 made a fresh reference numbered as Reference Case No. 2 of 2014 and the same said to be pending.

14. This Court is of the considered view that the aforesaid matter has no bearing on the case of the petitioner in view of the fact that the petitioner was issued fresh appointment letter by M/S Lafarge India Ltd and was terminated from service with effect from 07th June 2004 in terms of the letter of fresh appointment. Moreover, the learned labour court has decided the dispute

between the petitioner and the respondent and M/S TISCO is not a party in the said proceedings. It is also important to note that the impugned award was passed on 04th August 2012, but no such plea was ever taken before the learned labour Court regarding pendency of any proceedings in connection with the aforesaid dispute.

15. This Court is of the considered view that in this writ petition this court has to only examine as to whether the impugned award passed by the learned Court below suffers from any perversity or such illegality calling for interference under Article 226 of the Constitution of India.

16. On the basis of the pleading of the parties the following points were framed for adjudication: -

“(i) Is Mr. D. K. Verma is a workman within the definition of I.D. Act?

(ii) Whether the dismissal of Mr. Verma by the management from the service of the company is justified? If not, what relief he is entitled to?”

17. The aforesaid point no.(i) was decided in favour of the petitioner and the point no.(ii) was decided in favour of the respondent. The respondent has not challenged the finding with regards to the point no. (i) but the petitioner has challenged the award as the point no. (ii) was decided against the petitioner.

18. It is not in dispute that no departmental enquiry was conducted against the petitioner before terminating his services.

19. The learned counsel for the petitioner has referred to a number of judgements to submit that before the learned labour Court, it was open to the Management to justify their action in terms of section 11-A of the Industrial Disputes Act by leading evidence but the learned court below has not acted in terms of section 11-A of the Industrial Disputes Act, 1947.

20. The law in connection with the scope of section 11-A of the Industrial Disputes Act, 1947 has been explained in a recent judgment Uttar Pradesh State Road Transport Corporation v. Gajadhar Nath, (2022) 3 SCC 190, wherein it has been explained as under: -

“5. The scope of an adjudicator under the Industrial Disputes Act, 1947 (for short “the Act”) may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11-A of the Act. This Court in a judgment reported as Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. [Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813 : 1973 SCC (L&S) 341] held that in terms of Section 11-A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

"32. From those decisions, the following principles broadly emerge:

'(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied

about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *Panitole Tea Estate v. Workmen* [*Panitole Tea Estate v. Workmen*, (1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal.”

(emphasis supplied)

21. The present case is a case where no enquiry was conducted before terminating the services of the petitioner. However, before the learned labour Court, the petitioner as well as the respondent duly led evidence and the learned labour court has decided the legality and validity of termination of the petitioner on the basis of evidences placed on record by the parties. In such circumstances, this court is of the considered view that the mandate of the provisions of section 11-A of the Industrial Disputes Act, 1947 has been followed when seen in the light of the interpretation made by the Hon'ble Supreme Court to the scope and manner of exercise of powers by the labour court under section 11-A of the Industrial Disputes Act, 1947. Accordingly, the arguments of the petitioner that mandate of section 11-A of Industrial Disputes Act, 1947 has not been followed by the learned court below, is rejected.

22. Before the learned labour Court, the Management examined three witnesses and altogether fourteen documents were exhibited which have been recorded as under – M.W. 1 Mr. Manish Ahuja, who was a Manager in E & I department of the company; M.W. 2 was Mr. Sanjay Dutta and M.W. 3 was Mr. J. L. Murray who was a Senior Manager of the company. Exhibit M was the letter of the company dated 01.11.1999; M/1 was the letter dated 10.04.2004; M/3 was the letter dated 07.06.2004; M/3/A was the letter of the company dated 14.07.2004; M/4 was the list of employees; M/5 was the application of training; M/6 was the time sheet; M/7 series was the leave form; M/8 was the loading advice; M/9 was the letter of Mr. Verma dated 29.12.2005; M/10 was the Resolution of Board; M/11 series was the Registers; M/12 was the certified copy of PLA Case No. 35 of 2006; M/13 was the rejoinder in PLA Case; and M/14 was the delegation of power.

23. On the other hand, the workman examined only himself as W.W. 1. He also exhibited altogether six documents; they are recorded as under – Exhibits W was the letter dated 10.04.2004; W/1 was the letter dated 18.04.2004; W/2 was the letter to D.L.C. Jamshedpur; W/3 was the termination letter; W/4 was the transfer order dated 14.06.2004; W/5 was the letter to D.L.C. JSR; and W/6 was the letter dated 01.11.1999.

24. With regard to point no. (ii) as framed by the learned court below, the following facts based on materials on record and found by the learned labour court are not in dispute:

(a) The petitioner was posted in cement plant Jojobera under TISCO.

(b) The plant was sold to M/s. Lafarge India Limited and the workmen were posted in the cement division under M/s. Lafarge India Limited with effect from 01st November 1999.

(c) A fresh appointment letter was issued by the management of M/s. Lafarge India Limited and the terms and conditions of the appointment was accepted on 01st December 1999.

(d) The petitioner continued to be in service of the company till his termination on 07th June 2004.

(e) The workman served M/s. Lafarge India Limited after his fresh appointment for more than three-and-a-half years and thereafter, pleaded that his placement under M/s. Lafarge India Limited was without his consent and therefore, the transfer itself was illegal.

25. The specific case of the respondent before the learned court below was that they had terminated the services of the petitioner in terms of letter of appointment. The learned labour Court after considering the materials on record found that the workman did not comply with the order of transfer even after lapse of 52 days which was a serious concern of indiscipline. The learned labour Court also recorded that Exhibit M was the appointment letter which contained the terms and conditions of service wherein it was specifically mentioned that service of the workman is liable to be transferred to any office in India or in the world and the respondent could terminate the services of the petitioner after giving one month's notice or notice pay. The learned labour Court recorded a finding that the services of the petitioner was terminated in terms of the letter of appointment. It has also been recorded that a cheque for one month's pay was also forwarded to the petitioner along with the letter of termination dated 07th June 2004, but the said cheque was returned back to the respondent by registered letter dated 29th December 2005 which was certainly during the pendency of the reference case. The reference was made vide notification dated 05th July 2005. The learned labour Court, after considering the materials on record held that the dismissal of the petitioner was justified and the petitioner was not entitled to get any benefit.

26. This Court finds that the impugned Award is a well-reasoned Award and the services of the petitioner was terminated in terms of the letter of appointment. Such finding has been recorded by the learned labour court after scrutinizing the materials on record which were brought on record by the Management as well as the petitioner by adducing both oral and documentary evidences. This Court finds no illegality or perversity in the impugned Award calling for any interference

under Article 226 of the Constitution of India.

27. This writ petition is accordingly dismissed.

28. Pending interlocutory application, if any, is closed.