
(2010) 08 JH CK 0042
In the Jharkhand High Court

Dr. Shambhu Sharan Lall

APPELLANT

Vs

The Coal India Limited and Others

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 161

Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (2010) 4 LJLR 319 : (2010) 127 FLR 858 : (2011) 3 LLJ 488

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard Mr. Rajiv Sinha, Learned Counsel for the petitioner.

2. Neither any body appears on behalf of the respondent- Coal India Limited nor any counter affidavit has been filed inspite of sufficient opportunity given to the respondents.

3. The petitioner is aggrieved by the order as contained in Annexure-6 dated 9.7.2009, whereby the Coal India Limited has passed an order for his reinstatement in service in the Company with effect from 7.11.2007 i.e. the date of judgment of the High Court, by which the conviction and sentence passed against the petitioner by the trial Court was set aside.

4. As it appears that the petitioner was prosecuted for committing offence u/s 161 of the Indian Penal Code and u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. The trial Court found him guilty and thereby sentenced him to undergo rigorous imprisonment for a period of one year on each count. Besides this he was also sentenced to fine of Rs. 500/ -, in default of payment of fine he was further directed to serve out rigorous imprisonment for one month. The sentences were ordered to run concurrently.

5. In view of the fact that the petitioner was convicted by a Court of law and hence after notice to show cause and on consideration thereof, passed an order

on 2.7.2007 (Annexure-3) for removal of the petitioner from service with immediate effect.

6. The petitioner preferred an appeal before this Court in Cr. Appeal No. 1443 of 2006 against the judgment of conviction and sentence passed by the trial Court, which was finally heard and allowed vide judgment as contained in Annexure-4 dated 7.11.2007, whereby it was held that the evidence on the record fell short of proving the guilt of the appellant for the charge he stood. Consequently, the appeal was allowed and the conviction and sentence recorded against him by the trial Court was set aside.

7. Thereafter the petitioner represented the matter to his employer Coal India Limited for his reinstatement in service, which was placed before the Board of Directors of Coal India Limited and ultimately by the impugned order contained in Annexure-6 dated 9.7.2009, the petitioner has been ordered to be reinstated in service with effect from 7.11.2007 i.e. the date of the judgment of the High Court passed in Cr. Appeal No. 1443 of 2006. It has further been directed that the petitioner shall not be entitled for any pecuniary benefit for the intervening period from the date of removal from service till the date of joining on reinstatement.

8. It is submitted on behalf of the petitioner that in fact the petitioner ought to have been reinstated in service from the date of removal from his service and not from the date of judgment passed by the High Court in Cr. Appeal No. 1443 of 2006 and he is entitled to the continuity of service with all back service i.e. for the intervening period. It is also submitted that the part of the order contained in Annexure-6, whereby he has been held to be not entitled for any pecuniary benefit for the intervening period from the date of removal from service till the date of joining on reinstatement and as to why the petitioner has been deprived from the reinstatement in service from the date of removal from service.

9. Despite opportunity given to the respondents to file counter affidavit, no counter affidavit has been filed. Therefore, this Court has been left with no option but to dispose of the writ petition on the basis of the averments made in the writ petition and the documents annexed thereto.

10. The question of decision is as to whether the petitioner should have been reinstated in service from the date of the judgment passed by the Court i.e. 7.11.2007 or from the date he has removed from service i.e. from 2.7.2007?

11. As it appears that the petitioner was removed from service only on the ground that he was convicted in a criminal case which amounted to serious misconduct. However, when the conviction and sentence passed by the trial Court has been set aside and the petitioner has been acquitted then in that case the ground on which he was removed from service on 2.7.2007 becomes non-existent and therefore the order of removal from service has to be withdrawn and the order for reinstatement has to be made from the date he was removed from service and not from any other date.

12. In this view of the matter, I hold, that part of the order as contained in Annexure-6, whereby the petitioner has been directed to be reinstated in service with effect from 7.11.2007 i.e. the date of judgment of this Court passed in Cr. Appeal No. 1443 of 2006 to be unsustainable in the eyes of law. Accordingly, the aforesaid part of the order is hereby set aside.

13. Consequently, the petitioner is held to be entitled to be reinstated in service from the date of removal from service and, consequently he is entitled to all pecuniary benefits from the date of his removal from service till the date of his joining on reinstatement. The respondents shall issue consequential order immediately on receipt of a copy of this order.

14. The Learned Counsel for the petitioner further states that now the petitioner has already retired from service on 31.7.2009, but till date no action has been taken by the respondents- Coal India Limited for payment of the retiral dues.

15. In such a situation, the respondents are directed to pay all the retiral dues as well as all consequential benefits within a period of six weeks from the date of receipt/ production of a copy of this order.

16. This writ application is thus allowed with the aforesaid observations and directions.