

(2003) 09 JH CK 0052

In the Jharkhand High Court

Case No : C.W.J.C. No. 3912 of 1995 (R)

Employers in relation to Kedia Underground Project APPELLANT

Vs

Presiding Officer, Central Govt. Industrial Tribunal No. 1 and RESPONDENT
Another

Date of Decision : 30-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 124

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : M.M. Banerjee and Indrajit Sinha, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In the instant writ application the petitioner has prayed for quashing the Award dated 8th August, 1995 passed by the respondent No. 1 in Reference Case No. 34 of 1990 by which the Tribunal, though held that action of the Management in terminating the service of the concerned workman was justified but he held that the concerned workman was entitled to full back wages with effect from 20.2.1990 up to the date of the Award.

2. The case of the petitioner is that the concerned workman unauthorisedly absented from 11.7.1983 without the permission of the management and as such charge-sheet was issued against him though the management waited for explanation of the concerned workman but no explanation was submitted by the workman and therefore, the management terminated the service of the concerned workman. Since no domestic enquiry was held, therefore, the Management made a prayer before the Tribunal to allow the Management to lead evidence.

3. Therefore, on the basis of the evidence led by the Management the Tribunal

came to the conclusion that the workman unauthorisedly remained absent for a long period without any information and justification and therefore, it amounted to mis-conduct on the part of the concerned workman and if the concerned workman was dismissed for service, the order of dismissal cannot be said to be unjustified in view of the nature of misconduct committed by him.

4 The Tribunal further held that since the order of the dismissal of the concerned workman was passed without holding any domestic enquiry, and as such the order of dismissal of die concerned workman is illegal.

5. It was further held by the Tribunal that since the Management did not prove the fact that the charge-sheet Ext. M/1 or Ext. M/2 was ever served on the concerned workman in legal manner and, therefore, the order of dismissal, was illegal and the concerned workman would be considered to be in continuous service and therefore, the order of the dismissal shall be made effective only from the date of the award and as such the concerned workman would be entitled to back wages. The Tribunal further held that since the workman failed to prove that he actually reported for duty on 22.6.1984 as he claimed in its written statement and if the workman on his own remained absent unauthorisedly, therefore, he could not claim wages for that period i.e. w.e.f. 22.6.1984 and ultimately the Tribunal directed the Management to pay to the concerned workman his full wages with effect from the date on which the reference was made by the Tribunal, to the date of the award.

6. The learned counsel for the petitioner submitted that if once it was held by the Tribunal that the action of the Management in dismissing the workman was justified then, in that view of the matter, the Tribunal could not have set aside the order of dismissal passed by the Management.

7. In my view, the submission of the learned counsel for the petitioner cannot be accepted in view of the admitted position that the order of the dismissal of the concerned workman was passed without holding any domestic enquiry and therefore, the order of dismissal cannot be said to be legal and valid. "The Tribunal has rightly set aside the order of dismissal passed by the Management on that ground.

8. Consequently, if the order of the dismissal of the concerned workman is set aside then he would be deemed to have continuous in service and therefore, he would be entitled to back wages. The learned Tribunal has rightly held that the concerned workman shall be entitled to full back wages with effect from 20.2.1990 up to the date of the Award.

9. In that view of the matter, I find no illegality in the impugned award. Accordingly, this application is dismissed but no cost.