
(2001) 05 JH CK 0029

In the Jharkhand High Court

Case No : CWJC No's. 1175 of 1989 (R) , 1083 of 1991 (R) and 680 of 1999 (R)

Employers in relation to the Bhurkunda Colliery C.C.L

APPELLANT

Vs

Their Workmen and Another
 Koyal Mazdoor Sabha Vs
Presiding Officer and Others
 Workmen of Bhurkunda
Colliery of Central Coalfields Ltd. Vs Presiding Officer and
Another

RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 10, 10(1), 11, 2

Citation : (2001) 90 FLR 443

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A. Sen, V. Shivnath, M.B. Lal, Alok Lal and T.K. Das, for the
Appellant;

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The petitioner of CWJC No. 1175/89 (R), who is the employer in relation to the management of Bhurkunda Colliery of M/s. Central Coalfields Ltd., has challenged the award dated 13.5.1988 passed by the Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad in Reference Case No. 250/86, whereby and where-under the management has been directed to enlist the workmen named in the list annexed to the award and pay 50% of the wages of category I to the concerned workmen till they are enlisted as casual workmen of Bhurkunda Colliery. While in CWJC No. 1083/91 (R), the petitioner M/s. Koyal Mazdoor Sabha representing their workmen, is aggrieved by that part of the said award whereby the tribunal refused to regularise other 51 workmen, who are members of the petitioner and also that part of the award by which the tribunal awarded only 50% of the back wages. These two cases along with CWJC No. 680 are being disposed of by this common judgment.

2. It appears that the Government of India. Ministry of Labour, in exercise of

power conferred upon them u/s 10(1)(d) of the Industrial Disputes Act. 1947 referred the following dispute to the tribunal for adjudication :--

"Whether the demand raised by Koyala Mazdoor Sabha in regard to alleged discrimination in employment/regularisation of 125 casual workers of repair and maintenance Section (Civil) of Bhurkunda Colliery of Central Coalfields Ltd. is justified ? If so, to what relief are these workmen entitled ?"

3. The case of the workmen is that the concerned 125 workmen were in the employment of Bhurkunda Colliery in various capacities since before its take over by the Central Coalfields Ltd. After take over by the CCL, the concerned workmen were employed as Mazdoors in certain Engineering Projects and were known as Civil Engineering Workers. Earlier a dispute arose by which the concerned workmen claimed that such type of civil engineering workers should be put on regular basis as casual labour and in course of time they should be regularised. Thereafter, the Management of CCL issued a direction that such workmen if they had completed 240 days of working should be regularised. Accordingly a large number of workers employed in Gidi-A Colliery of M/s C.C.L. were regularised on the basis of such direction. In Bhurkunda Colliery of CCL 39 workmen of this type were also regularised after their case of regularisation was taken up by the Union and they were still continuing in service. Further case of the workmen is that the General Secretary of Koyala Mazdoor Sabha took up the matter of concerned 125 Civil Engineering Workers on the ground that during 1973 all these concerned workmen had completed 140 days of attendance and were entitled to regularisation in their jobs. The Deputy Chief Personnel Officer of M/s. CCL communicated to the General Secretary of Koyala Mazdoor Sabha, vide letter dated 5.10.1980 that the case of the concerned 125 Civil Engineering Workers would be examined in the light of the discussions held between him and the General Secretary of the Union. When no communication was made, the Union of concerned workmen demanded the same benefits to them as was available to other workers of the colliery. However, in the meantime, the Management retrenched the concerned workmen as a result of which dispute was raised by the Union in respect of the unjust retrenchment and on the failure of conciliation, the Government of India, Ministry of Labour first refused to make reference but subsequently the dispute was referred for adjudication.

4. The case of the management, on the other hand, is that the reference order itself is vague inasmuch as it does not refer the names of the so-called 125 casual workmen. The reference is over stale and there is no valid industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act. Further case of the management is that the Union is making efforts to induct impersonators into the employment of the management in place of some casual workers who might have worked for some time more than 10 years ago.

5. The tribunal, on the basis of the respective cases of the parties, formulated the following points for determination :--

(i) Whether reference is too stale ?

(ii) Whether reference is vague ?

(iii) Whether the sponsoring Union has locus standi to raise the present industrial dispute ?

(iv) Whether any discrimination in employment/regularisation of the concerned 125 workmen of repair and maintenance Section (Civil) of Bhurkunda Colliery of M/s. CCL was made by the Management ?

6. While deciding issue No. 1, the tribunal came to a finding that the Union of the concerned workmen has been taking up the matter since 1974 and it is not the case that the Union was sitting idle after the stoppage of work of the concerned workmen in 1974. Accordingly, the tribunal held that the dispute raised by the Union on behalf of the concerned workmen is not stale. The tribunal decided the other points and answered the reference in favour of the Union of the concerned workmen.

7. Mr. Ananda Sen, learned counsel appearing for the management of M/s. CCL assailed the impugned award as being wholly illegal and without jurisdiction. Learned counsel submitted that the reference itself is invalid inasmuch as the reference does not disclose the concerned workmen for whose benefits reference has been made. Learned counsel further submitted that the finding of discrimination arrived at by the tribunal is perverse in law. Learned counsel submitted that the question of discrimination has been wrongly decided by the tribunal and that even the identity of the workmen has not been established. No evidence was led to establish as to who were the actual workmen in the concerned section. The identity of the concerned workmen has been left to be determined by the Mukhia/BDO/CO and, therefore, the award is invalid.

8. On the other hand, Mr. V. Shivnath, learned counsel appearing on behalf of the concerned workmen drew my attention to the findings arrived at by the tribunal and submitted that there is no perversity in the findings of the tribunal.

9. So far the first point taken by Mr. Sen, learned counsel for the petitioner that the reference is too stale, the tribunal has gone into detail facts and found that the Union through out agitated the matter before the appropriate authority. Admittedly the concerned 125 workmen were stopped from doing work in 1974. The concerned workmen immediately represented before the Union and consequently a demand was raised for raising an industrial dispute. When the reference was refused, the Union of the concerned workmen represented before the State Home Minister, Government of India, New Delhi. It further appears that the previous representation had been made in 1975 before A.L.C. (C), Hazaribagh when the case was closed in absence of the General Secretary of the Union, who was in jail during the said period. Again a dispute was raised in 1981 but the Government of India refused to refer the case for adjudication. The General Secretary again moved the higher authority and the Ministry which led to

the present reference. Exts. W/8, W/10, W/11, W/16, W/19, W/21 and W/25 show that the concerned Union has been pursuing their claim since 1974 and ultimately in 1985 the Government agreed to refer the matter for adjudication. Taking into consideration all these evidences the tribunal has come to a finding that the dispute raised by the Union on behalf of the concerned workmen is not stale as the matter was being pursued by the Union since the date of stoppage of work of the concerned workmen. I do not find any illegality in the conclusion arrived at by the tribunal. I am of the opinion that, the award cannot be interfered with on the ground that the dispute raised by the Union is stale one.

10. In the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, the question came for consideration before the Apex Court was whether reference of industrial dispute to labour Court is subject to limitation under Article 137 of the Limitation Act. In that case the workmen were terminated in 1974 and the demand was raised in 1981 and ultimately the dispute was referred to the labour Court by the appropriate Government in 1982. The labour Court gave its award in 1986 directing reinstatement of workmen with full backwages. The management challenged the award on the ground, inter alia, that the reference itself was belated one and the claim was stale. The Apex Court, while rejecting the ground taken by the management, held as under :--

"It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour Court or Board, dealing with the case, can appropriately mould the relief by declining to grant backwages to the workman till the date, he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the backwages instead of full backwages. Reliance of the learned counsel for the respondent-management on the Full Bench judgment of the Punjab and Haryana High Court in Ram Chander Moryav State of Haryana (1999) 1 SCT 141 : ILR 1999 P&H 93, is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases". However, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay".

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application u/s 33C of the Act to be adjudicated. It is not the function of the Court to prescribe the limitation where the Legislature in its wisdom and thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding over the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncement of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act."

11. As noticed above, the Union of the concerned workmen have been raising their demand on and from the date when the management stopped taking work from the workmen. It was only after the Union pursued their demand before the higher authority, the reference was made in 1985. In my view, therefore, the award of the tribunal cannot be disturbed on this ground.

12. The next question falls for consideration is whether any discrimination was made by the management in employment/ regularisation of the concerned 125 workmen of repair and maintenance Section (Civil) of Bhurkunda Colliery of M/s. CCL. While deciding the issue, the tribunal has gone in the evidences both oral and documentary in detail and came to the positive conclusion that the demand raised by the Union with regard to the alleged discrimination is justified. On the basis of finding of fact recorded by the tribunal, the management was directed to enlist the workmen named in the annexures to the impugned award and they may be provided with different Jobs. I do not find any vagueness either in the reference or in the award given by the tribunal. It is also not a case where the award can be interfered with either on the ground of non-consideration of important evidences adduced by the management or on the ground that the finding arrived at by the tribunal is based on no evidence.

13. Mr. Sen, learned counsel appearing for the management, mainly contended that the award cannot be sustained in law for the reason that it is not possible to identify the person actually working at the relevant time. It was further contended that the tribunal failed to rely that if these 125 persons were also amongst the retrenched workers, it is unthinkable that they would be left out of the dispute by the same Union who raised the issue in 1975. In my opinion, this is nothing but hyper-technical ground taken by the management. At this stage, it is worth to mention here that- after the admission of this writ application this Court time to time passed interim orders directing the management to make payment to the concerned workmen. This Court time to time directed the Registrar of the Court to make enquiry regarding identification of the workmen. After enquiry most of the workmen have been identified. On their identification

payments have been made to the concerned workmen, who have been identified. In my opinion, therefore, this Court cannot interfere with the award passed by the tribunal on hyper-technical ground.

14. In the case of Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others, the Apex Court observed :--

"The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by courts exercising powers of Judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and therein the awards on trial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."

15. In the case of Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, , the Apex Court, while considering the scope and limit of the High Court in the matter of interference with the award under Article 227 of the Constitution, observed :--

"Under Section 11A of the Act, advisedly wide discretion has been vested in the tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. The High Court is indisputably entitled to scrutinise the orders of the subordinate tribunals within the well accepted limitations and therefore, it could in an appropriate case quash the award of the tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court, is not entitled to exercise the powers of the tribunal and substitute an award in place of the one made by the tribunal as in the case of an appeal where it lies to it."

16. In the case of Employers in relation to the Management of Bhurangiya Project of M/s. Bharat Coking Coal Limited v. The Presiding Officer and others (1997) 2 PLJR 434, a Bench of this Court held :--

"It is well settled that the High Court should not normally interfere with the award of the tribunal or the labour Court, in exercise of writ jurisdiction by issuing a writ of certiorari, unless it is shown that the award suffers from an error apparent on the face of the record or the error must be an error of law, and not an error of fact. It is equally well settled that the High Court should not review findings of fact reached by inferior Court or tribunal, even if it is erroneous on the principle that the High Court is not supposed to sit in appeal against the

award of the tribunal."

17. As noticed above, the tribunal after considering the entire evidence on record and after drawing adverse inference against the management for non-production of vital documents, recorded a conclusive finding of fact. This Court, therefore, does not find any cogent reason to interfere with the award. From perusal of the award, it is evident that the management had full knowledge about the name and identity of 125 workmen when there was a conciliation proceeding before the conciliation officer. The conciliation officer had submitted the list of 125 workmen along with the failure report. In my opinion, therefore, mere omission to mention the names in the order of reference u/s 10, of the Act by the Central Government, cannot vitiate the award particularly when the management did not challenge the order of reference before any forum, rather the management submitted it to the jurisdiction of the tribunal and participated in the reference. In that view of the matter also, the impugned award passed by the tribunal cannot be held to be erroneous in law. I, therefore, do not find any merit in the writ petitions filed by the management and the Union being CWJC Nos. 1175/89 (R) and 1083/91 (R).

18. So far CWJC No. 680/99 (R) is concerned, it has been filed by the petitioner claiming to be the General Secretary of the Koyala Mazdoor Sabha after 11 years of the award. In the writ petition, the grievance of the petitioner is that the tribunal has not given any relief to 51 workmen out of 125 workmen, whose cases were referred to the tribunal. This writ petition is belated one. Moreover, in view of the conclusion arrived at by me in the aforementioned two writ petitions, this writ petition is also devoid of any merit.

19. In the result, all these three writ petitions are dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

20. Petitions dismissed.