
(2019) 08 JH CK 0043

In the Jharkhand High Court

Case No : Writ Petition (L) No. 6650 Of 2016

General Manager, Bhowra Area Of M/s Bharat Coking Coal Ltd

APPELLANT

Vs

Their workman

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 342
Arms Act, 1959 — Section 27
Industrial Disputes Act, 1947 — Section 11A
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 JH CK 0043

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Anoop Kr. Mehta, Amit Kr. Sinha

Final Decision : Allowed

Judgement

Heard counsel for the petitioner.

Nobody appears on behalf of the respondent in spite of filing Vakalatnama.

The petitioner-management has filed the present writ petition against the Award dated 31.07.2015 passed in Reference No. 34 of 2007, whereby the reference has been answered in favour of the workman directing the petitioner-management to reinstate the workman in service without back wages.

It appears that the workman namely Suresh Hari was a permanent employee of the management and it has been alleged that he was absent from the duty since 09.10.2003 and for such absenteeism he has been charged vide memo dated 20.12.2003. The said charge has been replied by the employee vide his reply dated 26.12.2003 but the factum of detention in the Jail or conviction by the Criminal Court has not been disclosed. It came to the knowledge of the management that the workman has been convicted in a Criminal Case under Sections 307/342/34 of the Indian Penal Code and also under Section 27 of the

Arms Act.

Accordingly, supplementary charge-sheet has been issued on 12/13.05.2006 for committing misconduct in terms of Clause 26.1.19 and 26.1.20 of the certified standing orders of the company, which reads as under:

"26.1.19 - Conviction by a court of law for any criminal offence involving moral turpitude.

26.1.20 - Any breach of the Mines Act, 1952 or any other Act or any Rules, Regulations or Bye Laws thereunder or any standing orders."

In the domestic enquiry charge has been proved vide enquiry report dated 11.10.2006 and on such proved charge the respondent-employee has been dismissed from the service w.e.f. 24.05.2007.

The order of dismissal has been challenged by raising Industrial Dispute which has been referred as Reference Case No. 34 of 2007 in following terms:

THE SCHEDULE

"Whether the action of the Management of Jealgora Regional Hospital of M/s BCCL in not allowing Shri Suresh Hari, Sweeper to join his duty is justified and legal? If not, to what relief is the concerned workman entitled?"

The Tribunal has answered the reference in favour of the workman. The operating portion reads as under:-

"7. In the instant case, on perusal of the materials on the case record manifests, as I observe and find the following points:

(i) The department enquiry prima facie suffers double chargesheets (Extt.W.2 and 2/1) firstly totally vague for unauthorized absentism and secondly for specific (on re-charge sheet after more than 3 years for misconduct of conviction in the Session Case issued against the workman. But on the enquiry based on the latter chargesheet dt. 12/13.05.2006, the workman appears to have got dismissal for alleged misconduct of his conviction in the S.T. Case. It is well settled that when a charge based partially on relevant facts and partially on facts which are irrelevant or assumed, it is a serious defect in the charges which can not be sustained in law as held by the Hon'ble Apex Court in the case of Calcutta Dock Labur Board Vs. Jaffar Imam, reported in AIR 1966 SC 282; 1966 SCC211. It is now well established that vagueness in a chargesheet framed against an employee is a defect serious enough to vitiate the entire proceeding of a domestic enquiry which otherwise might have culminated in discharge, dismissal, removal from service or reduction in the rank of an employee as held in the case of Khemchand Vs Union of India, 1959 (I) LLJ 167.

In the instant case, the second chargesheet dt. 12/13.05.2006 (Ext.W.2/1) following the reply of the workman dt.24.12.2003 (Ext.w.5) was issued to the workman f

(ii) No suspension was ever effected by the OP/Management in natural course of their conduct even during the period of the entire enquiry proceeding.

(iii) The petitioner workman appears to have clearly stated in his reply dt.24.12.2003 (Ext.W.3) to his first charge sheet dt. Jan 19, 2003 his inability to attend to his duty due to unavoidable circumstances of his being in the jail custody for his conviction in his Session Case.

(iv) The dismissal of the workman only on the ground of his conviction in his aforesaid Session Case is not unsustainable in the eye of Law.

8. Considering the aforesaid facts based on the materials available on the case record, the reference is responded and accordingly awarded that the action of the Management of Jealgora Regional Hospital of M/s BCCL, in not allowing Shri Suresh Hari, Sweeper to join his duty is unjustified and illegal, hence the workman concerned is entitled to his reinstatement without his back wages for his absence period from his duty due to his unavoidable reasons maintaining his continuity of his service. The OP/Management is directed to implement the Award in a month from the date of its receipt following the publication of the Award in the Gazette of India by the Government of India."

The tribunal has been assigned jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 which reads as under:

"11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

Scope of Section 11-A of the Industrial Disputes Act, 1947 has been explained in various judgments of the Apex Court passed in the cases of: C. Subramanyam Vs. Commissioner, Bangalore Development Authority and Ors. reported in (2005) 3 SCC 331 and 401, South Indian Cashew Factories Workers Union Vs. Kerala State Cashew Development Corporation and Ors. reported in (2006) 5 SCC 201, LIC of India Vs. R. Dhandapani reported in (2006) 13 SCC 613 and L & T Komatsu Ltd. Vs. N. Udayakumar reported in (2008) 1 SCC 224.

The law has been settled that in a case of no enquiry or defective enquiry, the management has been given liberty to justify the order of dismissal. Thus, the consideration has to be made by the Tribunal is, "Whether the dismissal was justified or not".

In the present case, it is admitted position that the concerned workman has been convicted in a Criminal Case under Section 307 of I.P.C. Against such conviction, appeal has been filed which is pending till date. Dismissal of employee on the ground of conviction by a Criminal Court cannot be said to be unreasonable or unjustified.

Thus, the Tribunal has committed fundamental error by answering the reference in favour of the employee on the ground that charge was vague. Even if the charge was vague. Law provides management an opportunity to justify the order of dismissal.

In the present case, the dismissal is justified as this was based upon conviction in a Criminal Case.

In view of above discussion, this Court finds that the impugned order dated 31.07.2015 passed in Reference Case No. 34 of 2007 is not sustainable and accordingly the same is, hereby, set aside. Resultantly, the present writ petition stands allowed.