
(2015) 04 JH CK 0076

In the Jharkhand High Court

Case No : Writ Petition (L) No. 4415 of 2013

General Manager, Eastern Jharia

APPELLANT

Vs

Jiwesh Sharma and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33-C(2)

Citation : (2015) 04 JH CK 0076

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Anoop Kr. Mehta and Amit Kumar Sinha, for the Appellant; Ashok Kumar Sinha and Kishore Kumar Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 11.06.2012 in L.C. Application No. 01 of 2010, the present writ petition has been filed.

2. The brief facts of the case are that, the management of M/s. Bharat Coking Coal Limited took a decision to construct a Washery at Sudamdih. A contract was awarded to M/s. McNally Bharat Engineering Company Limited to construct the Washery on Turn-Key basis. The construction of the Washery was complete in March, 1980 and thereafter, the contractor and the sub-contractors retrenched their workmen. However, for a brief period, for maintaining the Washery, 39 workmen were retained by the Company who were also retrenched after successful completion of the trial run, on payment of retrenchment compensation by the contractor-M/s. McNally Bharat Engineering Company Limited. An industrial dispute was raised which, by order dated 20.11.1981, was referred for adjudication to the Central Government Industrial Tribunal. The reference was answered vide, award dated 03.03.1983 holding that the management of M/s. BCCL was not justified in not absorbing the concerned workmen as their regular employees. The award was challenged by M/s. BCCL by filing the writ petition

which was dismissed and, the Special Leave Petition filed by M/s. BCCL was also dismissed by the Hon'ble Supreme Court and thus, the award dated 03.03.1983 attained finality. Since the reference did not contain parentage, address etc. of the concerned 39 workmen and there arose serious disputes as to identity of the concerned workmen, only 32 workmen who were identified in different phases were reinstated. The petitioner brought this fact to the notice of the Deputy Commissioner, Dhanbad who vide letter dated 01.09.1986 directed the management of M/s. BCCL not to appoint any person until their identity is fully established. A Contempt Petition being MJC No. 288 of 1991 (R) was filed in which order dated 11.01.1993 was passed directing the applicants/respondents and other workmen to appear before the General Manager, M/s. BCCL and the Director (Personnel), M/s. BCCL was directed to consider the case of the applicants/respondents and other workmen. During the pendency of the contempt application some of the respondent-workmen were identified and they were allowed to resume their duties. The respondent Nos. 5 and 6 was already identified and permitted to resume their duties w.e.f. 09.12.1989. The respondent Nos. 1 to 10 filed an application on 05.03.2010 under Section 33-C(2) of the Industrial Dispute Act, 1947 claiming back-wages from 1983 till the date of their joining. One of the workmen in Reference No. 58 of 1981 namely, Shiv Balak Sharma filed L.C. Application No. 24 of 2003 in which order of payment of wages was passed on 30.06.2009. The management has preferred W.P.(L) No. 738 of 2010 challenging order dated 30.06.2009 and the writ petition has been admitted for hearing vide order dated 29.09.2010.

3. Accordingly, the present writ petition was heard along with W.P.(L) No. 738 of 2010 and the parties relied on documents filed in the said writ petition.

4. Heard the learned counsel for the parties and perused the documents on record.

5. Mr. A.K. Mehta, the learned counsel for the petitioner-M/s. BCCL submits that the award dated 03.03.1983 in Reference No. 58 of 1981 could not be implemented because several workmen approached the management seeking benefit of the said award. Neither the reference nor the award contained parentage, address etc. of the concerned 39 workmen and therefore, the management was compelled to write letter to the Deputy Commissioner, who after conducting inspection with the Superintendent of Police directed the management not to appoint any workmen, without proper identification. It is submitted that in an application under Section 33-C(2) of the Industrial Dispute Act, the labour court can calculate benefit under the award and since the benefit of back-wages to the respondent-workmen was given, direction contained in award dated 03.03.1983 stood complied. It is further submitted that the claim for difference in wages from 1983 till the date of their joining was raised after 10 years and it was an idle claim and therefore, the application under Section 33-C(2) was liable to be dismissed. Since payment of back-wages is not automatic and between the period from 1983 till the date of joining the respondent-

workmen did not discharge their duties, the labour court seriously erred in law in allowing the application filed by the respondent-workmen.

6. As against the above, the learned counsel for the respondent-workmen submits that the plea of identification of the workmen taken by M/s. BCCL before the labour is barred by res-judicata. The award dated 03.03.1983 contained a direction for absorption of the concerned workmen as regular employee with full back-wages. It is submitted that the management illegally did not permit the respondent-workmen to discharge their duties and therefore, on the spacious plea of identification of the workmen, the respondent-workmen cannot be denied payment of wages. It is further submitted that the labour court has not committed error of jurisdiction nor the findings recorded by the labour court are perverse and therefore, the writ court would not interfere in the matter.

7. Relevant extract of Section 33-C(2) of the Industrial Dispute Acts, 1947 is quoted below.

33-C(2). "Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months. Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

8. In *State Bank of India Vs. Ram Chandra Dubey and Others*, (2000) 87 FLR 849 : (2000) 2 JT 590 Supp : (2000) 2 LLJ 1660 : (2000) 7 SCALE 420 : (2001) 1 SCC 73 : (2001) SCC(L&S) 3 : (2001) 1 UJ 290 : (2000) AIRSCW 4176 : (2000) 7 Supreme 545 , the Hon"ble Supreme Court has held that, the jurisdiction of the labour court under Section 33-C(2) extends to computation of a pre-existing benefit or the one flowing from a pre-existing right. In *U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari*, AIR 2006 SC 3220 : (2006) 111 FLR 393 : (2006) 3 LLJ 969 : (2006) 9 SCALE 642 : (2006) 10 SCC 211 : (2007) 1 SCC(L&S) 69 : (2006) 7 SCR 690 Supp : (2007) 2 SLJ 239 : (2007) 2 UJ 1324 : (2006) AIRSCW 4901 : (2006) 7 Supreme 397 , the Hon"ble Supreme Court has reiterated that "the benefit which can be enforced under Section 33-C(2) is a preexisting benefit or the one flowing from a pre-existing right".

9. A perusal of the materials on record indicates that opposing the application dated 05.03.2010 filed by the respondent-workmen, M/s. BCCL took a plea that the claim raised by the workmen was stale in as much as, the application was filed after expiry of 10-20 years. In paragraph No. 4 and 10 of the show-cause reply/written statement, it is stated that delay in implementation of the award

was due to want of proper identification of the concerned awardees. The labour court took note of the evidence of the management witness MW-2 who admitted in cross-examination that "I have not filed individual calculation chart". It is apparent that M/s. BCCL has tried to justified the delay in absorption of the concerned workmen only on the ground that the concerned workmen could not be absorbed for want of proper identification. In the present writ petition also a similar plea has been taken by the petitioner-M/s. BCCL.

10. I find that in Reference No. 58 of 1981 though, names of 39 workmen with their designation have been given, before the Industrial Tribunal M/s. BCCL did not raise the plea of identification of those 39 workmen, seriously. Only in paragraph No. 29 of award dated 03.03.1983, I find a reference as to identification of the concerned workmen however, the said plea was with reference to the Title Suit filed on behalf of the workmen. It was contended on behalf of M/s. BCCL that "several hundred workmen were working under the contractor and without parentage, address etc. it is very difficult to say that infact, the concerned workmen was also party in the said title suit." It further appears that in the proceeding of Reference No. 58 of 1981 one of the concerned workmen stated that M/s. BCCL maintained Form-B Register in which names of the concerned workmen were entered. In the said proceeding Form-B Register was not produced by M/s. BCCL. It was also pleaded that after the Washery was handed over to M/s. BCCL in December, 1979, the concerned 39 workmen were under the M/s. BCCL from January, 1980 to 03.01.1981 and they were paid by the Coal Washery Management. The identity cards with the signature of Project Officer of atleast two workmen were marked as exhibits and it was contended that all 39 workmen were issued similar identity card. Award dated 03.03.1983 attained finality after the dismissal of the Special Leave Petition preferred by M/s. BCCL. Thus, the plea of identification of the concerned 39 workmen taken by M/s. BCCL must be held to be barred by constructive res-judicata. It appears that at no stage a plea of identification was raised by M/s. BCCL and if raised by it, such plea was negated by the higher Courts. I further find that a specific plea has been taken by M/s. BCCL that for trial run of the Washery, 39 workmen were retained who after payment of retrenchment compensation were removed from their engagement and thus, identification of those 39 workmen cannot be disputed by M/s. BCCL. Those concerned 39 workmen were working at the Washery through M/s. McNally Bharat Engineering Company Limited and thus, they were very much identifiable.

11. The plea of identification taken by M/s. BCCL cannot be accepted for another reason. Neither before the labour court nor before this Court any material has been produced by M/s. BCCL to disclose the steps taken by it for proper verification/identification of the concerned workmen. It is stated that 32 workmen were identified between August, 1986 to July, 2009. This is unbelievable that identification of 32 workmen would take 23 years. As noticed above, award dated 03.03.1983 was for absorption of the concerned workmen as regular employee, with full back-wages. I am of the opinion that the

management of M/s. BCCL has illegally denied absorption to the concerned workmen for a period of 10 years or more and therefore, the claim of the respondent-workmen cannot be termed as a stale claim. The management of M/s. BCCL cannot be permitted to take benefit of its own wrong. The letter dated 01.09.1986 of the Deputy Commissioner is of no help to the petitioner. The labour court has held that there is no fault on the part of the concerned workmen.

12. In so far as, the contention that the application under Section 33-C(2) is maintainable only for calculation of benefit under the award and since back-wages to the workmen have been paid till the date of award i.e. 03.03.1983 the application dated 05.03.2010 was not maintainable, I am of the opinion that after taking the respondent-workmen as its regular employee, M/s. BCCL cannot deny that the workmen have a legal right for receiving wages from M/s. BCCL. The right to receive wages is a pre-existing legal right in as much as, the direction of the Court was to absorb as regular employee and thus, it does not require a further determination for grant of wages between the period 03.03.1983 and the date on which they were absorbed. It is not the case of the petitioner that the labour court has recorded a perverse finding. The plea of jurisdiction of the labour court is answered by the decisions of the Hon'ble Supreme Court noticed above. In these facts, I am of the opinion that this Court has no jurisdiction to interfere with order passed by the labour court. In *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, AIR 1964 SC 477 : (1964) 5 SCR 64, the Hon'ble Supreme Court has observed as under:

7. "The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that

would be regarded as an error of law which can be corrected by a writ of certiorari"

13. Considering the above facts, I am of the opinion that the dispute raised by the management of M/s. BCCL regarding identification of the respondent-workmen lacks bona fide. The concerned workmen have been illegally denied the benefit of absorption in terms of award dated 03.03.1983. I find no infirmity in order dated 11.06.2012 and accordingly, the writ petition is dismissed with cost of Rs. 25,000/- to be paid to respondent-workmen however, the respondent-workmen shall not be entitled for interest on the amount claimed till 11.06.2012 by them.