
(2012) 11 JH CK 0041

In the Jharkhand High Court

Case No : Cont. (C) Case No. 513 of 2011

Harihar Yadav and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Citation : (2012) 11 JH CK 0041

Hon'ble Judges : Prakash Tatia, J;Jaya Roy, J

Bench : Division Bench

Advocate : Priya Hingorani and S. Prasad, for the Appellant; R. Pallav, JC to AG for the Respondent-State and Mr. Gautam Rakesh, for the Respondent-State, for the Respondent

Judgement

1. Heard learned counsel for the parties. By the judgment dated 16th June, 2011, this Court directed the JHALCO to absorb the employees and also passed the order that now and from the date of order of this Court, i.e. 16th June, 2011, the employees shall be deemed to have been absorbed in JHALCO with the benefit of past services rendered by the employees under BHALCO. Learned counsel for the JHALCO submitted that JHALCO has also preferred S.L.P which is apparent from the order passed by the Hon''ble Supreme Court dated 14th November, 2011, wherein it has been ordered that notice be issued in both the S.L.Ps and in the said order dated 14th November, 2011, contempt proceedings have been stayed. According to the learned counsel for JHALCO, it appears that inadvertently in the order of the Hon''ble Supreme Court dated 6th August, 2012, it has been mentioned that the said order would protect only the State of Jharkhand who have chosen to question the correctness of the judgment of this Court dated 16th June, 2011. It is also submitted that the Hon''ble Supreme Court, in the clarification order dated 6th August, 2012, directed this Court to implement the directions given in paragraph 37 of the judgment dated 16th June, 2011 passed in L.P.A Nos. 77 & 79 of 2009 and according to the learned counsel for JHALCO, this is also clear from the said order of the Hon''ble Supreme Court that the Hon''ble Supreme Court directed to implement limited directions

contained in judgment dated 16th June, 2011 and that is to secure payment of wages to the employees who have been absorbed by JHALCO and obviously so is because of the reason that the State of Jharkhand informed the Supreme Court that the State has already earmarked an amount of Rs. 6 crores for back wages of the absorbed employees.

2. It is further submitted by the learned counsel for JHALCO that JHALCO is, therefore, under impression that rest of the directions contained in the judgment dated 16th June, 2011, have been stayed by the Hon''ble Supreme Court except with respect to payment of wages to the absorbed employees, who have already been absorbed by the JHALCO. Learned counsel for JHALCO submitted that the JHALCO may seek further clarification from the Hon''ble Supreme Court, for which time may be given to JHALCO.

3. Learned counsel for the writ petitioner submitted that when the S.L.P was listed before the Hon''ble Supreme Court on 19th November, 2012, it was stated on behalf of the appellant of S.L.P that contempt petition is likely to be listed on 26th November, 2012 in view of the specific order already passed by this Court in this contempt petition and therefore, S.L.P may be adjourned. According to the learned counsel for the petitioner, this Court has already taken note of the fact that a number of employees died in harness, who could not get the wages and the directions issued by this Court are not being implemented and here it has been stated that let JHALCO obtain order from the Hon''ble Supreme Court, whereas in the Hon''ble Supreme Court, it has been stated that let High Court pass order in the contempt petition.

4. Learned counsel for the petitioner submitted that as per her information, the amount, which has been earmarked for payment to the beneficiaries of the judgment dated 16th June, 2011, may have been paid to those employees who have already been absorbed prior to the judgment dated 16th June, 2011 and admittedly none of the employees has been absorbed by JHALCO after the judgment dated 16th June, 2011, therefore, Rs. 3,43,42,000/- out of Rs. 5.42 crores have been misutilized by the JHALCO and paid to already absorbed employees, whereas this fund was earmarked and was given to JHALCO by the State for the employees who are to be absorbed in pursuance of directions contained in the judgment dated 16th June, 2011 and therefore, it is not the compliance of the order of this Court even with respect to payment of wages to the employees who were required to be absorbed in view of the directions of this Court. It is submitted that in fact, in the garb of the directions of this Court, JHALCO has misused the amount by making payment to those who have already been absorbed and those who have no connection with this litigation. According to the learned counsel for the petitioner, only the persons, who were to be absorbed, are required to be paid the amount.

This issue will also be considered after obtaining the stand of the respondents.

5. Since it is a matter of urgency and there are specific directions and there is

interim order passed by the Hon''ble Supreme Court initially on 14th November, 2011 and it was clarified on 6th August, 2012, if the JHALCO wants any clarification from the Hon''ble Supreme Court, it may move an appropriate application before the Hon''ble Supreme Court for the same. All the parties may also verify the fact whether JHALCO also has preferred the S.L.P against the judgment of this Court dated 16th June, 2011.

6. However, so far as payment of wages to the employees, for which respondent-State has earmarked an amount of Rs. 6 crores, is concerned, the counsel appearing from the State of Jharkhand has submitted that as per the reply of JHALCO, State has already transferred Rs. 5.42 crores, out of which Rs. 3,43,42,000/- have been paid to the absorbed employees in JHALCO. Learned counsel for the State submitted that he may be given some time to clarify whether Rs. 6 crores earmarked for payment of wages to the absorbed employees has been paid.

7. We are making it clear that the controversy was with respect to payment of wages to the employees who have not been absorbed and here in this case, it is clear from the judgment dated 16th June, 2011, this Court in paragraph 37 clearly not only directed the JHALCO to absorb the employees but also ordered that from the date of the order, i.e. 16th June, 2011, employees shall be deemed to have been absorbed in JHALCO with past service benefit and Hon''ble Supreme Court has directed to implement the directions and taken note of the fact of earmarking of Rs. 6 crores by the State for payment of wages to the employees, obviously, who are supposed to be absorbed in view of the directions contained in the judgment dated 16th June, 2011. Looking to the totality of the facts, one more opportunity is granted to the respondents to make their stand clear and since the matter is likely to be listed before the Hon''ble Supreme Court on 30th November, 2012, to give opportunity to JHALCO to obtain any clarification, it will be appropriate to list the matter on 17th December, 2012.

Let copies of this order be given to the learned counsel for the petitioner, State and Jhalco.