

(2012) 02 RAJ CK 0077

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 200 of 2006

Hindustan Copper Limited

APPELLANT

Vs

Bihari Lal Meena and Another

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2012) 02 RAJ CK 0077

Hon'ble Judges : Narendra Kumar Jain, J;Mahesh Bhagwati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Bhagwati, J.—Challenge in this intra court appeal is to the order dated 13th January, 2006, whereby the learned Single Judge dismissed S.B. Civil Writ Petition No. 6761/2002.

2. Adumbrated in brief, the facts of the case are that the respondent no.1 - Bihari Lal Meena was initially appointed as Mazdoor in the services of Khetri Copper Complex vide order dated 16th July, 1974. Pursuant to this order, he joined on 24th August, 1974. It is alleged that after joining the services in August, 1974, the respondent no.1 became habitual of remaining absent from duty intermittently. Albeit, the Disciplinary Authority, punished him with the stoppage of Annual Grade Increment with cumulative effect for his misconduct, yet he finally absented himself from 12th July, 1978. Resultantly, the Management of Khetri Copper Complex struck off his name from the company roll on 18th October, 1978. After nine months of striking off his name from the attendance roll of the company, the respondent no.1 made a representation on 27th August, 1979 for re- employment as Mazdoor in the Company, but the Management having kept his past conduct in mind, turned down his request. Finally, he moved a representation on 17th September, 1987 to the Conciliation Officer. The Conciliation Officer submitted a Final Report to the Government on 23rd December, 1987 and the Government also, in turn, referred the dispute to

the Labor Court vide order dated 26th July, 1988.

3. The Labor Court No. 2, Jaipur having heard the parties, found at the initial stage that that departmental enquiry conducted by the Management was not fair. Hence, both the parties were directed to lead their evidence in support of their case. The Labor Court, ultimately allowed the reference and held that the termination of the services of respondent no.1 Bihari Lal Meena vide order dated 18th October, 1978 was not legal and valid and further directed the appellant to reinstate the workman-respondent no.1 with the continuity of service. Of-course, no relief for backwages was granted by the Labor Court to the employee.

4. Aggrieved with the award passed by the Court, the appellant-petitioner filed a Writ Petition bearing S.B. Civil Writ Petition No. 6761/2002, but the learned Single Judge also, after hearing both the parties, dismissed the petition and upheld the award passed by the Tribunal. Hence, this intra-court appeal.

5. Heard the learned counsel for the parties and carefully perused the relevant material on record.

6. Learned counsel for the appellant canvassed that the respondent no.1 raised the dispute before the Government after nine years of his termination of services. Hence, the Labor Court ought to have not entertained the reference u/s 10 of the Industrial Disputes Act. He further canvassed that despite the fact of workman Bihari Lal Meena being undisciplined and ill mannered and he was habitual of remaining absent frequently from duty and further the disciplinary action was also repeatedly taken against him, the Labor Court did not consider this aspect of the workman and arbitrarily held the departmental enquiry being conducted by the Management to be illegal and invalid and sans there being any trustworthy evidence, issued directions for his reinstatement with continuity of service. The learned Single Judge also did not consider this aspect and cursorily dismissed the writ petition with a sketchy order. Hence, the intra court appeal deserves to be allowed and the impugned orders passed by the learned Single Judge and Labor Court are liable to be set- aside.

7. E Converso, the learned counsel appearing for the respondent no.1 defended the impugned orders and stated the same to be just and proper. He further contended that the workman Bihari Lal Meena was reinstated by the Management way back on 17th February, 2006 and since then he has been continuously in service. No complaint with regard to his undisciplined attitude and remaining absent from duty has ever been noticed by the Management nor has been suggested by the learned counsel for the appellant. Now, he has to work only for two years more and after completion of two years" service, he shall be superannuated. Otherwise too, the impugned orders passed by both the Labor Court as also the learned Single Judge are perfectly legal and just and do not justify any interference.

8. Having reflected over the submissions made at the bar and carefully scanned the relevant material on record, it is noticed that as per the averments made by

the appellant itself, the respondent no.1 remained absent from duty intermittently for one day or two days. As per the version of the appellant itself when he remained absent from duty from 12th July, 1978, his name is found to have been struck off from the attendance roll of the company arbitrarily without serving any notice upon him. Despite that the workman Bihari Lal Meena beseeched for his re-employment, but that prayer was also arrogantly turned down by the Management. Even the enquiry conducted by the Management was not found to be legal, valid and fair. The Labor Court held the termination of services of respondent no.1 by the Management to be illegal and invalid and thus, directed the Management to reinstate his service with continuity of service. It is to be remembered that the principle of "No Work No Pay" did not escape the sight of the Labor Court and the Labor Court finally did not order for the backwages, to be granted to the workman.

9. The Learned Single Judge also having considered the submissions of both the parties and material on record, observed in the impugned order thus:

Subsequently, after considering the evidence and material placed on record on behalf of both the sides, the Labor Court held the charge of absence from duty not proved taking note of the evidence produced on behalf of the concerned workman, particularly the leave application, medical certificate as also telegram. Though there is no limitation prescribed under the Industrial Disputes Act, 1947 for raising a grievance before the competent forum, however, in the present case, the plea of delay as taken on behalf of the petitioner has also not been accepted by the Labor Court. A bare reading of the documents as placed on record would show that the concerned workman had continuously been making efforts before the management of the petitioner to get the employment back.

Since after due consideration, proper discretion has been used by the Labor Court in granting appropriate relief to the concerned workman, in the facts and circumstances, I find no ground for any further interference of this Court.

10. The up-shot is that the order dated 13th January, 2006 rendered by the learned Single Judge is found to be just and apposite and suffers from no infirmity. The workman-respondent no.1 has been in employment for the last six years and he has to superannuate after completion of two years service only. Hence, keeping in view all these factors emerging on record, we do not find any ground to interfere with the impugned orders and the intra-court appeal, thus, deserves to be dismissed.

11. For the reasons stated above, the intra- court appeal fails and the same being bereft of any merit deserves to be dismissed, which stands dismissed accordingly.