

(2003) 09 JH CK 0144
In the Jharkhand High Court
Case No : C.W.J.C. No. 3119 of 1996 (R)

Management of Damodar Valley Corporation	APPELLANT
Vs	
Workman represented by the Damoder Valley Corporation Staff Association	RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 270

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : M.M. Banerjee, S. Chowdhury and C.S. Singh, for the Appellant;
Binod Poddar and Nisha Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The Award dated 20.4.1996, passed by the Industrial Tribunal, Ranchi, in Reference Case No. 7 of 1992 is under challenge, in this writ application, at the instance of the Management of Damodar Valley Corporation (hereinafter referred as "D.V.C.", for the sake of convenience) whereby, the learned Tribunal on the basis of the evidence both oral and documentary, adduced on behalf of the parties, held that eight workmen namely; A.K. Dey, Jagarnath Karmakar, Dukhan Singh, R.A. Tiwary, Sita Moni. Narayan Giri, Aklu Manjhi and Gulam Hansda, were entitled for their employment against Class III post, with effect from 1.5.1988 and they shall be entitled for their emoluments and other facilities which were availed by the employees of Class III post minus the monetary benefits.

The terms of the reference before the Tribunal was as under :--

"Whether the following temporary workman of Chandrapura Thermal Power Station engaged on daily wages should be regularized? If not, what relief they are entitled to ?"

2. The case of the workmen before the Tribunal was that certain number of casual workers including the concerned workmen used to be engaged in overhauling and maintenance of six turbo generators at Chandrapura Termal Power Station (hereinafter referred as CTPS for the sake of convenience) and out of those persons, some were engaged in the year 1975 and some were engaged in subsequent years.

In the year 1978, the D.V.C. introduced a scheme for regularization of those casual workmen who worked for more than 180 days, in a calendar year in group "C" category and that the concerned workman used to perform the job not only as khalasi of Group "C" category but also even higher than that, that is to say the jobs which were performed by the technicians.

It is stated that the candidatures of the concerned workmen were not considered and they were not empanelled in the casual categories for regular employment.

The management of the D.V.C. subsequently issued office memorandum keeping a provision of absorption of casual workers in regular service in the year 1986, 1988 and 1990. It is stated that the concerned workmen ought to have been considered for regularization of their services in the light of the policies adopted by the D.V.C. It is stated that out of 21 concerned workmen, except eight persons namely A.K. Dey, Jagarnath Karmakar, Dukhan Singh, R.A. Tiwary, Sita Moni, Narayan Girl, Aklu Manjhi and Gulam Hansda, the other persons were regularized by appointing them on the basis of the technician Gr. III. It is further stated that in the past management of D.V.C. regularized the services of 225 workmen engaged by the Contractors as regular khalasi in "C" category by creating so many regular posts in Grade "C". It is stated that the concerned workmen actually were engaged on daily wages basis and they performed perennial nature of job and that there are vacancies in the post of khalasi in Gr. "C" category against which the concerned workmen were entitled to be regularized. It is further stated that the concerned workmen have not been regularized in the job and were made victim of discriminatory treatment as well as they were deprived from fair and natural justice.

3. On the other hand the case of the management of D.V.C. was that the concerned workmen were required to work as CTPS, D.V.C. under the control of CSO DVC Maithan on casual basis as per requirement and that the concerned workmen were not performing jobs of perennial nature. It is further stated that the casual employees were to be empanelled for requirement for Class-III post had to complete 180 days as casual workers in D.V.C. on or after 1.3.1973 and panel was to be prepared by each field formation at D.V.C. and at CTPS panel for casual workers and others were prepared in the year 1978. It is stated that the names of workmen for whom dispute has been referred were not empanelled in the panel of casual workers at CTPS prepared in the year 1978. It is further stated the non-empanellment of the concerned workmen were asked to apply against the management's advertisement for different posts according to their qualification, experiences etc. and they were interviewed by the Interviewed

Board constituted by the management and good number of them were employed in D.V.C. and rest could not get employment due to non-selection by the Selection Board. It is further stated that none of the concerned workmen is presently working at CTPS as casual workers and therefore, the question of regularization of their services does not arise. It is further stated that services of other workmen except eight concerned workmen were not regularized but they were selected by the Selection Board through the selection test for the post for which they had applied for and subsequently they have been appointed. The concerned eight workmen were not called for interview as they were not fulfilling the requisite requirements in accordance with the terms and conditions mentioned in the advertisement.

4. Both parties led their evidences both oral and documentary in support of their claims.

5. The learned Tribunal in the impugned award has discussed in detail the evidence adduced by the parties. The learned Tribunal on consideration of the fact, held that though the Management made out a case to the effect that the panel of the casual was prepared in the year 1978 but the said panel does not contain the name of any of the concerned workmen but the management failed to adduce in evidence, the said panel in order to substantiate, its case as made out on their behalf and the failure on the part of the management to file the alleged panel of casuals can be said to be a strong circumstance against them.

6. The Tribunal, on the basis of the evidence adduced by the parties also came to the conclusion that panels which were prepared in the year 1977 have not been fully exhausted and even by now and the appointment was being made against the class III post out the said panel.

7. The learned Tribunal, after considering the, fact further held that the Management did not invite applications for preparation of panel of persons to be employed against the Class III post after taking interview/tests and as such it can very well be said that the management failed to implement the scheme for their appointment against the Class III post and by not implementing the scheme for appointment against Class III post, the management deprived the concerned workmen from availing the opportunities for their appointment against the Class III post although they have worked for more 180 days after 1.1.1973 at least up to the month of May 1988. The learned Tribunal further held that the concerned workmen were entitled for the employment of the Class III post w.e.f. 1.5.1988 with emoluments and other facilities minus monetary benefits.

8. Mr. S. Chowdhury learned counsel for the petitioner has submitted that except on Ashok Kumar Dey, no other persons worked for more than 180 days in one calendar year and therefore, the finding of the Tribunal in that regard was not based on the evidence and therefore, the same was perverse and therefore, impugned award of the Tribunal is liable to be set aside. It has further been submitted on behalf of the petitioner that the Tribunal failed to consider that

respondents No. 2 to 9 applied for Gr. III post in view of the scheme of the D.V.C. but could not be empanelled because of their poor performance. Hence, the management cannot be directed to appoint those persons by issuance of an award.

9. On the other hand Mr. Biren Poddar learned counsel for the respondents No. 2 to 9 has submitted that the findings of fact arrived at by the Tribunal on the basis of the evidence on record cannot be interfered with in the present writ application. He has further submitted that the finding of fact arrived at by the Tribunal are all based on the records and nothing specific has been pointed out by the petitioner that any of such finding is not based on record and therefore, no interference by this Court is required. In this regard he has relied on the decision in the case of Emp., MGMT of Ramkanali Colliery of M/s. BCCL Vs. Workmen by Secy. Rasht. Colliery Mazdoor Sangh and Another, .

10. I have carefully perused the impugned award and the averments made in the writ application, documents annexed with it, counter affidavit and on consideration of the rival contention of the parties, I come to the conclusion that the findings arrived at by the Tribunal are all based on appreciation of evidence and no finding of the Tribunal is based on any evidence which can be said to be beyond record and therefore, in view of the settled principle of law that the High Court in its writ jurisdiction can not substitute its own finding on the question of the fact arrived at by the Tribunal. I find that the points raised by the petitioner are all the question of facts on which the learned Tribunal has given its finding after appreciating the evidence on record which cannot be interfered with. No finding of the learned Tribunal can be said to be perverse and beyond the record.

11. In the result this application is dismissed. However in the facts and circumstances of the case, there shall be no order as to costs.