

(2009) 02 JH CK 0046
In the Jharkhand High Court

Modern Cold Storage and Industries	Vs	APPELLANT
Rajendra Bhagat and Others		RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25, 25F

Citation : (2011) 2 JCR 217

Hon'ble Judges : M.Y. Eqbal, J;D.K. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the appellant No one appears on behalf of the respondents.
2. This appeal under Clause 10 of the Letters Patent Is directed against the judgment dated 18th June, 2003 passed in CWJC No. 3630/97 (R), whereby the learned Single Judge allowed the writ petition and set aside that portion of the award passed by the Labour Court, Ranchi in Reference Case No. 11/87, whereby while directing reinstatement, claim for back wages was refused.
3. The facts necessary for the purpose of deciding the appeal are that the concerned workmen were under the employment of the appellant. Their services were terminated. The workmen raised Industrial disputes and ultimately the matter was referred to the Labour Court for adjudication as to whether termination was legal and valid, vide Reference Case No. 11/87. The Labour Court in terms of award dated 10.3.1997, held that the termination of services of the workman was not justified and It was against the principle of Industrial Law and in violation of Section 25(F) of the Industrial Disputes Act. Accordingly, the order of termination was set aside and direction was given for reinstatement. The Labour Court on the question of payment of back wages came to a finding that after termination of services the concerned workmen were under gainful employment, for example two of the workmen were running the betel shop and

plying rickshaw respectively. Some of the workmen were doing cultivation. Some of the workmen did not examine themselves and did not make any evidence to the effect that they were not in gainful employment. Considering these evidences, the labour court held that the concerned workmen are not entitled to back wages. Aggrieved by that part of the award, the workmen filed the aforementioned writ petition. The learned Single Judge came to the conclusion that once finding was arrived at by the Labour Court to the effect that the order of termination is contrary to the provisions of Section 25 of the Industrial disputes Act, it would be deemed that the petitioners were always in service and, therefore, they would be entitled to all benefits that are associated with continuous service.

4. It is well settled that the principle of "equal pay for equal work" is undergone interpretation by the Supreme Court: and various High Courts. Recently the Supreme Court in the Case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, held that No precise formula can be laid down as to when back wages should be allowed. Entitlement of back wages cannot be automatic or mechanical merely because of awarding reinstatement. It depends on facts and circumstances of each case. Their Lordships further observed that onus to plead and prove that the concerned workmen were not gainfully employed during the period for which back wages have been claimed, are on the workmen.

5. Similarly in the case of M.P. State Electricity Board v. Smt. Jarlna Bee AIR 2003 SCW 3380 their Lordships observed that awarding of back wages cannot be a natural consequence of setting aside the order of termination or order of removal. Following the ratio laid down by the Supreme Court in the earlier decision In P.G.I. of Medical Education and research, Chandigarh v. Raj Kumar AIR 2001 SC 479, their Lordships held that Labour Court being the final court of facts came to a conclusion that in the facts of the case the workmen are not entitled to back wages. High Court in exercise of power under Article 226 of the Constitution of India need not go into the factual aspect of the matter and take a different view.

5. In the instant case, as noticed above, some of the workmen were gainfully employed and some of the workmen did not lead any evidence to prove that they were not gainfully employed, the learned Single Judge ought not to have held that the workmen are entitled to back wages. The impugned judgment, therefore, cannot be sustained in law.

6. For the reasons aforesaid, this appeal is allowed, the Impugned judgment passed by the learned Single Judge is set aside and the award passed by the Labour Court is restored.