
(2013) 02 JH CK 0073

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 3508 of 2001

M/s Bharat Coking Coal Ltd. and Another	APPELLANT
Vs	
The State of Jharkhand and Another	RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 29, 32

Citation : (2013) 138 FLR 491 : (2013) 2 JLJR 72 : (2013) 3 LLN 235 : (2013) LLR 999

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : A.K. Mehta and Amit Kr. Sinha, for the Appellant; Prabhash Kumar for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Jaya Roy, J.—Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the O.P. No. 2. This application has been filed for setting aside the order taking cognizance dated 4.1.2001 passed by Chief Judicial Magistrate, Dhanbad in connection with I.D. Case No. 4/2001 for the offence u/s 29 of the Industrial Disputes Act for non-implementation of the award dated 14.3.1991 passed in Reference Case No. 14/1989.

2. Counsel for the petitioners has submitted that Jagdish Bhuiya, Trammer of Gondudih Colliery was made to superannuate on 3.3.1987. The Trade Union raised Industrial dispute against the management and the dispute was referred to the Central Government Industrial Tribunal No. 1, Dhanbad for adjudication which was registered as Ref. Case No. 14/1989. In the said Reference Case both the parties settled their disputes and arrived at some settlement which are on the following terms:--

(a) That the concerned workman Sri Jagdish Bhuiya, Trammer will be referred to Apex Medical Board of the Management for assessment of his age. The age

assessed by the Apex Medical Board will be accepted by the concerned workman, the Union and the Management without any challenge for the purpose of his superannuation.

(b) That the concerned workman will be reinstated on his job if he will be found less than 60 years of age. In case it will be found that he had completed 60 years of age on the date of his superannuation, he will not be entitled to any relief.

(c) That in case the age is assessed to be less than 60 years of age on the date of his superannuation, the concerned workman will be paid 50% (fifty per cent) of his back wages from the date of his superannuation till he attained 60 years of age or till the date of the resumption of his duty as the case may be.

(d) That the concerned workman will report to the Management within three months from the date of the settlement for referring him to the Apex Medical Board.

3. On the basis of the said settlement, award was passed on 14.3.1991. According to the terms of the settlement, the said Jagdish Bhuiya was to appear before the Apex Medical Board for assessment of his age. He appeared before the Medical Board after expiry of long time i.e. on 11.3.1994 and the Board has found his age on that very date as 58 years. Thereafter, the said employee never resumed his duty till 10.3.1996 (the date he superannuated on attaining the age of 60 years). Before his superannuation, several notices were issued to him but he did not turn up. Thereafter, after three years, Complaint case was initiated against the present petitioners under Sections 18 and 32 of the Industrial Disputes Act by the Labour Enforcement Officer for implementation of the award dated 14.3.1991.

4. It is further submitted that according to the terms of the settlement, the workman had to resume his duty but he did not turn up till the date of his superannuation inspite of the repeated reminders. Therefore, the employer could not implement the award. It is further contended that on this very ground the Cr. M.P. No. 4586/2001 Reported in Ashok Mehta @ A.K. Mehta and Sri V.P. Gupta Vs. The State of Jharkhand and Labour Enforcement Officer(Central), Dhanbad, filed by other two co-accused, namely, Ashok Mehta @ A.K. Mehta and V.P. Gupta which was allowed after hearing both the parties including Labour Enforcement Officer (Central), Dhanbad and the entire criminal proceeding of I.D. Case No. 4/2001 initiated against them and also the order taking cognizance against them were quashed, Against the said order of this Court, O.P. No. 2 did not move before any higher Court. Thus, the said order has become final. Therefore, the petitioners against whom I.D. Case No. 4/2001 has been initiated for non-implementation of the aforesaid award should be quashed.

5. Counsel appearing for O.P. No. 2 has filed counter affidavit and annexed Annexure-A which is a letter dated 14.8.1995 addressed to the Regional Labour Commissioner, Dhanbad by the General Secretary, Bihar Colliery Mazdoor Sabha

wherein it is informed to the Regional Labour Commissioner that after continuous approach by the Union and the workman, the Management of Kusunda Area denied to implement the award. It is also contended that vide letter dated 18.4.1995 addressed to the Project Officer, Gondudih Colliery, the Area Personnel Manager, Kusunda Area requested the Project Officer to take necessary action from his end for the joining of the concerned workman on his duty. The aforesaid two letters are annexed with the counter affidavit as Annexures-A and D.

6. In reply, counsel for the petitioners has submitted that the authority concerned has also issued number of letters to the workman for resuming his duty but the workman did not turn up till the date of his superannuation. He has also pointed out that there is not a single letter to show that the workman was ready to resume his duty or he went to the authority concerned to resume his duty and the officer concerned refused to accept his joining. After hearing both the parties and perusing the materials on record and also considering the fact that another Bench of this Court has already quashed the entire criminal proceedings of I.D. Case No. 4/2001 including the order taking cognizance dated 4.1.2001 against other two co-accused, namely, Ashok Mehta @ A.K. Mehta and V.P. Gupta vide order dated 19.4.2012 passed in Cr. M.P. No. 4586/2001 and also considering the fact that the workman never turned up to resume his duty till the date of his superannuation, I allow this application and the order dated 4.1.2001 passed in I.D. Case No. 4/2001 by which cognizance for the offence has been taken against the present petitioners is set aside and the entire criminal proceeding of I.D. Case No. 4/2001 is also quashed.