

(2012) 03 JH CK 0198
In the Jharkhand High Court
Case No : L.P.A. No. 446 of 2003

M/s. Bharat Coking Coal Ltd.

APPELLANT

Vs

Their Workmen Being Represented by the President, National
Coal Workers Congress, Khas Kusunda Colliery Branch,
Dhanbad

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Citation : (2012) 134 FLR 93 : (2012) LLR 954

Hon'ble Judges : Prakash Tatia, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Anoop Kumar Mehta, for the Appellant; Binod Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

P. Tatia, C.J. and A.K. Singh, J.—Heard learned counsel for the parties. This L.P.A. has been preferred against order dated 3rd July, 2003 passed in W.P.(L) No. 3479 of 2001, whereby it has been ordered that petitioner shall pay the concerned workmen wages last drawn by them. This order was stayed by this Court vide order dated 2nd September, 2003. The facts in brief are that a dispute was referred to the Labour Court "whether the demand of the National Coal Workers Congress for employment on the roll of Khas Kusunda Colliery of M/s. B.C.C.L. of Smt. Girija Kamin and 225 others (as per details annexed with Annexure- U-I) with full back-wages is justified? If so, to what reliefs the workers are entitled?. The learned Central Government industrial Tribunal No. 1, Dhanbad, decided in favour of the workmen and passed the award accordingly.

2. The said award was challenged by the appellant-writ petitioner in W.P.(L) No. 3479 of 2001, wherein the impugned order dated 3rd July, 2003 to pay last drawn wages was passed. However, during the pendency of this L.P.A. the writ petition of the petitioner was dismissed. Against dismissal of writ petition of appellant L.P.A. No. 734 of 2003 was preferred, which was allowed and the award

was set aside.

3. The appellant's contention in L.P.A. is that in a case where regularisation is sought, Section 17-B is not applicable. Learned counsel for the petitioner relies upon the Division Bench judgment of this Court delivered in the case of M/s. Bharat Coking Coal Ltd. v. Their Workmen represented by the Secretary, Bihar Colliery Kamgar Union, Jharnapara and Anr., decided on 20th March, 2003. In the said judgment it has been observed that "where the workmen claimed that they were not the employees of an independent contractor or of an intermediary and they were to be treated as regular, employees of the Management. The Tribunal accepted the plea of the workmen and passed the Award and the correctness of the decision is pending adjudication in the writ petition filed by the Management. It is in that situation that was not treated a case of reinstatement so as to attract Section 17B of the Act. The Division Bench held, u/s 17B it is clear that its application to case where the award directs reinstatement and not otherwise and thereafter, after considering the order of the Hon'ble Supreme Court, held that in such case Section 17-B cannot be applied.

4. The learned counsel for the workmen vehemently submitted that the Hon'ble Supreme Court in another case while dealing with this very issue in SLP (Civil) No. 8382 of 1998 in the case of Employers Management of C.M.P.D.I.L. v. Workmen by National Coal Workers" Congress & Ors. vide order dated 6th January, 1999 while dismissing the SLP observed that the High Court has jurisdiction to issue direction for payment of salary to the employees in the regular scales of pay even if it is assumed that Section 17-B was not applicable. Therefore, in that situation, the order under challenge may not be interfered as the High Court had jurisdiction to pass order even if Section 17-B had no application.

5. We are of the considered opinion that when the petitioner workmen were not entitled to any relief under the Award in view of the final decision of this Court referred by the Division Bench in L.P.A. No. 734 of 2003 and the Hon'ble Supreme Court has only held that Court can pass order even if it is assumed that there is no application of Section 17-B order does not hold the petitioner-appellant. In view of the above order the impugned order dated 3rd July, 2003 is set aside and the L.P.A. is allowed.