

(2013) 04 CHH CK 0014

In the Chhattisgarh High Court

Case No : Writ Petition No. 4009 of 2000

M/s. Rajaram Maize Products

APPELLANT

Vs

Member Judge, Industrial Court and Others

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) 3 CGLJ 382 : (2013) 4 MPJR 57

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Single Bench

Advocate : P.K.C. Tiwari and Mr. Shashi Bhushan, for the Appellant;

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 15.02.2000 passed by the Industrial Court, Jabalpur in Appeal No. 531/MPJR/1998 and the ex-parte orders passed by the President, Industrial Court, Indore, transferring the appeals from the roster of Member, Industrial Court Raipur to the roster of Member, Industrial Court, Jabalpur. The facts, in brief, as projected by the petitioner are that the petitioner is a factory duly registered under the provisions of the Factories Act, for manufacture of starch, liquid glucose etc. The employees of the petitioner went on strike due to some dispute between the management and the employees. On the call of the management, some of the workers called off the strike and resumed their duties while some remained on strike despite the request made by the petitioner. Thus, the petitioner approached the Labour Court at Durg for declaration of the strike as illegal. The petitioner filed an interim application seeking direction to the workers who were on strike to immediately resume their duties. The Labour Court, Durg, passed an interim order on 01.03.1986 in Case No. 35/86, wherein the strike was prima facie held to be illegal and directed the employees to resume their duties. The said order was duly communicated to the employees alongwith notice by the Management to call off their strike. Thereafter, also notices were issued to the employees who did not join the duties, however, some of the employees did

not report for duty and left their job. Some of the employees of another firm namely Rajaram & Brothers, filed a case u/s 31(3) read with section 61 and 83 of the Madhya Pradesh Industrial Relation Act, 1960 stating therein that they were not allowed to do their duties and the petitioner was not paying wages from 01.03.1998. The petitioner filed its written statement denying the allegations made by the respondents and further stating that they were employees of M/s. Rajaram & Brothers, and therefore, are not the employees of the petitioner within the meaning of section 2(13) of the MPIR Act. Since the construction of factory was not the trade and business of the petitioner and the said respondents have not been engaged in the manufacturing and production of maize products. It was further contended that M/s. Rajaram Maize Products and M/s. Rajaram & Brothers are two separate concerns and the respondents were not employed with the petitioner. On the basis of evidence adduced before the Labour Court, the Labour Court vide order dated 03.06.1995 (Annexure P/7) held that so far as the respondents are concerned, their application was liable to be dismissed because the Labour Court was of the opinion that neither their attendance cards were filed in case nor they entered into the witness box nor the respondents have given any notice to produce documents. The Labour Court, Rajnandgaon, while deciding the case directed reinstatement of the 28 employees mentioned in para 19 of the judgment, without back wages and in alternative, the petitioner was directed to pay a sum of Rs. 17500/- as compensation to the said employees, by order dated 03.06.1995 (Annexure P/7).

2. The respondents, whose application was dismissed by the Labour Court, on the ground that they failed to prove that they were employees of the petitioner, preferred an appeal before the Industrial Court, Raipur. During pendency of the said appeal, the respondents moved an application before the President, Industrial Court, Indore, for transferring the appeal to some other court, on the ground of apprehension. The said application was considered by the then President, Industrial Court, without affording an opportunity of hearing to the petitioner and the same was transferred to Bench at Jabalpur. Subsequently, the member against whom the respondents had grievance, was transferred, thus, the petitioner moved an application for transfer of the appeal to the Bench at Raipur but the same was rejected.

3. It is the case of the petitioner that the President, Industrial Court, without any rhyme or reason, and without affording any opportunity of hearing, transferred the proceedings from one court to another court, while the similar prayer made by the petitioner was not accepted. The appeal filed by the respondents was allowed by the Industrial Court, by order dated 15.02.2000 (Annexure P/12) ignoring the fact the Labour Court has held that the application filed before it by the respondents was time barred. The relief of reinstatement was not awarded by the Industrial Court in Appeal No. 204/MPIR/1998.

4. Shri P.K.C. Tiwari, learned Senior Advocate appearing with Shri Shashi Bhushan, Advocate for the petitioner submits that the Bench of the Industrial

Court at Jabalpur had no jurisdiction to hear the matter as for the matters arising out of Rajnandgaon area, the appropriate Bench was Raipur. Section 96A of the MPIR Act does not empower the President Industrial Court to transfer a proceedings from one court to another. The order impugned herein in (Annexure P/12) is illegal as the earlier judgment of the Coordinate Bench in this case has held that the application filed by the respondents was barred by limitation and the Industrial Court, in Appeal No. 204/MPIR/1995 has not given the relief of reinstatement. Further, on one hand, the application of the respondents for transfer of the proceedings from Raipur to Jabalpur was entertained, while the application of the petitioner for transfer of the proceedings from Jabalpur to Raipur was rejected without any reason. Even the impugned order has been passed on the grounds which were never raised in the appeal and there was no occasion for the petitioner to rebut the same. Thus, the impugned order passed by the Industrial Court, deserves to be set aside wherein the petitioner was directed to reinstate the respondents without back wages.

5. The President, Industrial Court, is responsible for setting up of the Bench of the Industrial Court and the matter can be transferred from one Bench to another judiciously. No ground has been pleaded or proved that the transfer was done on any other extraneous consideration, except that the application of the petitioner for transfer to some other Bench was not allowed. As such, the Power of the President to constitute a Bench and place the matter, cannot be held as vitiated unless some malice or ulterior motive is pleaded and established. The contention that since the application of the petitioner for transfer of the case was not entertained and, as such, the same was vitiated, does not merit acceptance.

6. The Labour Court directed reinstatement of the applicants without back wages or alternatively compensation to the tune of Rs. 17,500/- to each employee individually in lieu of reinstatement and cost of the petition was also granted to them. The Labour Court, in its award has considered the ground of limitation and found that no written order was served on the employees for the misconduct as defined under Rule 12(1)(f)(k) and (1) of the M.P./C.G. Industrial Employment (Standing Orders) Rules, 1963. The question of limitation will not be relevant as it has to be only counted from the date of service of written order of termination. The Labour Court, relying on several decisions of the Supreme Court, has rightly come to the conclusion that the application filed by the respondents was within limitation. In appeal, the Industrial Court has rejected the objection of the petitioner affirming the view taken by the Labour Court.

7. I have also examined the facts as well as the judicial pronouncements relied on by the Labour Court. I do not find any infirmity or illegality in the conclusion. Thus, the order of the Industrial Court, upholding that the application was within limitation, is just and proper.

8. The Court has examined the case on merit also. There is no error, irregularity or illegality in holding that the removal of the respondents/employee was bad and, as such, direction of the Industrial Court to reinstate without back wages

passed in the impugned order does not suffer from any infirmity. In such facts situation, no interference is warranted. Resultantly, this petition being devoid of merit, is dismissed. No order as to costs.