

(2005) 01 JH CK 0006
In the Jharkhand High Court
Case No : L.P.A. No. 58 of 2003

Nand Kishore Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

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

Citation : (2006) 1 LLJ 264 : (2005) 1 JCR 404

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : N.K. Sahani and Rina S. Kumar, for the Appellant; Ananda Sen, for the Respondent

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This appeal has been preferred by the appellant against the order dated 20th November, 2002 passed by the learned Single Judge in C.W.J.C. No. 818 of 2000 (R), whereby and whereunder, the learned Single Judge dismissed the writ petition preferred by the appellant, on the ground that the appellant had already accepted the order of re-appointment without even a demur and thereby the Court refused to interfere with the impugned award.

2. The brief fact of the case is that the appellant was appointed on 28th May, 1979 as Fitter at Bokaro Steel Plant, Bokaro. He remained absent from duty without prior permission for more than fifteen days. The Management of Bokaro Steel Plant while held that he had abandoned the service, removed his name from the roll of the Company w.e.f. 1st October, 1980, by an order dated 15th/16th, December, 1980, under Clause 20 (XI) of the Standing Orders without following the provisions of Section 25F of the Industrial Disputes Act. Thereafter, at the instance of the Union i.e. Bokaro Karmchari Panchayat, Bokaro Steel City, the Government of Bihar vide Notification No. 4/D2- 14069/93 L, E & T-126, dated 24th January, 1994, referred the following dispute for adjudication.

"Whether the termination of service of Sri N.K. Singh Fitter, Staff No. 420935, T.P.P. and T.B.S. (501), Bokaro Steel Plant, Bokaro Steel City is proper? If not, what relief Sri Singh is entitled to?"

3. The learned Presiding Officer, Labour Court, Bokaro Steel City, on hearing the parties and appreciation of evidence led by the parties, by its award dated 29th July 1979, held the order of termination dated 15th/16th December, 1980 as illegal and nullity having passed in violation of Section 25F of the I.D. Act. He further held the order of termination as penal in nature, as also harsh and excessive. The Reference Case No. 17/94 was answered in favour of workman N.K. Singh (Appellant) and it was ordered to reappoint him but without any back wages and promotion nor any other consequential benefit was granted as the Presiding Officer held the appellant negligent towards his duty.

4. The appellant challenged the last part of the award dated 29th July, 1999 passed in Reference Case No. 17/94, before this Court in C.W.J.C. No. 818 of 2000. It was dismissed by the learned Single Judge on 20th November, 2002 on the ground that the appellant had accepted the order of reappointment without a demur.

5. After hearing the parties initially we allowed both the appellant and the respondents time to inform whether the matter can be resolved if the order of re-appointment is substituted as an order of reinstatement in service but without back wages, so that the intervening period is not treated as break in service and the workman (appellant) gets the other consequential benefits.

6. On 22nd December, 2004, on instructions, learned counsel for the appellant while agreed to accept the suggestion but the counsel for the Bokaro Plant requested to decide the appeal on merit. It was informed that the Management is against the reinstatement of the appellant.

7. Admittedly, the award dated 29th July, 1999, in Reference Case No. 17/94, has been passed in favour of the workman-appellant. Therefore, even if he is reappointed or reinstated, in his interest, the appellant was bound to rejoin the service. The award was dictated on 29th July, 1999, but it was pronounced on 16th December, 1999. The appellant having received the same immediately filed the writ petition on 27th March, 2000 against the last part of the award. In such background learned Single Judge should have decided the case on merit instead of refusal on the ground that the appellant had accepted the order of re-appointment.

8. Admittedly, the Management of Bokaro Steel Plant have not challenged the award dated 29th July, 1999, including the observation and finding of fact made by the learned Presiding Officer, Labour Court, Bokaro.

9. From the award, it appears that the workman-appellant took specific plea that he was sick during the period of absence and so he could not attend the duty. He informed of his illness to his superiors. Though the Management of Bokaro

Steel Plant opposed such submission, the learned Presiding Officer on proper appreciation of evidence came to a definite conclusion and held :

".... These allegation of the management is not at all correct vide Ext. of the management Ext. M-4, (not-sheet two pages dated 17.11.80 and 1.12.80) where sickness of N.K. Singh and receipt of such information has been admitted by the management. Therefore the termination of the workman from service on the pretext of striking-off the name from rolls of the company is not justified.

Admittedly there is no compliance of the provision of Section 25F, of the I.D. Act, hence termination from service of the workman is illegal and void. Admittedly management received intimation of sickness vide Ext. M-4, read with workman Exts. W 1, W 1/1" W 2, W 2/1, W 3. W 3/1.W 4, W 4/1, W 1/2, W 1/3. The question arises whether the management is justified in saying that the workman abandoned his service. Not at all and the denial of employment by the employer to the workman saying that the workman abandoned services also amounts to retrenchment and termination.

This is not a case of remaining absent exceeding 15 days vide Exts. W 1, W 1/1, W 1/2 (letters of information, W 2, W2/1, W3, W3/1, W4, W4/1 and W 4/2 and management has submitted documents of their own vide Note sheets Ext. M 4, wherein they have admitted receipt of information from the concerned workman about his sickness/injury etc. which prevented the workman from joining his service and also admitted by M.W. 1 para-10. Hence it is not a case of abandonment of service or to have left service at own accord of the workman.

The termination order dated 15/16.12.80 as it has not been passed in consonance with the certified standing orders of the company, order spells retrenchment and provisions of Section 25F of I.D. Act, have not been complied with, order is nullity for non-compliance of Section 25G, and 25-H of the I.D. Act, 1947, punishment is too harsh and excessive and delay in raising the dispute has been fully explained hence said order is illegal, invalid and not justified.

10. Though aforesaid observation was made by the learned Presiding Officer that the workman-appellant was sick and he had intimated about his sickness/injury etc. which prevented him from joining his service and held that it was not a case of abandonment of service or that the workman-appellant had left service at his own accord and further held that the order of termination was issued in violation of Section 25F of the I.D. Act, and thereby is illegal and nullity In law, but instead of re-instatement in service, the learned Presiding Officer ordered to reappoint the workman-appellant without back wages, seniority and promotion. Other consequential benefits were also denied to him.

11. The appellant has brought another fact to the notice of the Court, which has not been disputed by the Management of Bokaro Steel Plant, Bokaro. Another workman, Shri Yudhistir Singh Choudhary a Junior Way Bridge Operator of Bokaro Steel Plant, his service was also terminated on the ground that he abandoned the service having remained absent from 12th May, 1986 to 10th

January, 1994 i.e. for more than 7-1/2 years. In his case also similar reference was made, which was registered as Reference Case No. 13/96. The said case was also heard by same learned Presiding Officer. Labour Court, Bokaro Steel City.

In his case also, the order of termination was held to be illegal having issued in contravention of Section 25F of the I.D. Act. Curiously, in his case also the award was made on the same date i.e. 29th July, 1999 by the same Presiding Officer, Labour Court, Bokaro but, in his case, the learned Presiding Officer ordered for "reinstatement" with full back wages and consequential benefits which was also accepted by the Management of Bokaro Steel Plant.

12. In the present case, the counsel for the Management of Bokaro Steel Plant could not give any satisfactory explanation as to why different consequential relief was granted by the learned Presiding Officer, Bokaro on the same date, particularly when the case of appellant was on a better footing. In the case of Yudhistir Singh Choudhary, the allegation for unauthorised absence from duty was for the period of about 7-1/2 years but in his case, the order of reinstatement was passed with full back wages, but in the case of appellant, the order of re-appointment was issued without back wages, though the absent from duty was for about 1-1/2 months that too when the appellant's plea was accepted that he was sick and was under medical treatment.

Further, once an order of termination is held illegal and void, the automatic consequential effect will be "reinstatement in service." The question of "reappointment" does not arise, though it is open for the Labour Court to deny full or part salary of the intervening period during which the workman remained out of service.

12. For the reasons aforesaid, I hold that the last portion of the award dated 29th July, 1999 passed by the learned Presiding Officer, Labour Court, Bokaro in Reference Case No. 17/94 so far as it relates to denial of re-instatement and denial of consequential benefits thereto, as arbitrary, illegal and is, accordingly, set aside. I further hold that the workman-appellant is entitled for re-instatement in service with consequential benefits such as seniority, promotion from the date the juniors, if any, promoted etc., except the back wages for the period he remained out of service. The award dated 29th July, 1999 stands modified to the extent above.

13. The Management of Bokaro Steel Plant are directed, accordingly, to treat the workman-appellant as re-instated and to provide him with all the consequential benefits, as held above, within a period of three months from the date of receipt/production of a copy of this Judgment, except the back wages.

14. This appeal is allowed with the aforesaid observations and directions.

N.N. Tiwari, J.

15. I agree.