

(2008) 08 JH CK 0068
In the Jharkhand High Court

Pandey Singh

APPELLANT

Vs

Central Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Citation : (2008) 4 JCR 624

Hon'ble Judges : Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the order dated 01.02.2008 passed by the learned Single Judge in W.P(S) NO. 5524/2002 by which the learned Single Judge was pleased to dismiss the writ petition holding therein that the petitioner(appellant herein) had himself accepted the post of Pump Khalasi in place of Loader after which he was regularized as a General Mazdoor Category-1 along with 33 others and hence, the petitioner/appellant is not entitled to the relief claimed by him.

2. In order to high light the controversy involved in this appeal it may be relevant to state that the appellant had been appointed initially on 04.01.1967 as a Loader and in the year 1988 he suffered compression fracture of both lumber vertebra spine due to which he was declared medically unfit to discharge the duty of a Loader. The respondent-management of the C.C.L. on compassionate ground allowed him to be absorbed on the post of Pump Khalasi as he was unable to discharge the duty of a Loader.

3. Admittedly, the payment which the petitioner/appellant was receiving as a Loader was granted to him as Pump Khalasi also which was Rs. 50/- per day. When he continued to discharge the duty of a Pump Khalasi, by order dated 10.09.1990 as contained in Annexure-1 to the writ petition filed before the learned Single Judge, the petitioner/appellant along with 33 others were regularized as General Mazdoor Category-I and the petitioner/appellant was

placed in the regular scale of pay as Time Rated worker. Thereafter he was also granted promotion as a Time Rated worker from category-I to category-II. The petitioner/appellant thereafter also retired from service in the year 2007 but prior to his retirement he had filed writ petition bearing W.P.(S) No. 5524/2002 before the learned Single Judge where he challenged his regularization in General Mazdoor Category-I completely overlooking the fact that he had himself accepted his regularization as General Mazdoor Category-I way back in the year 1990 and thereafter had also accepted promotion in category-II. After which he has also now retired.

4. Curiously enough, although the petitioner/appellant had accepted the regularization as General Mazdoor Category-I and also accepted promotion in category-II Hfc raised a dispute that he was wrongly granted lower scale as he was getting higher pay-scale as a Loader and also as a pump khalasi. Therefore, denial of pay protection at the time of his absorption as a General Mazdoor Category-I was clearly illegal and arbitrary. In fact, Counsel for the petitioner/appellant went to the extent of contending that the petitioner/appellant had never accepted his regularization in the category of General Mazdoor which is clearly contrary to the facts on record as that was never the contention either before the learned Single Judge or before us in this memo of appeal nor it was averred by way of rejoinder to the counter affidavit filed by the respondents. In paragraphs 16 and 17 of the counter affidavit filed in this memo of appeal and also in paragraphs 24 and 26 of the counter affidavit filed in the writ petition it has been clearly mentioned that the petitioner/appellant had voluntarily accepted the regularization in the category of General Mazdoor. Neither before the learned Single Judge nor before us this fact was ever controverted either by way of rejoinder or by way of averment in the memo of appeal yet it was asserted that the petitioner/appellant had never accepted his regularization as General Mazdoor Category-I which does not inspire any confidence for if at all this was a correct position, the same ought to have been raised by the petitioner/appellant either by way of rejoinder or at least by way of averment in the writ petition or in this memo of appeal. Hence the contention that the petitioner/appellant never accepted the regularization as Time Rated worker in the category of General Mazdoor is out rightly rejected.

5. The pay-scale therefore, which was available for the Time Rated workers in the category of General Mazdoor having already been availed by the petitioner/appellant and after having retired from service, he could not have been permitted to raise the dispute after twelve years as the order of regularization was passed way back in the year 1990 i.e. on 10.09.1990. What prompted the petitioner/appellant to raise this controversy after twelve years of his absorption is beyond comprehension of this Court.

6. Therefore, the petitioner/appellant having accepted the post of Pump Khalasi and having availed the salary of the Time Rated worker in the General Mazdoor Category-I, he cannot be permitted to turn around and contend that he should

now be granted the scale of Pump Khalasi. It was his conscious decision that he was regularised in the General Mazdoor Category-I.

Hence, for the reasons recorded in the order of the learned Single Judge as also for the reasons stated here-in-above, we find no merit in this appeal. It is accordingly dismissed.