

**(2014) 08 JH CK 0029**

**In the Jharkhand High Court**

**Case No : W.P.(S) Nos. 6186 and 6198 of 2010**

Punu Mudi

APPELLANT

Vs

The Coal India Ltd.

RESPONDENT

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**Date of Decision :** 08-08-2014

**Acts Referred:**

**Citation :** (2014) 4 JLJR 67

**Hon'ble Judges :** Aparesh Kumar Singh, J

**Bench :** Single Bench

**Advocate :** U.S. Agarwal and Kalyan Banerjee, Advocate for the Appellant;  
Rajesh Lala and Arpit Kumar, Advocate for the Respondent

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## **Judgement**

Aparesh Kumar Singh, J.—These two writ petitioners have sought a direction upon the Respondent-Eastern Coalfield Ltd. to make payment of back wages for the period from 19th August, 1994 to 29th April, 2010 and 19th August, 1994 to 25th April, 2010 respectively with allowances. These two petitioners were in service under the Respondent-E.C.L. from 31st March, 1973 as Pump Khalasi and 10th July, 1972 as Electrical Supervisor respectively before they were terminated by an order dated 19th August, 1994 by the respondent-employer. There were repeated journey from Kolkatta High Court to Apex Court earlier on the issue relating to challenge of their termination order. Ultimately when the Apex Court dismissed the Special Leave Petition of one of the petitioners, in the second round, the petitioners preferred writ petitions being W.P.(S) No. 5913 of 2006 and W.P.(S) No. 5923 of 2006 respectively before this Court challenging the said termination order. Incidentally, the Apex Court while dismissing the Special Leave Petition had given liberty to the petitioners to approach the appropriate forum for relief in accordance with law. That was the reason for these two petitioners to prefer the aforesaid writ petitions, in which common prayer had been made for quashing of the impugned order of termination with a prayer for a direction upon the respondents to reinstate them in service with full back wages and grant them all consequential relief, for which they are entitled in accordance with law.

2. As is evident from the first paragraph of the judgment dated 8th May, 2009 passed in the case of these petitioners earlier, the learned Single Judge of this Court, quashed the order of termination dated 19th August, 1994 on the grounds that principles of natural justice were not adhered by concerned authority of the respondents in passing the impugned order of termination. While doing so, at the concluding, paragraph No. 21, learned Single Judge gave a liberty to the respondents to take a fresh decision in the matter in accordance with the procedure laid down under the law after giving a reasonable opportunity of hearing to both the petitioners and allowing them to submit their fair defence.

3. The respondent-E.C.L. went in appeal being L.P.A. No. 345 of 2009 which was disposed of on 4th December, 2009 without interfering with the judgment of learned Single Judge. When the petitioners were not being reinstated, one of the petitioners preferred a Contempt Case (Civil) No. 588 of 2009, in which by an order dated 18th December, 2009, the respondents were directed to accept the joining of both the petitioners, however with a liberty to take any further decision in consonance with the liberty given to them under the original judgment passed in the writ petition. Subsequent to their joining accepted on 29th April, 2010 and 25th April, 2010 respectively, both the petitioners were proceeded against by a Memo of charge and after conclusion of the departmental inquiry, the Disciplinary Authority upon service of second show cause notice has passed an order of dismissal of both the petitioners.

4. The petitioners by way of their supplementary affidavit have indicated that they have preferred appeal before the Appellate Authority against the dismissal order. In the background of the aforesaid facts, the writ petition has been argued on behalf of the petitioners and contested by the respondents on the question of grant of back wages for the period the petitioners have remained out of service from 19th August, 1994 to 29th April, 2010. The plea of the petitioners is based upon the judgment rendered by Hon''ble Supreme Court in the case of R.S. Misra Vs. Union of India (UOI) and Others, and in the case of State of Uttar Pradesh Vs. Dayanand Chakrawarty and Others, . They have also relied upon the judgment of Allahabad High Court in the case of Kailash Kumar Mishra v. State Public Services Tribunal, Lucknow & Ors., reported in 2013(3) SLR 778 (All.) Based upon such decision, it has been argued by the petitioners that once the termination of petitioners was set aside they were consequentially entitled to entire back wages for the period they had remained out of service, as they were prevented by the respondents from discharging their duties. It has been submitted that principles of "no work no pay" would not be applicable to such employee like the petitioners, who have been prevented from discharging their duties on the fault of the respondents, as the original termination order was set aside by this Court earlier.

5. Learned counsel for the respondents has relied upon two decisions rendered in the case of Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, and in the case of A.P.S.R.T.C. and Another Vs. S.

Narsagoud, to resist the aforesaid prayer. According to the respondents, when the same prayer made in the earlier writ petitions preferred by the petitioners was categorically not allowed though the order of termination was set aside and they were directed to be reinstated, it is not open to them to raise this plea once again in a fresh writ petition. They have also relied upon a judgment of Division Bench of this Court in the case of *Minakshi Kumari v. the State of Jharkhand & ors.*, reported in (2010) 3 J.L.J.R. 159 (Jhr.) at paragraph 6, in support of the aforesaid contention. It is submitted that petitioner had not preferred any Letters Patent Appeal or review if such a relief was not granted in the writ proceeding by learned Single Judge when the termination order was set aside. On these grounds, the petitioner's claim has been rejected.

6. Having considered the rival submissions of the parties, and the judgments relied upon by them, this Court is of the opinion that the petitioners in the present writ petitions are not entitled to the relief claimed for the following reasons. As indicated earlier such a prayer was consciously made in the writ petition being W.P.(S) Nos. 5913 of 2006 and 5923 of 2006 while they had challenged their order of termination dated 19th August, 1994. Learned Single Judge of this Court while disposing of the writ petition and quashing the order of termination had granted liberty to the respondents to take a fresh decision in the matter in accordance with law after giving opportunity of hearing to the petitioners. However, the specific prayer for grant of back wages was not allowed. The petitioners if were aggrieved by the partial relief granted to them had occasion to challenge the same before learned Division Bench in Letters Patent Appeal or to seek a review of the said judgment on the available ground of review, which they never did. Petitioners at the same time in the present writ petitions also have not made any statement that they were not gainfully employed during the said period. So far as the judgment relied upon by the petitioners in the case of *R.S. Mishra (supra)* is concerned, perusal of the same indicates that when the termination order of the same appellant was set aside in the first instance in CWP No. 3354/1994 by the learned Single Judge of the Delhi High Court, the respondents therein were directed to reinstate him in service forthwith with all consequential benefits from the date of dismissal while granting them liberty to proceed against the said petitioner afresh as per rules.

7. In the instant case there is a clear distinction in the direction passed in the petitioners' own case challenging the order of termination where they had also made a prayer for grant of full back wages with all consequential relief. The learned single Judge as aforesaid did not allow the other prayer made by the petitioners for grant of full back wages with all consequential relief. The other judgment relied upon by the petitioner in the case of *State of Uttar Pradesh (supra)* also is of no help to the petitioners as it has been rendered in a case where the challenge was not in relation to any termination order passed in a disciplinary proceeding, where reinstatement was ordered. Perusal of the said judgment indicates that the relevant rules, which were under consideration, had provided two ages of superannuation of the employees depending upon source of

recruitment, which was struck down by the Hon"ble Supreme Court in the said case. The Hon"ble Court, therefore, held that principle of "no work no pay" would not be applicable to the case of employees therein as it was the employer-appellant who had prevented the employees from discharging then-duties while they were out of service on that account. On the other hand, the judgment relied upon by the petitioners in the case of Allahabad High Court is also distinguishable on the same principle.

8. The judgments relied upon by the respondents, on the contrary, support the view taken by this Court. In both the judgments as it appears that though the orders of termination were set aside but no consequential relief of grant of back wages was allowed to the concerned employees. Paragraph 9,10 and 11 of the judgment rendered in the case of Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, is illustrative of the legal position so far as the present claim of the petitioners is concerned.

9. In these circumstances, therefore, the petitioners have failed to make out a case for directing the respondents to make payment of back wages for the period they have remained out of service pursuant to their termination order dated 19.8.1994 earlier, which was set aside by judgment dated 8.5.2009 in their case.

10. Accordingly, both the writ petitions being devoid of merit are dismissed.