

(2015) 04 JH CK 0113
In the Jharkhand High Court
Case No : Writ Petition (S) No. 972 of 2006

Ram Bilash Sharma

APPELLANT

Vs

B.C.C.L. and Others

RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Citation : (2015) 4 AJR 444 : (2015) 3 JLJR 70

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : K.K. Srivastava, for the Appellant; A.K. Mehta and Sharad Kaushal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J—In this writ application, the petitioner has prayed for a direction upon the respondents to make payment of arrears of salary from December, 1999 to April, 2001, which was the period during which, the petitioner had worked as Night Guard/Security Guard as well as the arrears of salary for the period from April, 2001 to 04.09.2003, which is the intervening period between the dismissal of the petitioner from service and his subsequent reinstatement.

2. The petitioner was appointed as a Casual Labour/Helper in the year 1971 and his services were regularized with effect from 24.09.1983 as Coke Loader in Grade-III post. Subsequently, the petitioner was promoted to the post of Security Guard in T. & S. Grade-H vide office order dated 25.12.1999. Thereafter, a criminal case was instituted with respect to an incident which had taken place on 28.03.2001, which was construed to be an act of misconduct on the part of the petitioner and by invoking clause-28 of the certified standing order of the Company, which was applicable to the workmen of the establishment under respondents-BCCL, the petitioner was discharged from service. The petitioner was also proceeded against in a criminal case being G.R. Case No. 901 of 2001, which resulted in acquittal vide judgment dated 08.01.2003 passed by the

learned Judicial Magistrate, 1st Class, Dhanbad. On account of the acquittal, the petitioner made an application for reinstatement in service along with all consequential benefits and back wages and subsequent thereto vide office order dated 25/26.08.2003, the petitioner was reinstated in service on the basis of a memorandum of a tripartite settlement dated 26.06.2003. The petitioner, on his reinstatement, had made request before the respondents for payment of arrears of salary for the period he was not in service.

3. Heard Mr. K.K. Srivastava, learned counsel for the petitioner and Mr. Sharad Kaushal, learned counsel appearing for the respondents-BCCL. It has been submitted by the learned counsel for the petitioner that although, the petitioner was discharged from service but subsequently on account of his acquittal in the criminal case, he was reinstated but the back wages and the consequential benefits were never made available to him. It has further been submitted that although in the counter affidavit, it has been averred that the reinstatement was on the basis of a tripartite settlement, in which, a clause was inserted that the petitioner shall not be entitled to any back wages during the intervening period the petitioner was out of service but the petitioner was never a member of the Union, which was one of the parties to the tripartite settlement and in such circumstances, the petitioner, being not a party to the agreement, cannot be foisted with the terms and conditions arrived at in course of the settlement. In support of his contention learned counsel for the petitioner has referred to the decisions in the case of Anwarul Haque in Short A. Haque Vs. Steel Authority of India Limited and Others, (2013) 2 AJR 786 : (2013) 2 JLJR 75 wherein it was held that while considering the application of reinstatement in service after the acquittal in a criminal case, direction was given to the respondents to pay 50% of the back wages to the petitioner and in the case of ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of India (UOI) and Others, AIR 2006 SC 296 : (2006) 2 CTC 589 : (2006) 108 FLR 7 : (2005) 9 JT 413 : (2005) 9 SCALE 174 : (2005) 12 SCC 738 : (2006) 1 UJ 74 : (2005) AIRSCW 5785 : (2005) 7 Supreme 678 wherein it was held that where a settlement is arrived at by an agreement between the employer and the workmen other than in course of conciliation proceeding shall be binding on the parties to the agreement in view of the clear language used in sub-section 1 of Section 18 of the Industrial Disputes Act, 1948.

4. The learned counsel for the respondents-BCCL, on the other hand while referring to the counter affidavit, has submitted that the petitioner does not have a case for interference by this Court on account of the fact that the petitioner had raised an industrial dispute before the Assistant Labour Commissioner (C), Dhanbad and a conciliation had taken place, which culminated in a tripartite settlement and since Union of the petitioner was also a party to the said settlement, as such, the terms and conditions arrived at have to be adhered to by the petitioner. It has also been submitted that pursuant to the tripartite settlement, the petitioner has been reinstated in service and at this stage, the petitioner cannot raise an issue with respect to the arrears of the salary for the

period from April, 2001 to 04.09.2003.

5. After hearing the learned counsel for the parties, it appears that the petitioner was discharged from service and a criminal case was also launched against the petitioner, which, however, resulted in his acquittal. Respondents-BCCL, in their counter affidavit have categorically stated that at the instance of the petitioner, who had raised an industrial dispute, the matter was referred for conciliation before the Assistant Labour Commissioner (C), Dhanbad in I.D. Case No. 1/(27)/2002-E-3 and thereafter a tripartite settlement was arrived at and consequent to the same, the petitioner was taken back in service with effect from 25/26.08, 2003. The memorandum of tripartite settlement has been brought On record by the respondents-BCCE by way of supplementary counter affidavit, in which, in terms of the settlement, it has been categorically stated that the concerned workmen shall not be entitled for any wages for the period between dismissal and subsequent reinstatement and the period of his absence from the date of dismissal to the actual resumption shall be treated as dies non.

6. In view of the specific terms and conditions in the memorandum of tripartite settlement, the petitioner cannot, now,, harp over the fact that the respondents have denied him the salary during the intervening period he was out of service. To supplement his contention, the learned counsel for the respondents, in course of his argument, has referred to certain judgments, which are as follows;

(i) In the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, AIR 2000 SC 469 : (2000) 84 FLR 162 : (1999) 9 JT 377 : (2000) 1 LLJ 247 : (1999) 7 SCALE 322 : (2000) 1 SCC 371 : (1999) 5 SCR 87 Supp : (2000) 1 SLJ 194 : (2000) 1 UJ 685 : (1999) AIRSCW 4626 : (1999) 10 Supreme 344 , which is relevant, is quoted hereunder;

"The Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. The question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the Management, the Labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not that demands, which are left out, should be specifically mentioned in the settlement. It is not the contention of the Workers' Union that the tripartite settlement is in any way mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the Act and as such was not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly slum that the settlement was arrived at during the conciliation proceedings."

(ii) In the case of M.L. Binjolkar Vs. State of Madhya Pradesh, (2005) 6 JT 461 : (2005) 3 LLJ 524 : (2005) 6 SCC 224 : (2005) SCC(L&S) 827 : (2005) 1 SCR 765 Supp : (2006) 1 SLJ 59 the same was with respect to payment of back wages and it was held that the payment of back wages would depend on several

factors and Court has to weigh the pros and cons on each case and take a pragmatic view.

(iii) In the case of State Bank of India and Another Vs. Mohammed Abdul Rahim, (2013) 14 JT 120 : (2013) 9 SCALE 222 : (2013) 11 SCC 67 : (2013) 4 SCT 133 it was held that subsequent acquittal though obliterates conviction but does not operate retrospectively to wipe out the legal consequences of the conviction under the Act. The entitlement to back wages has to be judged on the aforesaid basis.

7. The judgments, which have been referred to by the learned counsel for the petitioner has mostly dealt with the reinstatement and payment of back wages. However, the factual position with respect to the present case and the cases under reference, are quite different inasmuch as in the present case, the arrears of salary or back wages were not paid to the petitioner in view of the settlement arrived at between the parties. So far as the decision in the case of ANZ Grindlays Bank Ltd. (supra) is concerned, while considering Section 18 of the Industrial Disputes Act, the Hon"ble Supreme Court had held that the settlement is not binding upon the members of the concerned Union, who is not a party to the same. While referring to the above-noted judgment, the learned counsel for the petitioner has tried to stress upon the point that the petitioner was not a member of the Union, who had taken part in the tripartite settlement and, therefore, such clause denying the payment of arrears of salary to the petitioner during the period he was out of service was not binding upon the petitioner. However, this contention, in my view, is not sustainable as the same seems to be an afterthought which is apparent from the fact that it was at the instance of the petitioner, the conciliation proceedings were effected and resultantly memorandum of settlement was arrived at. The petitioner has failed to show any document on record so as to judge that at any point of time during the conciliation proceeding, the petitioner had raised the issue of his not being a member of the Union. The settlement resulted in reinstatement of the petitioner, which the petitioner gladly accepted but subsequently on the basis of a flimsy ground, the petitioner has tried to raise an issue with respect to payment of salary for the intervening period which matter has already been settled. This conduct of the petitioner seems to be absolutely unjustified and without any legal basis.

8. In such circumstances, therefore, the respondents-BCCL have acted in a legal and proper manner in denying the arrears of salary to the petitioner during the period he was out of service. This writ application fails and, accordingly, the same is, hereby, dismissed.