
(2019) 01 JH CK 0043

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 147 Of 1996 (r)

Rengo Kurli And Ors

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 17-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 394
Indian Penal Code, 1860 — Section 34, 147, 148, 149, 201, 302, 380, 411, 461
Evidence Act, 1872 — Section 118

Citation : (2019) 01 JH CK 0043

Hon'ble Judges : Aparesh Kumar Singh, J;Kailash Prasad Deo, J

Bench : Division Bench

Advocate : Mokhtar Ahmad, Anand Kumar Pandey

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 the Constitution of India wherein award dated 10.09.2016 passed in Reference Case No. 07 of 2008 whereby and whereunder the reference has been answered in favour of the petitioner by holding the dismissal as unjustified, directing the management within State-workman with continuity in service along with 25 per cent back wages from the date of his dismissal i.e. since 03.02.1989 till the date of raising the Reference i.e. on 23.06.2006 with the date of his actual date of retirement.

2. The brief facts of the case is that the respondent-workman have been appointed as post Khalasi by virtue of an order passed on 08.08.1073, promoted on the post of Crane Operator (N3) vide order dated 31.12.1984 but thereafter he is being absent from his duty unauthorizedly but taking the lenient view he has been allowed to discharge his duty by giving warning by virtue of decision taken vide letter dated 3/4 March, 1987. The respondent-workman has not made and again absented from duty, in consequence thereof, charge-sheet was issued on 2/3 March, 1987 and the management considering the habitual nature of unauthorized absence, have issued charge-sheet by appointing an enquiry officer

but he has not appeared before him. The proceeding has been concluded and the charge levelled against the petitioner has been found to be proved in consequence thereof, he has been dismissed from his service w.e.f. 03.02.1989 on the ground of unauthorized absence.

3. Respondent-workman being aggrieved with the same has raised a dispute which has culminated into Reference Case No. 07 of 2008 wherein the following reference has been made:-

"Whether the dismissal of Sri Sitaram Manjhi, Staff No. 269630 by the management of SAIL, Bokaro Steel Plant is justified? If not then what relief workman is entitled to?"

The Labour Court, by answering the reference, has directed the management to reinstatement the workman in service along with further direction to pay 25% back wages from the date of dismissal i.e. from 03.02.1989 till 23.06.2006 and thereafter 50% of back wages with effect from 24.06.2006 to the date of actual retirement in case the workman has not worked the age of superannuation he shall be entitled for all increments and revision in pay;

4. The management aggrieved with the same is before this Court by invoking extraordinary jurisdiction conferred to this Court under Article 226 of the Constitution of India on the ground that the Labour Court has not appreciated properly the fairness of the departmental enquiry, the dispute has been raised after lapse of 14 to 15 years and therefore, the question of limitation has not been considered, the workman is the habitual absentee and therefore, the management has taken perfect decision in submitting him from service.

5. The workman has been represented by the learned counsel who has submitted that there is no infirmity in the award. The Labour Court has passed the award by taking into consideration the fact that there is a domestic inquiry which has not been conducted fairly.. He submits that the jurisdiction of writ court under Article 226 of the Constitution of India, so far as the making interference in the finding of the award by the Labour Court or the Tribunal is concerned, it can be exercised only when there is any perversity in the finding but no such ground has been raised by the petitioner management, hence the award may not be interfered with.

6. Heard learned counsel for the parties and after appreciation of their rival submissions it is evident from the material available on record that dispute has been raised by the respondent-workman questioning his dismissal. The Tribunal has answered the reference in favour of the workman, wherein the order of reinstatement along with the back wages, has been passed that 25% back wages would be paid from the date of making the reference till the date of reinstatement and 50% from the date of reinstatement till the date of retirement, since the petitioner has been superannuated on attaining the age of superannuation in course of dismissal.

7. There is no dispute over the position of law that the scope of Article 226 of the Constitution of India, in interfering with the award is very less and it can only be exercised if there is error apparent on the face of record or if it is without jurisdiction and if there is perversity in the finding.

8. It needs to refer herein that the scope of interference of the High Court to issue writ of certiorari sitting under Article 226 of the Constitution of India is very limited, as has been discussed by Hon'ble Supreme Court in the case of Syed Yakoob Vrs. Radhakrishnan reported in A.I.R. 1964 477 Supreme Court wherein at paragraph no.7 their Lordships have held as follows:-

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque*, 1955-1 SCR 1104 : ((S) AIR 1955 SC 233); *Nagendra Nath v. Commr. Of Hills Division*, 1958 SCR 1240 : (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168.

9. Reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Hari Vishnu Vs. Ahmad Ishaque and Ors. reported in 1955 Supreme Court 233 wherein at Paragraph-21, which is quoted hereinbelow :-

"With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Writ of certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari."

10. In another judgment of Hon'ble Apex Court in the Case of Sawarn Singh Vrs. State of Punjab reported in (1976) 2 SCC 868 their Lordships while discussing the power of writ under Article 226 for issuance of writ of certiorari has been please to hold at paragraph nos.12 and 13 as under:

"12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra).

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

11. In another judgment rendered by Hon'ble Supreme Court in the case of

Heinz India (P) Ltd. Vrs. State of U.P. Reported in (2012) 5 SCC 443 their Lordships have been please to hold at paragraph no.66 and 67 as under:-

"66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant "the feel of the expert" by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land.

67. In Dharangahara Chemical Works Ltd. v. State of Saurashtra this Court held that decision of a tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in Thansingh Nathmal case where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce for which the writ is claimed."

12. In the case of Thansingh Vrs. Supdt. of Taxes reported in A.I.R. 1964 1419 Supreme Court, Hon'ble Supreme Court has been pleased to hold that the High Court does not jointly determine question which requires elaborate examination of evidence to establish the right to enforce for which the writ is claimed.

13. In another judgment rendered by Hon'ble Apex Court in the case of Pepsico India Holding (P) Ltd. Vrs. Krishna Kant Pandey reported in (2015) 4 SCC 270 their Lordships while discussing the scope of Article 226 and 227 of the Constitution of India in the matter of interference with the finding of the tribunal has been please to hold by placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao Vrs. Ashalata S. Guram reported in (1986) 4 SCC 447 at para 17 has held as under:-

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal V. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J, as the learned Chief Justice then was, observed at page 1301 of the report as follows:

..... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose V. Commr. Of Hills Division and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeking that the tribunal functions within the limits of its authority."

In the light of this proposition of law so far as the case in hand is concerned, this court has gathered from the material available on record that the tribunal has considered the fact about the absentee, the pleadings of their domestic inquiry and the allegation of unauthorized absence, the Labour Court has appreciated the different documents which has been placed before it from which it is further evident that the documents have been placed before the management but no oral evidence has been made by the management either before the domestic enquiry or before the Tribunal, therefore, the Labour Court has reached to the conclusion that the enquiry was not fair and also against the principles of natural justice, in view of such finding the order of dismissal since was passed upon the finding given in the domestic enquiry. The Labour Court has reached to the conclusion that the order of dismissal based upon enquiry which has not found to be fair, cannot be allowed to stand.

14. According to the considered view of this Court that when the foundation will go, the consequence will automatically vanish.

15. Herein, in the instant case the domestic inquiry has been conducted against the petitioner in which the charges levelled against the petitioner has been found to be proved, the petitioner has questioned the fairness of domestic enquiry which has been said to be not fair vide order dated 24. 07.2010 and admittedly the petitioner-management has not challenged the aforesaid order dated 24.07.2008 meaning thereby the petitioner-management has accepted that the domestic enquiry as not fair.

16. In view thereof, once domestic enquiry has been held to be unfair and the management has accepted the order, now the management come forward to assail the finding of the Labour Court since the order of dismissal was totally based upon the finding of the domestic enquiry and once the domestic enquiry has been held to be unfair any punishment based upon such enquiry will be said to be not sustainable. In view thereof, this Court does not find any infirmity in the award therefore, refrains itself to interfere with the impugned award by applying the principle as has been held by the Hon'ble Apex Court as indicated hereinabove.

17. This writ petition is, accordingly, dismissed.