

(2013) 05 JH CK 0036
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2920 of 2002

R.S. Singh

APPELLANT

Vs

The Managing Director, Bokaro Steel Plant, Sail

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Contract Act, 1872 — Section 23

Citation : (2013) 4 AJR 354 : (2013) 3 JLJR 156

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Niraj Nayan Mishra, for the Appellant; Rajiv Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking following reliefs: (i) Declare the settlement of respondent with the(sic) arbitrary, unjust, unfair, regarding waiver of 50% back wages other benefits.

(ii) Direct the respondent to pay 50% back wage; and other benefits like, bonus, incentive, reward, canteen earneed leave, etc.

(iii) Issue the order/direction to pay the compensation for mental agony, harassment, made by the said company.

(iv) Issue the appropriate direction to the respondent to pay all cost of this petition.

(v) Issue any further order/orders or direction/directions as this Hon''ble Court may deem fit and appropriate on the fact and in the circumstances of this case.

The brief fact of the case are that, the petitioner was appointed as a Store Keeper in the year 1970 and a charge-memo was served upon him on 21.12.1982 on the allegation of that of the Company's property, dishonesty, etc. By order dated 05.07 1980, the petitioner was dismissed from service and

therefore, he raised an industrial dispute. The learned Labour Court passed an order on 04.04.1996 in Reference Case No. 11 of 1988, whereby the order of dismissal was held unjustified. The Management was directed to reinstate the petitioner with full back wages and other consequential benefits within three months from the date of pronouncement of award. It appears that by order dated 22.08.1996, the petitioner was reinstated in service. However, such office order was made subject to outcome of the writ petition, which the company proposed to prefer against the order of the Labour Court. It appears that on 30.08.1996, the petitioner wrote a letter to the Management indicating his inability to contest another case and he requested for compromise as he was ready to forgo 50% of back wages, if his seniority, promotion and consequential benefits were granted to him. Challenging the alleged compromise entered into between the Management and the petitioner and the denial of 50% back wages, the petitioner has moved this Court by filing the writ petition. 2. A counter-affidavit has been filed on behalf of the respondent stating that the petitioner has suppressed several vital facts. The letter written by him is subsequent to the order of reinstatement of the petitioner in service. It was open to the Management to take the order of the learned Labour Court in appeal, however in view of the letter written by the petitioner, the Management did not challenge the order of Labour Court by filing Writ Petition Th(sic) all the consequential monetary benefits were given to the petitioner which is reflected in order dated 07.11.1996. On 17.04.1997 the petitioner again wrote a letter for grant of entire earned leave along with encashment of earned leave and it was also given to him In these facts, it has been stated that the writ petition is fit to be dismissed

3. Heard counsel appearing for both the parties and (sic)used the documents on record.

4. Mr. Niraj Nayan Mishra, learned counsel appearing for the petitioner has submitted that in view of Section 23 of the Contract Act, the alleged compromise is not a valid contract and is a void contract. The learned counsel appearing for the petitioner has further contended that in view of the Award of the Labour Court and (In decisions of the Hon'ble Supreme Court, there was every likelihood that the grant of full back wages to the petitioner as ordered by the learned Labour Court would have been affirmed by the Appellate Court also. The petitioner under duress had written letter dated 30.08.1996 proposing to forego 50% of back wages. The said letter dated 30.08.1996 is an outcome of implied coercion from the management whereby in the office order dated 22.08 1996 while reinstating the petitioner it was indicated that such order was subject to outcome of the writ petition which the management proposed to file challenging the order dated 04.04.1996 passed by the learned Labour Court.

5. Mr. Rajiv Ranjan, learned counsel for the Respondent has contended that in view of the fact that the petitioner accepted all the monetary benefits subsequent to his reinstatement in service, would stop him from contending that he can claim full back-wages as ordered by the learned Labour Court. The

Management was misled by the petitioner by writing letter dated 30.08.1996 and therefore, the petition challenging the award of the Labour Court could not be filed in the High Court. He has reiterated the stand taken in the counter-affidavit filed on behalf of the respondent and submitted that after long lapse of 5 years, the petitioner has approached this Com. and therefore, this writ petition is liable to be dismissed on the ground of laches and delay.

6. Countering the contention raised on behalf of the petitioner, the learned counsel appearing for the respondent has submitted that the Hon"ble Supreme Court has not laid down the law that full back wages is the normal rule in cases where workman has been illegally terminated. The learned counsel has further submitted that there are cases in which either 50% back wages has been approved or only 25% back wages has been allowed by the Hon"ble Supreme Court and there are cases in which no back wages has been awarded to the workman even after reinstatement in service. To fortify his contention the learned counsel appearing for the respondent has relied on decisions reported in *Manager (Now Regional Director) R.B.I. Vs. Gopinath Sharma and Another*, , *U.P.S.R.T.C. Vs. Mitthu Singh*, and *Bharat Coking Coal Ltd. through Management Vs. National Coal Workers Congress through Vice President*, .

7. It is not in dispute that on 05.07.1986, the petitioner was dismissed from service and by order dated 04.04.1996, the petitioner has been ordered to be reinstated in service with full back wages. The petitioner, after his reinstatement in service by office order dated 22.08.1996, has written a letter to the Management stating that he is ready to forgo 50% of the back wages instead of full back wages which was ordered by the learned Labour Court. I am of the opinion that the contention of the learned counsel appearing for the petitioner that, in view of Section 23 of the Contract Act, the letter written by the petitioner would not bind him, is not tenable. The letter dated 30.08.1996 is not denied by the petitioner and it is also a fact that In view of the letter of the petitioner, the Management did not file the petition in the High Court challenging the order of learned labour Court.

8. Adverting to the contention raised by the counsel appearing for the parties with respect to grant of back wages. I find that the Hon"ble Supreme Court in "*U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, , has observed:

27. In *Hindustan Tin Works (P) Ltd. v. Employees* this Court merely held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law.

9. In *J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another*, , the Hon"ble Supreme Court has held as under:

17. "There is also a misconception that whenever reinstatement is directed, "continuity of service" and " consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply then judicial mind to the facts and circumstance to decide whether "continuity of service" and/of "consequential benefits" should also be directed. We may in this behalf refer to the decisions of this Court in A.P. SRTC v. S. Narsagoud, A.P. SRTC v. Abdul Kareem and Rajasthan SRTC v. Shyam Bihari Lal Gupta.

10. I further find that in several cases, the Hon"ble Supreme Court has approved grant of only 50% back wages to the, employees. who were reinstated in service State of Uttar Pradesh and Others Vs. Ram Daras Yadav, . It is thus clear that the contention of the learned counsel appearing for the petitioner that there was every likelihood of approval of grant of full back wages to the petitioner by the Appellate Court also, is only hypothetical. The fact remains that in view of letter dated 30.08.1996 of the petitioner, the respondents were prevented from challenging the order of learned Labour Court and after to accepting all the dues as admissible in law, the petitioner cannot be permitted in say that his letter dated 30.08.1996 cannot be acted upon and he is entitled for grant of full back wages. In view of the aforesaid discussion and in view of the letter dated 30.08.1996 of the petitioner, the present writ petitioner dismissed.