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(2002) 09 JH CK 0032

In the Jharkhand High Court

Case No : CWJC No''s. 1222 with 1412 to 1421 of 1999

Satish Kumar Singh and Others, Bhanu Ranjan Ghosh, Jag Nandan Kachap, Bishwanath Singh, Andreas Lakra, Jai Prakash Chourasia, Ram Krishan Jha, Ramakant Singh, Dukhi Ram, Naresh Chandra and Anil Kumar Singh	APPELLANT
Vs	
Garden Reach Ship Builders and Others	RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 1 JCR 489

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : M.M. Banerjee, A.K. Sahani and R.S. Majumdar, for the Appellant; A.K. Sinha and M. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J. 1. As in all these writ applications, the same question is sought to be determined, they have been heard together and are being disposed of by this common judgment.

2. All the writ applications have been filed for quashing orders of the respondent No. 2, Annexure-10 series, and the order dated 8.12.1997 passed by the respondent No. 4 whereby and whereunder the petitioners have been discharged from service.

3. In short compass, the case of the petitioner is that admittedly they were the workmen in the Diesel Engine Plaint of respondent No. 1 at Ranchi and there were certain Tripartite Settlement which was not being implemented by the respondents and for that, there were some labour disputes going on between, the workmen and the management-respondents. According to the petitioners, on 13.12.1995, there was some commotion in which the workmen had participated, but according to the respondents, this was not a simple commotion, rather it was

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a case of confinement of Senior Officials, pressuring them to tender resignation by the workmen etc. Then the petitioners were served with the charge sheet-cum-suspension order individually. Two Enquiring Officers were appointed, one of which was Ex-General Manager, Coal Authority of India and at that relevant time, he was a practicing advocate at High Court. Another enquiry officer, who was also a practicing advocate, was appointed for one of the writ petitioners, namely, Shri Ram Krishna Jha. According to the petitioners, appointments were against the rules of enquiry under the Certified Standing Orders (for short order) but according to the respondents, it was done so that there may not be any prejudice on the part of the enquiry officer and in the interest of the petitioners was it was not in violation of the provisions of the Clause 15(2) of the orders. The enquiry was challenged on the ground that the petitioners were not allowed to appoint practicing Advocates to defend that and the documents asked for by them were not. supplied, even after the preliminary enquiry has been conducted prior to the enquiry aforesaid. This contention was denied by the respondents. Then the enquiry was held and the copy of the enquiry report was provided to them and they filed representations against that to the discipli- nary authority. The disciplinary authority passed the order of discharge from service. The contention of the petitioners was that the authorities which had issued the charge-sheet-cum-suspension order was not competent to issue as they were not the employer of the petitioners and therefore, it was illegal and as such, the punishment ordered by the disciplinary authority was in violation of Clause 15(2) of the orders. Thereafter, it appears that the petitioner filed a writ application. The said writ application was disposed of with a direction that they should file appeals and the appellate authority should dispose of their appeals with four months. There was delay in passing the appellate order but the appellate authority confirmed the orders of the Disciplinary Authority. The order of discharge of the appellate authority has been challenged on the ground that the appellate authority has not applied its mind on the facts and circumstances of the case and it was improper exercise of jurisdiction. Then it appears that the petitioners approached the Ministry of Defence and the Ministry of Defence found that the punishment appeared to be harsh and therefore, it required review. But that order of the Ministry of Defence was not complied with by the Board of Directors on the ground that there was no provision for review of any order and in absence of any special order/direction by the Ministry of Defence, to that effect the advice of the Ministry of Defence was not binding upon them. The petitioners, thereafter filed these writ applications.

4. It appears that when the matter was pending for hearing at the admission stage, it was brought to the notice of the Court that the petitioners had filed review and because of pendency of the writ applications, no decision was being taken on these. Therefore, by the order passed 1.9.1999 the Court save the following directions :--

"In the facts and circumstances, I adjourn the case for six weeks to enable the respondents-authorities to pass appropriate order on the review applications

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preferred by the petitioners. While passing such orders, they will take into consideration the quantum of punishment which, prima faice. appears to be disproportionate

It is expected that they will taken some lenient view in the matter.

The counsel for the petitioners, on instruction from them, stated that if the petitioners are reinstated to their original posts with continuity in service, they will not claim 75% of the back wages for the intervening period."

It is apparent that the second portion of the aforesaid order with regard to the continuity of service, no claim being preferred for 75% of the back wages is not an order of the Court, rather it is submission made by the petitioners. The order of the Court was only that a lenient view be taken because the punishment appeared to be disproportionate.

5. Thereafter it appears that the review order passed on 23.11.1999 in the following terms :--

"6. The order of discharge dated 8.12.1997 is accordingly set aside.

7. You are re-employed in the service of the Company and your are placed in the lower grade of L.D.C. (Lower Division Clerk) in the pay scale of Rs. 2100-50-3100 and will be drawing basic of Rs. 2100/- per month with permissible IDA and benefits under the said scale. Your shall remain temporary in the new position for a period of 4(four) years during which your performance shall be watched.

8. Your shall not be entitled to any wages from the date of discharge till the date of joining.

9. We hope that you would appreciate the generosity show to you by better conduct on your part in future.

10. You are advised to repot to DGM (DEP) for duty within 7 (seven) days from the date of receipt of this latter. Your place of posting will be intimated to you after jointing duty."

6. In pursuance of that review order, all the petitioners filed their willingness to join. Following is the proposal of re- employment in service before authorities, (An-nexure-B series, (each petitioner had made the same request before the authorities), one of the request is Annexure-B series is as follows :--

"To

The Dy. General Manager, G.R.S.E. Limited, Diesel Engine Plaint, Dhurwa, Ranchi - 834004

Sub. Re-employment in service

Dear Sir,

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In accordance with paragraph 10 of letter No. PERS/77/99/858 DATED 23.11.1999 of Chief General Manager (Pers) GRSE, Calcutta, 1 Mr. ANDREAS LAKRA, S/O the Joseph Lakra Residence at Tamtamtoli KAN-TATOLIP P.O. KANTATOLL, P.S. Lower Bazar, District - Ranchi, hereby report for joining, accepting all the terms and conditions mentioned therein with my own freewill and without any pressure and coercion. My joining for re-employment may kindly be accepted.

Thanking you,

Yours faithfully, Sd/"

7. Thereafter they were allowed to join the posts after their proposal were accepted, Annexure-C series, one of such acceptance report of the joining of the petitioner is as follows :--

"Ref. No. DEP/P & W-ESTT/586/99 Date 3.12.1999

To,

Shri Satish Kumar Singh Son of late Badri Narayan Singh Address QR. No. DT-2525, HEC Township P.O. Dhurwa, Ranchi - 834004

With reference to your letter No. Nil dated 3.12.1999 regarding acceptance of your re-employment in service as L.D.C. in the scale of Rs. 2100-50-3100/- with initial basic of Rs. 2100/-and permissible D.A. and benefits under the said scale, is hereby provisionally accepted with effect from 3.12.1999.

Formal employment letter with respect to your re- employment in service will be served to you after disposal of the writ application bearing CWJC No. 1222/99R filed by you.

You are, therefore, temporarily posted in Product Department till further order(s).

This has the approval of the com petent authority.

Sd/ CDR.D. PATI, CM (PR&S)."

8. It appears that the petitioner filed an amendment petition after about six months of their re-employment alleging that the Clauses 7 and 8 of the review of order (which is a letter dated 23.11.1999) are illegal conditions and as such, they were sought to be quashed. On this amendment petition, the Court vide order dated 5.10.2001, said that the amendment petition would be considered at the time of hearing. On perusal of the order dated 20.11.2001, it transpires that the petitioners are getting the basic pay plus D.A., H.R. and CCA.

9. In the aforesaid circumstances and the latest development, it is now needless to examine the alleged illegalities in the enquiry, in the appointment of the enquiry officers and to answer questions raised by the petitioners in the original writ applications.

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10. When the petitioners have already taken the benefit of review order and joined and are taking the advantages in terms of that reviewed order then only question to answer is whether they are estopped from raising this issue that the Clauses 7 and 8 of the review order are illegal?

11. The orders are the orders by which the petitioners are governed. Clause 13 of the orders defines misconduct. In view of the discussions made above, I am least concerned with the nature of misconduct or whether it is proved against the petitioners and these matters have also not been canvassed during hearing in view of the developments that have already taken place, and the real question has shrunk to the legality punishment.

12. The major penalties for major misdemeanour are prescribed under Clause 14(b) of orders which are as follows :

(i) Suspension without pay for the period not exceeding ten days, (ii) Stoppage of increment/with or without cumulative effect, (iii) Reduction to a lower grade or post or lower stage in time* scale, (iv) Relegation from permanent status to temporary status, (v) Discharge from service which does not disqualify for future employment, (vi) Dismissal from services which disqualifies for further employment, (vii) The management may at its discretion, give a workman any of the minor penalties mentioned above for major misdemeanours.

13. It is to be seen whether the punishment awarded by the order dated 23.11.1999 are in accordance with the punishments prescribed under Clause 14(b). On bare perusal, it appears that the penalty Nos. (iii) and (iv) have been clubbed together besides a probation clause has also been added. True it is that a new punishment against the prescribed ones cannot be created by the management; rather the punishment should be in accordance with the prescribed punishment in the orders. Clubbing is not permissible. So from this angle, the punishment appears to be not in accordance with the orders and therefore, apparently the amendment petition, which challenges the legality of Clauses 7 and 8 of review order, appears to be tenable but the question is whether it is really tenable.

14. The import of the amendment petition is that while Clause 6 (recall of discharge) be retained the punishing Clauses 7 and 8 be scrapped. If the amendment is allowed, then its effect will be that petitioners will be reinstated without any punishment being there and it will amount to allowing the writs without going into their merit. This tactical approach of the petitioners is quite unconscionable. If they were aggrieved by the Clauses 7 and 8, they should have challenged the entire order and they should not have accepted the order "out of their free will and without pressure" and they should not have joined the post and drawn the benefits. But I was talking whether the punishment is illegal.

15. It is noticed that the order dated 23.11.1999 was passed on a direction to review, though review petitions were already pending. There is no express or implied provision in the standing orders for review. Therefore, the review is not

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available to petitioners as a statutory right. Therefore, the management had rightly disregarded the directions of the Ministry of defence for reviewing the punishment on the ground that there is no provision for review. Even if the review has been made as per the desire of the Court, then also no statutory right has accrued to the petitioners for getting the punishment reviewed. This review is under a judicial order. In such a situation the law is replaced by equity and good conscience, then in that circumstance, the punishment becomes subject to this good conscience. I mean thereby, that if the review is beyond law, the punishment will also be not strictly in accordance with the prescribed rules and the petitioners cannot he allowed to say that they will take the advantage of review to the extent it recalls the discharge and will not accept the punishment which are also the directives of the review on the ground that it is not in accordance with the prescribed rules. If they were so conscious of their rights and were confirmed of the illegalities which they urged regarding everything else, then they should not have prayed for review, even before the Ministry of Defence, much less the Court and even after passing of the review order they should not have submitted so willingly to the order of review was provided to the petitioners in special circumstances by the Board and even if they were aggrieved, they should not have joined their post on the same terms and conditions or by way of amendment in all fairness, they should have challenged the entire order dated 23.11.1999 which they did not. Thus, the petitioners cannot take the advantage of the benevolent part of the order passed in review and discard the punishment aspects, which, according to them, are illegal because in the circumstances the review order assumes the form of consented order, the decisions cited by the parties are not applicable in the facts and circumstances of the case. Thus the amendments sought being crafty cannot be allowed.

16. Consequently, I hold that in the facts and circumstances of the case the clubbing of the two punishments does not make it illegal and the petitioners are estopped from challenging the same on the ground of illegality. Thus, all the writ applications are dismissed.

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