

(2023) 10 CHH CK 0043
In the Chhattisgarh High Court
Case No : Writ Appeal No. 375, 382 Of 2021

S.E.C.L.

APPELLANT

Vs

Arun Kumar Rana

RESPONDENT

Date of Decision : 30-10-2023

Acts Referred:

Constitution of India, 1950 — Article 311(2)(b)
Industrial Disputes Act, 1947 — Section 2(s), 2(s)(iii), 2(s)(iv)
Mines Act, 1952 — Section 57
Indian Penal Code, 1860 — Section 147, 294, 323, 427, 566

Citation : (2023) 10 CHH CK 0043

Hon'ble Judges : Ramesh Sinha, Cj;Naresh Kumar Chandravanshi , J

Bench : Division Bench

Advocate : H.B. Agrawal, Sudhir Kumar Bajpai, Ashok Kumar Shukla

Final Decision : Dismissed

Judgement

Ramesh Sinha , CJ

1. Heard Mr. H.B. Agrawal, learned Senior Advocate assisted by Mr. Sudhir Kumar Bajpai, learned counsel for the appellants/SECL in WA No. 375 of 2021 and respondents/SECL in WA No. 382 of 2021. Also heard Mr. Ashok Kumar Shukla, learned counsel, appearing for the respondent in WA No.375 of 2021 and appellant in WA No. 382 of 2021.

2. Since both these appeals arise out of same order dated 01.09.2021 passed by the learned Single Judge in WP(S) No. 3829 of 2008, they are clubbed and heard together and are being disposed of by this common order.

3. The present writ appeals are directed against an order dated 01.09.2021 passed by the learned Single Judge in WPS No. 3829 of 2008, whereby, the writ petition filed by respondent / Arun Kumar Rana in WA No. 375 of 2021 (Arun Kumar Rana) was allowed and the impugned order dated 18.02.2008, dismissing the respondent /Arun Kumar Rana from services as well as the rejection of the

appeal dated 06.06.2008 by the Appellate Authority were quashed.

4. Brief facts of the case are that the writ petitioner / appellant in WA No.382 of 2021, at the relevant point of time, was working as Safety cum Production Assistant (Mining Sardar) in Bagdeva Colliery of SECL. On account of certain charges of misconduct, the Disciplinary Authority held that it is not practicable to hold inquiry against the writ petitioner and straightway proceeded to impose penalty upon him and by its order dated 18/02/2008 (Annexure P/1) he was dismissed from service. The said order of dismissal (Annexure P1) was assailed by the writ petitioner before this Court in Writ Petition (S) No. 1716/2008 which was disposed off by this Court by order dated 20/03/2008 (Annexure P/11) relegating the writ petitioner to avail alternative remedy available to him in terms of the applicable Standing Orders. Accordingly, the writ petitioner filed an appeal before the Appellate Authority against the order of dismissal (Annexure P/1), which was dismissed by the appellate authority by order dated 06/06/2008 (Annexure P2). Thereafter, the writ petitioner filed a writ petition registered as WP(S) No. 3829 of 2008 against his order of dismissal from service (Annexure P/1) as well as against the order of the Appellate Authority dismissing his appeal (Annexure P/2). This Court vide order dated 13/01/2014 disposed of the writ petition granting liberty to the writ petitioner to avail the alternative remedy raising industrial dispute before the Labour Court and directing the said Court to decide it in accordance with law.

5. The order dated 13/01/2014 was challenged by the writ petitioner in Writ Appeal No. 98/2014, whereby the Writ Appeal Court by its order dated 07/08/2014 allowed the appeal partly and sent back the matter to the Writ Court for deciding the petition after finding out whether petitioner is a 'workman' or not within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (in short 'the Act of 1947'). Subsequently, when the matter was taken up for hearing again, this Court vide order dated 08/02/2019 allowed the writ petition by setting aside the order of writ petitioner's dismissal from service dated 18/02/2008 (Annexure P1) and the order of the Appellate Authority dated 06/06/2008 (Annexure P2), but Writ Appeal No. 261/2019 was preferred by the petitioner seeking backwages and Writ Appeal No. 346/2019 was also preferred by the respondents-SECL against the order passed by the Writ Court on 08/02/2019, which were decided by a common order dated 07/08/2019 whereby the order dated 08/02/2019 passed by the Writ Court was set aside and it has held that the Writ Court should decide the mandate of order dated 07/08/2014 passed in Writ Appeal No. 98/2014 as to whether the petitioner is a 'workman' in terms of Section 2(s) of the Industrial Disputes Act, 1947 (in short 'the Act of 1947') and thereafter, to proceed in accordance with law.

6. In order to comply with the order in writ appeal, learned Single Judge by order dated 10/6/2021 directed as under:

"Since a finding has to be recorded in this regard that whether a 'Mining Sardar' comes within the definition of 'workman' or not and since it is a mixed question

of fact and law, therefore, respondents – SECL is directed to file an affidavit not below the rank of the Director clearly stating the work & responsibilities and duties to be discharged by a 'Mining Sardar' so as to find out whether he comes within the definition of 'workman' or not including documents, rules and regulations and the standing orders, if any.

7. Pursuant to order dated 10/6/2021, affidavit has been filed by the petitioner stating that he is not a 'workman' within the meaning of Section 2(s)(iv) of the Act of 1947 and respondents-SECL have also filed a counter affidavit supported by the affidavit of Director (Finance) stating that petitioner who was working on the post of Mining Sardar at the time of his dismissal, would fall within the meaning of 'workman' as per Section 2(s)(iv) of the Act of 1947 and as such, the writ petition deserves to be dismissed on this short ground alone relegating the petitioner to avail the remedy of raising industrial dispute.

8. The case of the writ petitioner is that he is not a "workman" within the meaning of Section 2(s) of the Act of 1947 and he falls within the exception carved out in clause (iii) & (iv) of Section 2(s) of the Act of 1947 as he was employed mainly in managerial / administrative capacity and drawing wages more than ten thousand rupees, whereas it is the case of the respondents-SECL that the petitioner is "workman" within the meaning of Section 2(s) of the Act of 1947 and exception carved out in clause (iii) and (iv) of Section 2(s) of the Act of 1947 would not be applicable in case of the petitioner, therefore, the writ petition as framed and filed would not be maintainable and the petitioner be relegated to the remedy of raising industrial dispute before the Labour Court. This is the reason, why twice the Division Bench of this Court has remitted the matter to writ Court for deciding as to whether the petitioner is "workman" or not.

9. Thus, the issues involved for consideration before the learned Single Judge were as under :

(i) Whether the petitioner, who was working as Mining Sardar in the respondent-SECL, would fall within the definition of 'workman' as contemplated under Section 2(s) of the Act of 1947 on the basis of material produced before this Court.

(ii) Whether the Disciplinary Authority is justified in terminating the services of the petitioner without holding departmental enquiry in absence of enabling provision in Certified Standing Orders applicable to the respondents-SECL ?

10. In order to answer the first question, the learned Single Judge has noticed the provisions contained in Section 2(s) of the Act of 1947 which defines the workman as under:

"2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in

relation to an industrial dispute, includes any such person who has been dismissed, discharged, or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

(i) who is subject to Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957; or

(ii) who is employed in the police service or as an officer or other capacity; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

11. In order to decide the first issue that the writ petitioner is employed in the respondents-SECL as “workman” or not, the learned Single Judge has noticed pertinent decisions on the point rendered by their Lordships of the Supreme Court in this regard such as *Ananda Bazar Patrika (P) Ltd. vs. The Workmen* (1990) 3 SCC 248, *S.K. Verma vs. Mahesh Chandra and another* (1983) 4 SCC 214, *S.K. Maini vs. M/s. Carona Sahu Company Limited and others* (1994) 3 SCC 510, *Heavy Engineering Corporation Ltd. vs. Presiding Officer, Labour Court and others* (1996) 11 SCC 236, *Birla Corpn. Ltd. vs. Rajeshwar Mahato and others* (2001) 10 SCC 611, *Anand Regional Coop. Oil Seedsgrowers’ Union Ltd. vs. Shaileshkumar Harshadbhai Shah* (2006) 6 SCC 548 and after close scrutiny of nature of duties and responsibilities of the writ petitioner on the post of Mining Sardar, which he was required to perform on the said post, as reflected in Regulations 44 & 113 of the Regulation issued under the provisions of Section 57 of the Mines Act, 1952 observed that merely because the work of Mining Sardars is subject to further supervision by the Manager/ Under Manager/ Assistant Manager, their work cannot be taken from the purview of supervisory / managerial work, as such, the duties and responsibilities conferred to Mining Sardars cannot be held that his work is clerical in nature and therefore, he is workman. Similarly, the petitioner was appointed on the post of Mining Sardar with pay scale of Rs.1222 to 2230 in E.N.S. Grade of NCWAIV with initial pay of Rs.122 and his services are governed by the NCWA and the certified standing order of the respondents-SECL, but the writ petitioner was drawing salary at that time more than ten thousand rupees, which has been admitted by the respondents-SECL in para16 of additional affidavit dated 17.6.2021, which clearly shows that the writ petitioner was drawing more than ten thousand rupees in terms of Section 2(s)(iv) of the Act of 1947 and since the petitioner is not a workman and clearly falls outside the purview of Section 2(s) of the Act of 1947, it cannot be held that he is “workman” within the meaning of Section 2(s) of the Act of 1947 and his remedy would under the provisions of the Act of 1947 to question the order of dismissal.

12. While deciding the second issue, the learned Single Judge observed that a careful perusal of paragraph 28.1 to 28.10 of the Standing Orders in respect of SECL would show that there is no provision which empowers the Disciplinary Authority to dispense with the services of any employee like the petitioner (Mining Sardar) without holding any departmental enquiry as provided in clause (b) of second proviso to Article 311(2) of the Constitution of India which provides that where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry. In absence of any enabling provision in the Standing Orders applicable to the SECL, the Disciplinary Authority is absolutely unjustified in terminating the services of the petitioner without following the procedure laid down in paragraph 28.1 to 28.10 of the Standing Orders and the Appellate Authority has also perpetuated illegality in affirming the order of the Disciplinary Authority without noticing serious legal infirmity in the disciplinary action, as such, the order of the Appellate Authority affirming the order of the Disciplinary Authority is liable to be set aside.

13. Accordingly, the impugned order dated 18/2/2008 (Annexure P1) and the appellate order dated 6/6/2008 (Annexure P2) both were quashed by the learned Single Judge and the respondent SECL was directed to reinstate the petitioner in service forthwith with all consequential benefits except backwages. The question of backwages will be considered by the competent authority in accordance with Rules /Regulations/Standing Orders within 45 days. However, it was made clear that the order passed by the learned Single Judge shall not preclude the competent authority for taking action against the petitioner in accordance with law. At the same time, the learned Single Judge also observe that liberty given by him shall not be construed as a mandate for initiation of disciplinary proceeding against the petitioner and the competent authority shall take appropriate decision after objectively considering the entire record.

14. Against the said order, the appellant/SECL preferred WA No. 375 of 2021 with a prayer to set aside the impugned order dated 01.09.2021 passed by the learned Single Judge and appellant/writ petitioner has preferred WA No. 382 of 2021 with a prayer to modify the impugned order to the extent and further direction to the respondent-authorities to pay the full backwages to the petitioner from the date of termination till the date of reinstatement.

15. Mr. H. B. Agrawal, learned Senior Advocate assisted by Mr. Sudhir Bajpai, learned counsel for the appellant/SECL submitted that Regulation 40 of Coal Mines Regulation, 1957 and other documents filed along with the additional affidavit dated 17.06.2021 (in compliance of order dated 10.06.2021) of learned Single Judge would clearly show that the duties and responsibilities attached to the post of "Mining Sardar" are that of a "workman" defined u/S 2(s) of the Act, 1947. It is further submitted that the learned Single Judge has wrongly interpreted the provisions of Coal Mines Regulation 1957 and held that the Mining Sardar is having the work of supervisory nature is incorrect looking to the

rider "Regulation 44(1)(a) subject to orders of superior official" meaning thereby it is clear that superior official are supervising the work of the Mining Sardar and superior officers have right to grant leave, issue charge sheet, take disciplinary action and control the working of Mining Sardars, therefore, the word occurring in regulation 44(1)(a), "He shall have responsible charge and control of the District of the mines assigned to him by the Manager or the Under Manager or Assistant Manager", hence it is clear that over Mining Sardars the Manager / Under Manager / Assistant Manager are the supervisor officers, therefore, the Mining Sardar or workman under them and if he execute the work of above said officers and supervise the work of subordinate then it is under his charge and control, hence do not becomes supervisory officer and remains workman u/s 2(s) of the Act of 1947.

16. Mr. Agrawal further contended that in the instant case from the plane reading of impugned order dated 18.02.2008 (Annexure P/1 of writ petition), itself would clearly establish the graveness of the misconduct committed by the respondent and the situation then prevailing in the working area which forced the Management to take the extreme steps of similarly placed persons for committing riotous acts resulting in serious injuries upon the officers of the SECL establishment and a criminal case has also been registered against the respondent and other personnel for offences under Sections 294, 323, 566, 147 and 427 of IPC. It was under this factual backgrounds that the appellants-SECL were forced to take step of issuance of impugned order Annexure-P/1 exercising the right conferred upon the appellants Management under Article 311(2)(b) where the Constitution of India empowers the authority to dismiss a person or reduce in rank after being satisfied for some reason that it was not reasonable and practicable to hold an enquiry in the given facts and circumstances of the case.

17. On the other hand, Mr. Ashok Kumar Shukla, learned counsel, appearing for the private appellant in WA No. 382 of 2021 opposed the aforesaid submission and though has supported the impugned order passed by the learned Single Judge, but has submitted that the impugned order so far as it pertains to the claim/relief of backwages is not sustainable. He further submitted that there are catena of decisions and judicial pronouncement of the Hon'ble Apex Court in which it has been categorically held that the employee who has been dismissed without holding the full fledged enquiry and without affording any opportunity of hearing has always to be reinstated with full backwages from the date of dismissal up till the reinstatement.

18. After considering the submissions made by the learned counsel appearing for the parties and upon perusing the impugned order, we notice that the same has been rendered by the learned Single Judge with cogent and justifiable reasons. In an intra-court appeal, no interference is usually warranted unless palpable infirmities are noticed on a plain reading of the impugned order. In the facts and circumstances of the instant case, on a plain reading of order, we do not notice

any such palpable infirmities or perversities, as such we are not inclined to interfere with the impugned order. Learned Single Judge while dismissing the writ petition by the impugned order has adverted to all the facts of the case. We do not find any fault in the impugned order.

19. Accordingly, both the writ appeals are dismissed.