
(2003) 08 JH CK 0067

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3426 of 2001

Shankar Bose

APPELLANT

Vs

Presiding Officer, Industrial Tribunal No. 2 and Others

RESPONDENT

Date of Decision : 30-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 683

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.K. Laik, for the Appellant; Anoop Kumar Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—In this writ petition, the petitioner has, prayed for quashing of the award dated 30.9.1999 passed in Reference Case No. 5 of 1997 by the Central Government Industrial Tribunal (No. II) at Dhanbad whereby and whereunder he has held that the action of the management in dismissing the concerned workman was legal and justified and consequently he was not entitled to any relief.

2. The facts which appear from the award are that the concerned workman while posted as a Head Clerk in the Bhargora Area of M/s. Bharat Coking Coal Limited, was served with a charge-sheet in relation to allegations of misconduct pertaining to theft, fraud and dishonesty. The allegations were that while he was assigned the duties and responsibilities of processing employment files in the year 1991 of the said Bhargora Area, he dealt with 6 (six) letters containing list of workmen/candidates numbering 319. He was entrusted with the duty of preparing appointment letters in respect of those candidates who had been duly selected for employment as per requirement of M/s. Bharat Coking Coal Limited in that area. However, the concerned workman, taking advantage of his official position as Head Clerk, prepared appointment letters in phases in respect of 115 candidates whose names did not even figure in those six letters. Out of these

115 appointment letters, 83 were issued and those persons were consequently appointed and they started working under the management. The remaining 32 appointment letters were cancelled when fraud etc. was detected,

3. The management issued a charge-sheet to the concerned workman and asked him to reply. Upon receipt of his reply, the Management was not satisfied and accordingly a domestic enquiry was constituted and an enquiry officer as also a presenting officer, appointed. Several attempts were made by the enquiry officer notifying the date of enquiry by sending notices both to his local as well as permanent address, but the concerned workman willfully and purposely avoided service of notice. Thereafter the procedure of substituted service was resorted to. Subsequently, repeated attempts were again made to procure his attendance, but all such attempts failed whereafter the Management was compelled to decide the matter expert holding him to be guilty of the charges.

4. Mr. M.K. Laik, learned counsel for the petitioner submitted that there was gross violation of the principles of natural justice and this point was taken before the Tribunal relying upon Union of India and others Vs. Mohd. Ramzan Khan, . Mr. Laik submitted that the concerned workman was prejudiced because a second show cause notice was not given to him and therefore, he was deprived of an opportunity in relation to the sufficiency or otherwise of the proposed punishment.

5. The aforementioned argument of Mr. M.K. Laik cannot be accepted because upon perusal of paragraph 7 of the award, relevant at internal page 11 thereof, it is evident that the fairness of the domestic enquiry had been decided against the workman and in favour of the management upon the concision made by the workman himself. The relevant portion of the aforementioned fact contained in the award reads thus :-

"It is thus crystal clear that the decision relied upon by the representative on the side of the workman has in fact no application in the instant case and since the fairness etc. of the domestic enquiry held against the concerned workman have been decided in favour of the management on being conceded to on the side of the workman and in the absence of any evidence on the side of the workman to show the manner in which he was prejudiced because of non-service of notice for the second time before issuing the order of dismissal by way of punishment there is no way out but to hold that the management has not committed any wrong in passing the order of dismissal by way of punishment specially in view of the grave misconduct alleged against the concerned workman as specifically mentioned in the charge-sheet issued, against him."

6. Ramzan Khan's case was subsequently considered in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and that Judgment has subsequently now been explained and/or reviewed in the case of State of U.P. Vs. Harendra Arora and Another, .

7. Mr. M.K. Laik submits that by not having been given second show cause

notice, by not having been furnished with the copy of the enquiry proceedings the order of dismissal should be set aside because of noncompliance of these elementary rules of natural justice.

8. However, in the facts and circumstances of this case, it is evident that the concerned workman intentionally avoided to take part in the inquiry proceedings and in fact, proceeded to concede that the domestic enquiry was fair and proper. In that view of the matter and following the judgment of the Hon'ble Supreme Court of India in the case of State of U.P. Vs. Harendra Arora and Another, as referred to above, the workman has not been able to establish as to in what manner he was prejudiced, regard specially being had to the fact that he himself was instrumental in virtually compelling the Management to proceed with the inquiry ex-parte. To that extent therefore, this Court does not find any mala fide or perversity with the award.

9. Additionally, in the instant case, the Tribunal has published its award on the basis proper reasoning and therefore, this Court will not, embark upon re-appreciating evidence or weighing the same like an appellate authority. Reference in this context may be made to the case of Bank of India and Another Vs. Degala Suryanarayana, . A similar proposition of law is also to be found in the recent case of the Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another, wherein the Supreme Court has clearly and specifically barred a 226 Court from re-appreciating evidence in matter relating to pure findings Of fact. Following Degala s case (supra), our own High Court in the case of Kashi Nath Sharma v. Presiding Officer, Labour Court, reported in 2002 (1) JLR 15 : 2001 (3) JCR 661 (Jhr) has also taken the view that a finding of fact conclusively recorded by a Labour Court or a Tribunal cannot be judicially reviewed except in case of mala fides or perversity and that 226 Court cannot sit as an Appellate Court to re-appreciate evidence.

For the foregoing reasons, therefore, this Court refuses to interfere with the award and holds that there is no merit in this writ application. It is accordingly dismissed. There shall however no order as to costs.