
(2017) 08 JH CK 0045
In the Jharkhand High Court
Case No : 76 of 2009

Sharda Devi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 08-08-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 25-FFF](#)

Citation : (2017) 08 JH CK 0045

Hon'ble Judges : Aparesh Kumar Singh, B.B. Mangalmurti

Bench : DIVISION BENCH

Advocate : Anjani Kr. Singh, Anoop Kr. Mehta

Judgement

1. Heard counsel for the parties.

2. This appeal is directed against the Judgment dated 14.11.2008 passed by the Learned Single Judge in W.P.(S) No. 1958/2003 by the aggrieved writ petitioner. The writ petitioner / appellant herein was one of the 51 workmen in respect of whom reference was made for adjudication before the Central Government Industrial Tribunal No. I, Dhanbad by the Ministry of Labour, Central Government in the following terms. "Whether the demand of Dhanbad Colliery Karamchari Sangh- Kamla Shankar Dubey and 51 Ors. workmen working with Sanjeev Hard Coke Manufacturing Company, Sudamdih in the district of Dhanbad be regularized in the service of M/s B.C.C.L. w.e.f. 20.09.1983 is justified? If so, to what relief these workmen are entitled?"

The Learned Tribunal by Award dated 23.01.2001 (Annexure-1) held as under:-

"Therefore, I find that they were the genuine workmen of Sanjeev Hard Coke Manufacturing Plant and therefore they are entitled for retrenchment benefit from the management of said Hard Coke Manufacturing Plant.

10. In the result, I render -

Award -

That the concerned workmen, Kamla Shankar Dubey and 51 others are not entitled for regularisation in the roll of M/s B.C.C.L. Ltd. They are only entitled to retrenchment compensation under Sec. 25FFF of the Industrial Disputes Act from the management of said Sanjeev Hard Coke Manufacturing Company and re-employment in case the said Hard Coke Manufacturing Company is re-opened."

3. Out of the 51 workmen who were covered by the Award, only the writ petitioner assailed it on the ground that M/s BCCL was in possession of the said company on 20.12.1982 on which date it was in running condition. However, the Learned Tribunal had wrongly decided that M/s BCCL took the possession of the said Company on 20.09.1983 on which date Company was closed. The crux of the petitioner's case is that if on the date of taking over the possession of the Company by M/s BCCL it was in running condition, then the workmen was entitled to be regularized in the service of M/s BCCL.

4. The background to the litigation including the terms of the reference however negate the plea raised by the writ petitioner / appellant. A mere perusal of the terms of the reference would itself indicate that the workmen had raised the claim to be regularized in the service of M/s BCCL with effect from 20.09.1983. 20.09.1983 had a distinct place in the history of litigation between M/s Sanjeev Hard Coke Manufacturing Company and M/s BCCL. While several other Coking Coal Mines and coke oven plants were taken over by virtue of the provisions of Coking Coal Mines (Nationalization) Act 1972, M/s Sanjeev Hard Coke Manufacturing Company strongly resisted the process of taking over and vesting through litigation which travelled up to the Hon''ble Supreme Court from Calcutta High Court. The owner of the Company had invoked the writ jurisdiction of Calcutta High Court against the Notification of taking over under the Act of 1972. Calcutta High Court appointed on P.D. Ajmera, one of the partners of the Company and one Mr. R.N. Sharma, representative of M/s BCCL as Joint Receiver to manage the affairs of the said Company. Subsequently, the case was transferred to the Hon''ble Supreme Court. The matter was decided by the Constitution Bench of the Hon''ble Supreme Court vide Judgement dated 10.12.1982 reported in 1983 (1) SCC 147 [Sanjeev Coke Manufacturing Company Versus M/s Bharat Coking Coal Limited and Another]

5. As a matter of fact, even after the Judgment rendered by the Apex Court on 10.12.1982 holding the Act of 1972 to be constitutionally valid, the Management of M/s Sanjeev Hard Coke Manufacturing Company did not handover the possession of the said Company to M/s BCCL. It was only upon application of M/s BCCL moved again that the Hon''ble supreme Court directed the Company to handover the possession to M/s BCCL vide Judgment dated 29.07.1983. The process of handing over possession of the Company was to commence from 16.08.1983 within a period of six weeks. M/s BCCL got actual possession of the plant on 20.09.1983. This date is not disputed. M/s BCCL throughout had taken the plea before the Hon''ble Tribunal that on the date of taking over possession

of the Company i.e. 20.09.1983, there were no employees on their rolls and machines were also completely damaged.

6. Learned counsel for the Respondent BCCL Mr. Mehta submits, on instruction, that such Unit has never recommenced production. A similar demand arose by 184 workmen for regularization under the BCCL, claiming themselves to be the employees of the said M/s Sanjeev Hard Coke Manufacturing Company and also alleging that they were on the rolls of the Company when BCCL took possession on 20.09.1983. Learned Central Government Industrial Tribunal No. I decided the reference against the workmen. Their challenge to the impugned award travelled up to the Hon"ble Supreme Court after the Learned Division Bench of Patna High Court (Ranchi Bench) dismissed the writ petition CWJC No. 1735/1990 (R) preferred by the aggrieved workmen against the award of the Learned Tribunal. In the Civil Appeal arising out of Special Leave to Appeal Nos. 15227/1990 and 213/1991 preferred by the workmen of Sanjeev Coke Oven of M/s BCCL, the Hon"ble Supreme Court by judgment dated 07.08.1991, held as under: "Special leave granted.

We are of the view that even on the basis that there was a valid closure, the appellants who are 71 in number were entitled to the benefit of Section 25-FFF of the Industrial Disputes Act, 1947, and, therefore, the Management, Coke Oven Plant, shall proceed to compute the amount and pay the same and in the event of the Plant operating again, they would be entitled to reemployment as provided under the law. It shall be the obligation of the Management in that situation to take them back in accordance with the mandate of the statute.

The appeals are disposed of accordingly. No costs."

7. Accordingly, Learned Tribunal in the present reference has refused the claim for regularization of these 51 workmen on the rolls of BCCL. It however proceeded to hold that they are entitled to retrenchment compensation under section 25-FFF of Industrial Disputes Act from the Management of said M/s Sanjeev Hard Coke Manufacturing Company and reemployment in case said Sanjeev Hard Coke Manufacturing Company is reopened.

8. From the relevant pleadings and documents on record, the appellant has not been able to dislodge the categorical findings recorded by the Learned Single Judge also based upon the previous background of the litigation. BCCL could get actual possession of the plant on 20.09.1983 only, whereas the plant had been closed in the middle of December 1982. The plea for regularization by the sole petitioner / appellant herein has not been acceded to in such circumstances by the Learned Single Judge also. We find that the writ petitioner was not aggrieved by the remaining part of the Award relating to retrenchment compensation, but had assailed it only to press the plea of regularization under M/s BCCL. If on undisputed facts, the workmen were not found to be on the rolls of the Company when M/s BCCL took possession on 20.09.1983, such a plea could not have been allowed either by the Learned Tribunal or by the Writ Court. The appellant has

not been able to show any distinguishing feature from the case of 184 workmen of same Sanjeev Hard Coke Manufacturing Company which were finally disposed of by the Apex Court vide judgment dated 07.08.1991. We therefore do not find any infirmity in the impugned judgment on any point of law or fact. Accordingly, the appeal is dismissed.