

(2003) 11 JH CK 0003
In the Jharkhand High Court
Case No : W.P.L. No. 4888 of 2003

Sheo Chand Kumar and Others	Vs	APPELLANT
Bharat Coking Coal Ltd. and Others		RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 158

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Kalayan Roy, R.M. Singh and Ashok Kumar, for the Appellant; A.K. Mehta and Rajiv Anand, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This writ application is directed against the order dated 4.4.1996 passed by respondent No. 6, the Project Officer

(Washery), BCCL, Dhanbad of the respondents-BCCL whereby the provisional appointment given to the petitioners has been withdrawn and

they have been stopped from doing their duties. These writ petitioners, who are 11 in number, also seek a direction upon the respondents to

reinstate them in service with full back wages pursuant to the award dated 3.3.1983 passed in Reference Case No. 58/91.

2. This case has a very chequered history. The petitioners along with others, at one point of time, were working as contract labours in the erstwhile

company which was subsequently taken over by the respondents-BCCL. Those employees although became the employees of the BCCL and

worked from December, 1979 to January, 1981 but they were removed from service, Consequent there upon an industrial dispute was raised and

the matter was referred to the labour Court to adjudicate whether the management of BCCL was justified in not absorbing 39 workmen including the petitioners as their regular employees. The award was published on 3.3.1983 and by the said award the respondent-BCCL was directed to reinstate all those 39 workmen including the petitioners with full back wages. When the award was not implemented, some of the beneficiaries, 18 in number, moved this Court for the implementation of the award. The matter reached up to the Supreme Court. Pursuant to the direction issued by the Supreme Court those 18 persons were regularized in service.

3. The petitioner who are 11 in number, also moved this Court in 1994 vide CWJC No. 482/1994 and finally went to the Supreme Court and a similar direction was issued to the Regional Labour Commissioner to make inquiry and record a finding with regard to genuineness of the claims of these petitioners. Pursuant to that direction the Regional Labour Commissioner, by this report dated 31.8.1994, held that these 11 persons are the genuine persons claiming under the award dated 3.3.1983 and as such, they are entitled to the benefits of the said award.

4. When the report of the Regional Labour Commissioner was not given effect to, the petitioners again moved this Court in CWJC No.

3092/94(R). The writ petition was disposed of on 4.4.1995 with a direction to the management-respondent to provisionally reinstate the

petitioners and get their identity established to their satisfaction. It was also directed that if the management so feels it necessary, it may also get a

police verification and antecedent report etc. of these petitioners. When the said judgment was not complied with the petitioners filed MJC No.

127/95(R) which was disposed of on 17.7.1995 with some direction which shall be referred hereinafter. The petitioners were again identified by

the Regional Labour Commissioner and a finding was recorded in favour of the petitioners in his report dated 19.10.1995. In spite of the aforesaid

finding the petitioners were not regularized in service, rather, their provisional appointment was withdrawn by the impugned order dated

3/4.4.1996. One of the petitioners again moved this Court in contempt which was subsequently converted into a writ petition being CWJC No.

1522/ 96 The said writ petition was dismissed as withdrawn on 8.9.2003 on technical ground with liberty to the petitioner to file a fresh writ

petition. Hence this writ application.

5. Mr. Kalyan Roy, learned counsel appearing on behalf of the petitioners, on the basis of the facts stated hereinabove, submitted that inspite of the findings recorded by the Regional Labour Commissioner twice with regard to the genuineness of the petitioners as the beneficiaries of the award, the respondents have issued the impugned order without any basis. Learned counsel submitted that the respondents had agreed before the Supreme Court to give the benefits of the award to those persons whose identification has been found to be genuine by the Regional Labour Commissioner.

6. Mr. A.K. Mehta, learned counsel appearing on behalf of the respondent-Company, has submitted that although the Regional Labour Commissioner recorded a finding with regard to the genuineness of these petitioners as the beneficiaries of the award but further directed the management to get their identification and antecedent verified by the District Administration. According to the learned counsel since counter claimants raised objection and the identification of the petitioners was not fully established, the provisional appointment of the petitioners has been withdrawn.

7. As noticed above, the award was passed by the Industrial Tribunal for reinstatement of 39 persons in 1983 including the petitioners. Some of the beneficiaries of the award moved this Court and the matter went upto the Supreme Court in Civil Appeal No. 3749/90. The Supreme Court disposed of the appeal on 30.7.1990 by passing the following order :

The Regional Labour Commissioner (Central) at Dhanbad is directed to examine afresh the claims of all the rival claimants claiming reinstatement under Award in question except two persons already reinstated. The Regional Labour Commissioner to give rival claimants opportunity to be heard and to dispose of the claims within four months from today. The Company is agreeable to appoint such of the labourers as are entitled to reinstatement as per the finding of the Regional Commissioner. The appeal is disposed of as above. There will be no order as to costs.

8. The Regional Labour Commissioner in his report dated 31.8.1994 a copy of which is Annexure 5 to the writ application, recorded a finding that these petitioners are the genuine claimants under the award and, as such, they

are entitled to the benefits under the said award. The relevant portion of the finding reads as under :

From the documents submitted by the said persons and their oral statement as also their statement made on cross- examination in course of

enquiry/interrogation held by me between 26th July and 28th July, 1994 in this office. I find that prima facie the following 11 (eleven) persons

appear to be the genuine claimants in the award dated 3.3.1983 in Ref. No. 58 of. 1981, and as such they are entitled for the benefits under the

said award, I therefore, recommend that necessary action for the reinstatement of the following 11 (eleven) persons, may please be initiated

immediately, in compliance of the award dated 3.3.1983 in Ref. No. 58/1981 and order dated 2.5.1994 of the Hon"ble Patna High Court, Ranchi

Bench, Ranchi in CWHC No. 482/94(R). It is also advised that the management of M/s. BCCL, Dhanbad may observe the formalities regarding

police verification of their character and antecedent to further ensure satisfaction about the identity and bona fide of these 11 (eleven) persons.

9, It appears that in CWJC No. 3092/ 94(R) this Court, taking into consideration the report of the Regional Labour Commissioner, directed the

respondents to provisionally reinstate the petitioners and to further get their identity established to their satisfaction. Again the matter was referred

to the Regional Labour Commissioner who submitted the second report dated 19.10.1995 which is Annexure 4 to the writ application. The

Regional Labour Commissioner recorded the following finding :

From the records available in the office of the Regional Labour Commissioner (Central), Dhanbad has been examined with regard to enquiry

conducted by the then Regional Labour Commissioner (Central), Dhanbad and it has been found that the photographs affixed on the left hand side

of the deponents signatures before on the affidavit sworn by these 11 (eleven) petitioners before the Notary Public, Dhanbad fully resemble with

those submitted by them between 26th July, 1994 and 28th July, 1994 and available in their respective case file and their respective signatures also

tally with the signature at the bottom of their statement made before the Regional Labour Commissioner (Central), Dhanbad at the time of enquiry

between 26th July, 1994 and 28th July, 1994 before declaring their genuineness. The 11 deponents have been identified in the affidavit in

photographs dated 17.10.1995 by the Advocate Md. Israil Ansari, Dhanbad and in earlier affidavit by Shri B.B. Pandey, Advocate, Dhanbad.

I am, therefore, fully satisfied that the following petitioners whose photographs have been affixed in the affidavit dated 17.10.1995 enclosed in

original as Annexure 1-A" are the same person who participated in the enquiry between July 26th and July 28th, 1994 and who have been

declared to be genuine claimant by the Regional Labour Commissioner (Central), Dhanbad vide his letter dated 31.8.1994 addressed to the

Chairman-cum-Managing Director. M/s. Bharat Coking Coal Ltd., Koyla Bhawan, PO Koyla Nagar, district Dhanbad.

1. Sri Sheochand Kumar, S/o Sri Maheswar Singh
2. Sri Fagu Prasad, S/o Late Ram Bachan Prasad.
3. Sri Sanatan Nayak, S/o Muni Prasad.
4. Sri Moti Lal Prasad, S/o Sri Vimal Prasad.
5. Sri Shukat Choudhary, S/o Manager Sah.
6. Sri Ramraj Yadav, S/o Bhagwan Yadav.
7. Sri Ram Pravesh Paswan, S/o Sri Bhorik Paswan.
8. Md. Sahada, S/o Sri Vimal Paswan.
9. Sri Balram Paswan, S/o Sri Vimal Paswan.
10. Sri Chandan, S/o Sri Rambali
11. Sri Madan Bishwakarma, S/o Sri Ganesh Bishwakarma.

Sri Madan Bishwakarma S/o Sri Ganesh Bishwakarma is, therefore, directed to produce this letter alongwith the affidavit enclosed with it and two

identical photographs attested by the Gazetted Officer before the Chairman-cum-Managing Director/General Manager (Personnel), M/s. Bharat

Coking Coal Ltd., Koyla Bhawan, PO Koyla Nagar, District Dhanbad within one week from today for compliance of the Hon"ble High Court's

order dated 17.7.1995 in MJC No. 127 of 1995(R) for his reinstatement.

The management of M/s. Bharat Coking Coal Ltd. is also requested to take necessary action with regard to police verification etc. as per direction

of the Hon"ble High Court in CWJC No. 3092/94(R) dated 4.4.1995.

10. The respondents, instead of sending the names of the petitioners to the concerned police station for police verification, issued notices and

invited objections from the general public with regard to their claim as beneficiaries under the award. Pursuant to that notice no one turned up to file objection. Then the management again issued second notice inviting objections from the public at large. Pursuant to the second notice some persons, for the first time, filed objections claiming benefits under the award. Their candidature was also sent for police verification. On police verification it was found that the names, parentages and addresses of these petitioners was genuine. In spite of all these facts the respondents, by the impugned order dated 3.4.1996, withdrew the provisional reinstatement of the petitioners on the ground that the petitioners failed to submit any document of their identification and their identity still appears to be doubtful.

11. In my opinion, the reasons given by the respondents in the impugned order is wholly arbitrary, unreasonable and also contrary to the findings recorded by the Regional Labour Commissioner twice in which he has found that these 11 petitioners are the genuine persons. It is, rather, surprising that on the one hand these 11 persons have been fighting litigation since 1990 claiming benefit under the award and their identification has been found genuine by the Regional Labour Commissioner but, on the other hand, merely because some objections were filed by some persons who never claimed any benefit under the award since 1983, the respondents only on surmises that the petitioners' identification is doubtful, have withdrawn their provisional reinstatement.

12. Taking into consideration the two reports of the Regional Labour Commissioner and the opinion expressed by this Court in the earlier writ petitions with regard to the genuineness and identity of these petitioners I am of the opinion that the impugned order withdrawing the provisional reinstatement is nothing but an arbitrary and whimsical action of the respondents. In my considered opinion, the dispute which is going on for the last two decades must be closed by regularizing the reinstatement and giving all other benefits under the award to the petitioners.

13. For the aforesaid reasons this writ application is allowed and the order as contained in Annexure 8 to the writ petition is set aside. The respondents are directed to regularize the provisional reinstatement of the petitioners and give all benefits, under the award. This direction must be complied with within period of one month from the date of receipt of a copy of

this order.