
(2003) 06 JH CK 0063
In the Jharkhand High Court
Case No : CWJC No. 2016 of 1994 (R)

Steel Authority of India Ltd.

APPELLANT

Vs

Hriday Nath Pandey and Others

RESPONDENT

Date of Decision : 12-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 108

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

Bench : Single Bench

Advocate : K.K. Jha Kamal, for the Appellant; V.P. Singh and A.K. Sahini, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the award dated 7.1.1994 passed by the Presiding Officer, Labour Court, Bokaro Steel City, Bokaro in reference case No. 11/ 92 whereby he has directed the petitioner to reinstate the respondent-workmen in service with full back wages, continuity of service and other consequential benefits.

2. It appears that the appropriate Government by notification dated 17th July 1992 referred the following dispute for adjudication :

"Whether the termination of Shri Hriday Nath Pandey, staff No. 266553 Recorder-cum-Issuer Changer (S-2) Steel Melting Shop (Operation) Bokaro Steel Plant, Bokaro, from service is proper. If not whether he should be reinstated or compensation be paid."

3. The concerned workman was absented from duty unauthorisingly and therefore action was taken by the petitioner-management and his services was terminated on 4.7.1980. The concerned workmen thereafter raised industrial dispute in 1990 and appropriate Government referred the dispute for adjudication in 1992. The Labour Court passed the impugned award on 7.1.1994.

4. Mr. K.K. Jha Kamal learned counsel appearing for the petitioner-management assailed that part of the impugned award whereby the Labour Court awarded full back wages to the workmen. Learned counsel submitted that the Labour Court committed grave error of law in not considering the fact that although the termination order was passed in 1980 the concerned workmen did not take any step for about 10 years and it was only in 1990 a dispute was raised which was referred by the Government in 1992. Learned counsel submitted that the petitioner company cannot be penalized for the laches of the workmen who remain idle for about 10 years and only in 1990 the dispute was raised. Learned counsel relied upon one unreported decision of the Supreme Court in the case of Steel Authority of India Ltd. v. The Presiding Officer and Anr., (arising out of SLP No. (C) 18031 of 1993).

5. On the other hand Mr. V.P. Singh learned counsel appearing for the workmen submitted that before raising the industrial dispute in 1990 the workmen represented the management several times and also approached the grievance committee on a number of occasion. The grievance committee also issued notices on 17.8.1981 and 9.6.1982 calling upon the workmen to participate in the deliberation of the committee but nothing was done after 1985. According to the counsel therefore, there is not laches on the part of the workmen.

6. Before appreciating the rival contention of the learned counsel appearing for the parties I would like to refer the decision relied upon by the learned counsels appearing for the petitioner. In the case before the Supreme Court referred to hereinabove the concerned workmen was terminated In 1980. Thereafter the concerned workmen did not do anything in the matter till he moved for conciliation on 5th February 1991 i.e. after a decade. Since the dispute could not be resolved a reference was made on 27.9.1991 for adjudication. The Labour Court directed reinstatement with full back wages. A similar argument was advanced before the Supreme Court assailing the award of full back wages. Their lordships of the Supreme Court modified the award of full back wages by substituting and by ordering 25% back wages. Their lordships observed.

As stated above the grievance of the appellant is that it was the employee who was to blame for not initiating proceedings till 5.2.1991 against the order of termination dated 23.8.1990 and therefore, the Labour Court was wrong in awarding "full back wages." It is further stated that at best he could have been awarded wages from 5.2.1991 when he initiated the conciliation proceedings. On the other hand counsel for the employee contends that the services of the employee were terminated without giving him any opportunity whatsoever and, therefore, the termination was ab initio void. We need not go into this aspect of the matter for the simple reason that we have not Interfered with the order or re-instatement in service. But the fact remains that even if the order of termination was ab initio void there was not justification for waiting for over a decade to challenge that order. The employer cannot be asked to pay for the default of the employee in not taking action for over a decade. May be the employer was harsh

in awarding the maximum punishment. We, therefore, set aside the order directing payment of full back wages and substitute it by ordering 25% back wages. The 25% back wages to be paid within three months from today. The appeal will stand disposed of accordingly with no order as to costs.

7. In the instant case it appears from the award that after the termination of the services in 1980 the petitioner approached the management and also approached the grievance committee and the grievance committee issued notices in 1981 and 1982 asking the workmen to participate in the deliberation of the committee but according to the admitted case of the workmen nothing was done after 1985. No explanation has been given by the concerned workmen as to the step he had taken after 1982 or 1985 till 1990 when the concerned workmen for the first time issued letter to the management and raised industrial dispute. Admittedly therefore, there is laches on the part of the concerned workmen for not raising any dispute for more than five years. In that view of the matter the petitioner management cannot be asked to pay full back wages. The impugned award therefore, so far it relates to payment of full back wages is set aside and it is directed that the petitioner management shall pay 50 per cent back wages to the concerned workmen in the manner directed by the Labour Court.

8. This writ application is therefore, allowed in part with the aforesaid modification in the award.