

(1995) 04 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 1879 of 1994 (R)

Steel Authority of India Ltd.

APPELLANT

Vs

K.B. Sarkar and Others

RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Citation : (1995) 1 BLJR 556

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Judgement

P.K. Deb, J.—The Jail authority has challenged the quantum and calculation of compensation allowed in favour of the respondent No.1 by the respondent No.2 in Reference Case No. 25 of 1989, as contained in Annexure-4.

2. Some backgrounds and history of the case is necessary for disposal of this writ petition. The respondent No.1 joined at Bokaro Steel Plant as Machine Tool Operator on 5.8.1974 on an offer being made on 9.4.1974. He worked as such till 24.5.1976 and then he became absent and according to the respondent No.1 he was absent as he was arrested in connection with theft/embezzlement of some materials within the knowledge of the petitioner-Company and after being released from the jail, when he wanted to join in the service he was not allowed as his name was found to be struck off from the Rolls of the Company in terms of Clause-20 (xi) of the Certified Standing Orders. This happened in the year 1976 but the respondent No.1 sat tight over the matter and after about 10 years he raised the issue which came in the form of Industrial dispute regarding his illegal termination from service. On notification being made, Reference Case No. 25 of 1989 was registered before the respondent No.2 and award was pronounced on 12.11.92, whereby it was held that the action of the Management in terminating the service of the respondent-workman is invalid but as because the workman has not been doing his job for last 17 years, it was held that his reinstatement would not be proper and as such awarded consolidated sum of Rs. One Lac as money compensation in lieu of reinstatement. The respondent No.1 received the

same with objection and then filed CWJC No. 745/93 (R) before this Court. By order dated 27.7.1993, a Division Bench of this Court held that the Tribunal was right in holding that the reinstatement in this particular case was not proper but as no grounds and reasonings were given regarding the assessment of the compensation of Rs. One lac paid to the respondent No.1, the matter was remanded back to the Tribunal (respondent No.2) for giving reasons in respect of the calculation of the compensation to be paid to the petitioner in lieu of reinstatement and it was further observed to the following manner:

....and in this connection, the Labour Court Shall take into consideration all the relevant facts, including the date of employment of the petitioner, nature of service, salary which was last drawn by him and the salary which should be drawn by him on his date of superannuation and all other relevant factors, and shall thereafter, Fix the amount of compensation to be paid to the petitioner. However, the amount of compensation to be so fixed by the Labour Court, should not be less than the amount already awarded by it.

3. In view of the order, the matter was remanded back before the respondent No.2 and after hearing both the parties, the impugned revised order was passed fixing compensation to the tune of Rs. 5.58 lacs in lieu of re-instatement, back wages etc. and directed the petitioner to pay a sum of Rs. 4.58 lacs only to the workman after deducting Rs. One lac from the award which had already been paid. This has been challenged in the writ petition.

4. Mr. K.K. Jha "Kamal" appearing for the petitioner-Company has strenuously argued that the learned Tribunal was wrong in appreciating the directions given by this Court and also in calculating compensation when the Apex Court had held otherwise, the judgment of which has been annexed with the writ petition.

5. Mr. A.K. Sinha, the learned Counsel appearing on behalf of the workman-respondent No.1 has firstly argued about the maintainability of this writ petition, on the ground that disputed matter of calculation of compensation cannot be adjudicated by a writ Court and there is little scope of interference with the impugned award when the same has been drawn on the basis of the directions given by this Court.

6. Before going into the merit of the case, It should be mentioned here that the respondent No.1 remained ineffective and sat over his retrenchment order for about a decade and then came up for setting aside the order of termination. It is true that the termination order was passed illegally and as the respondent No.1 was not working for 17 years, his reinstatement after setting aside the termination order was not felt proper and as such compensation was granted in lieu of reinstatement. The respondent No.1 worked under the petitioner only about one and half years and for the 17 years when he was out of employment, must have been doing something for the purpose of his survival and his family. Those have not been brought on record. Only for serving a meagre period of one and half year period with an Organisation, the petitioner cannot be expected to

receive full back wages alongwith retire mental benefits in lieu of compensation. The judgment of the Apex Court as contained in Annexure-5 may not be wholly applicable in the case as in that Case, there was reinstatement of the retrenched workman and as such order was passed for granting back wages to the extent of 25 per cent only on the ground that for a long decade the petitioner did not raise his voice against the illegally retrenchment order.

7. In the present case, the reinstatement has not been given and that has been confirmed by this Court in the previous writ petition as mentioned earlier and with regard to the compensation in lieu of reinstatement the matter was sent back to the lower court for making proper calculation in consideration of all factors regarding the pay scale of the petitioner at the superannuation stage and also at the date of appointment. The respondent No.2 has granted the back wages in full upto 1992 calculating from 3.8.1977 giving promotional benefits also in the pay scale save and except of the Executive Cadre which can only be done by way of selection and not by promotion on seniority according to law.

In that aspect, I do not find anything to interfere but it would be too much to be expected by the respondent No.1 to get the retrial benefits in calculating compensation in lieu of reinstatement. Respondent No.1 might have been doing something in these days in some other Organisation or private firms for his survival.

8. By serving only one and half year with the petitioner, he cannot have any claim towards the retrial benefits as calculated by the respondent No.2 in Para-8 of his impugned judgment. Nowhere in the direction of this Court, anything has been stated regarding retrial benefits to be included within the compensation amount. I can only find that alongwith back wages as calculated to Rs. 3, 69, 384/- there must be adding of three months' notice pay as per offer of appointment to the tune of Rs. 8, 856/- which comes out to be Rs. 3, 78, 240.88p. and making it around one it can be said to be Rs. 3, 78, 000/- only.

9. In the view that would be the proper compensation in lieu of reinstatement against the respondent No.1. This modification in the impugned order has been made. Keeping in view that the public money is being utilised for the purpose of such compensation to be paid to a negligent workman. Rs. 1, 00, 000/- which has already been to the respondent No.1 shall be deducted from the modified award as mentioned above.

10. The writ petition is thus partly allowed.

No order as to costs.