
(2006) 04 JH CK 0096
In the Jharkhand High Court
Case No : Writ Petition (L) No. 605 of 2005

Steel Authority of India Ltd.

APPELLANT

Vs

Md. Shamsad Ansari

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25(4), 25(F), 33C

Citation : (2006) 3 JCR 187

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

Bench : Single Bench

Advocate : G.M. Mishra and Umesh Mishra, for the Appellant; Manoj Tondon, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ petition the petitioner-Steel Authority of India Ltd. has prayed for quashing the order passed by the Presiding Officer, Labour Court, Bokaro Steel City dated 22.6.2005 in M.J.C. case No 6/2002 whereby he has computed the wages payable to the workman and has also allowed certain benefits u/s 33C(2) of the Industrial Disputes Act. (in short the Act).

2. The facts of the case lie in a narrow compass:

The Government of Bihar made a reference u/s 10 of the Act between the petitioner-Management and the respondent-workman which was registered as Reference Case No. 3/1995 before the Labour Court, Bokaro Steel City, Bokaro for adjudication of the following dispute:

Whether removal of Md. Shamsad Ansari Siloman staff No. 455885 a workman. Bokaro Steel Plant, Bokaro Steel City from work with effect from 25.9.1982 is proper? If not, what relief the workman is entitled to?

3. The Labour Court, after hearing the parties, published the award on 22.12.1999 whereby the Labour Court held that the workman is entitled to

reinstatement in service with full back wages and other consequential benefits. Petitioner's case is that due to perversity in the award the Management decided to challenge the same in the High Court. The workman made a request, by his letter dated 14.8.2002, that he is ready, willing and agree to accept 50% of the back wages and consequential benefits if he is reinstated in service. The workman represented that if his proposal is accepted, he shall not agitate any claim whatsoever, in future. Based upon the said commitment of the workman a settlement was arrived at on 5.12.2000 whereby it was unequivocally agreed that the Management shall pay 50% of the back wages and other consequential benefits with effects from the date of his termination up to the date of settlement i.e. December, 2000. Accordingly a letter dated 3.2.2001 was issued by the Management reinstating the workman and allowing him 50% of the total financial benefits and other consequential benefits. The workman received monetary benefits in terms of the settlement dated 5.12.2000 along with dearness allowances etc. After receiving the benefits the workman filed a petition dated 12.7.2002 u/s 33(C)(2) of the Act for implementation of the award passed in the reference case and also for computing the monetary benefits in terms of the award. The said application was registered as MJC case No. 6/2002. The Management challenged the maintainability of the said application in terms of the settlement arrived at by the workman and also the merit of the claim.

4. The Labour Court allowed the said application and awarded the entire benefits. A copy of the said order, which is impugned in this writ petition, has been annexed as Annexure 12 to this writ application.

5. Mr. G.M. Mishra, learned Counsel appearing on behalf of the petitioner-Management, assailed the impugned order passed by the Labour Court as being illegal and wholly without jurisdiction. Learned Counsel firstly submitted that the award of the Labour Court passed in Reference case No. 3/95 shall be deemed to have been terminated with effect from the date of settlement arrived at by the Management and the workman. Learned Counsel further submitted that the Labour Court had no jurisdiction to decide the claim of the respondent-workman u/s 33(C)(2) of the Act when there was no valid award existing or subsisting. Learned Counsel submitted that the Labour Court has no jurisdiction to determine the existence, scope and impact of the settlement and it could not have made a declaration that the settlement was invalid.

6. Mr. Manoj Tandon, learned Counsel appearing on behalf of the respondent-workman, on the other hand, submitted that the petitioner-Management deliberately did not implement the award although it had become enforceable on expiry of 30 days from the date of its pronouncement. After expiry of six months from the date of pronouncement of the award the Management prevailed upon the workman and taking advantage of the helplessness of the workman who was out of service for long 18 years, under duress and coercion, entered into the purported settlement. Learned Counsel submitted that such bipartite settlement is not valid in view of non-compliance of the mandatory provisions of Sub-section

2(p) of the Act. Learned Counsel contended that the purported settlement was not sent to the Labour Commissioner.

7. From perusal of the impugned order passed by the Labour Court u/s 33(C)(2) of the Act it appears that the Labour Court formulated the following questions for determination:

(i) Whether the memorandum of settlement entered into on 5.12.2000 in between the O.P.-Management and its workman (applicant) after pronouncement of award dated 19.6.2000 in Ref. Case No. 3/95 is valid and binding upon the claimant-applicant as per provisions of Clause 18 (i) of the I.D. Act, 1947?

(ii) Whether the applicant is entitled for determination of the amount as per pronouncement of the award dt. 19.6.2000 and also for Interpretation of the award in this case as filed u/s 33C(2) in Ref. Case No. 3/95 or as per the terms of settlement dt. 5.12.2000 the applicant is entitled thereto?

(iii) Whether the applicant is entitled for money/monetary benefits as per detailed in Annexure A to M?

(iv) To what relief or reliefs, if any, the applicant is entitled to?

8. While deciding point No. 1 the Labour Court held that although there is averment that the workman voluntarily filed application for reinstatement with 50% back wages but, as a matter of fact, the Management subjected the workman to file such application for implementation of the award for his reinstatement. The Labour Court, therefore, held that the memorandum of settlement is not valid because prior to this there was pronouncement of award which became final. On point No. 2 the Labour Court held that the workman is entitled for determination of the amount as per award and the Management cannot claim determination of the amount as per the terms of settlement. So far point Nos. 3 and 4 are concerned, the Labour Court held that the applicant is entitled to 100% back wages from the date of termination of service and further consequential benefits under different heads claimed by him.

9. The first question that falls for consideration before this Court is whether, after pronouncement of award and after the same became final, the labour Court can adjudicate the claim u/s 33C(2) of the I.D. Act ignoring the subsequent settlement arrived at between the parties after pronouncement of the award. For better appreciation I would like to quote Section 33C of the Act which reads as under:

33-C. Recovery of money due from an employer-(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any

money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer ;

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in Sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.-In this Section "Labour Court" includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

10. From bare reading of the aforesaid provision, it is manifestly clear that Section 33-C(1), applies to cases where money is due to a workman from an employer under a settlement under the provisions of Chapter V-A or Chapter V-B of the Act already calculated and ascertained. But Sub-section (2) applies both the non-monetary as well as monetary benefits. In the case of monetary

benefits, it applies where such benefit though dues is not. calculated and there is dispute about its calculation. It is, therefore, clear that the scope of Section 33-C(2) is wider than that of Section 33-C(1).

11. It is well settled that proceeding u/s 33-C(2) are analogous to execution proceeding and the Labour Court like the Executing Court in the execution proceeding governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based.

12. In the instant case, before coming to the point whether the Labour Court was justified in holding that the alleged settlement after the award of Labour Court was obtained by the Management under coercion, I would like to reproduce the memorandum of settlement which has been annexed as Annexure-3 to the writ petition:

1. The person concerned, namely, Md. Shamshad Ansari, Staff No. 458085 ex-Silo Man, CO & BPP Department, SAIL/Bokaro Steel Plant was terminated on the grounds of unauthorized absence for the period from June 28, 1982 to August, 29, 1982, under clause 20 (xi) of the Standing Orders w.e.f. June 28, 1982.

2. Before affecting termination, no chargesheet was issued nor any enquiry conducted. As against the version of the Manager. Sri Ansari contended that during the period of absence, he had informed the Management that he was ill.

3. Sri Ansari raised an industrial dispute before the DLC, BS City. The dispute was referred to the Labour Court for adjudication by the Govt. of Bihar.

4. The Labour Court, on adjudication of the entire matter, gave its decision that termination or striking off the name from the rolls of the Company on the grounds of unauthorized absence amounts to retrenchment as defined in Section 2(00) of the Industrial Dispute Act and in such type of termination, the provisions of Section 25(4) of the Industrial Dispute Act are required to be complied with by the Management,

5. Since the provisions of Section 25(F) of Industrial Dispute Act was not complied with by the Management in as much as no retrenchment compensation was paid, the termination was declared to be unconstitutional, illegal and unjustified.

6. The Labour Court, accordingly, directed the Management, in the Award dated June 19, 2000 in Reference Case No. 3/95, to reinstate Sri Shamshad Ansari with full back wages and consequential benefits.

7. Thereafter, the concerned person, in his application to the Management dated August 14, 2000, requested the Management of SAIL/Bokaro Steel Plant that he was agreeable to mutually settle the terms of implementation of the Award of full back wages along with other consequent benefits. In the said application, the concerned person also stated that he would like to associate his son Md. Abdul Kalam, USW, M/s. Baidyanath Construction, in the process of mutually settling

the issue.

8. Considering the request of the concerned person, the Management dropped the idea of challenging the order dated June 19, 2000 passed by the Labour Court in Reference Case No. 3/95.

9. The case, accordingly is amicably settled between the concerned person, along with his representative, and the Management of SAIL/Bokaro Steel Plant on the following terms:

The Person concerned, namely Md. Shamshad Ansari, Staff No. 458085, ex-Silo Man, CO & BPP Department is now to be reinstated along with consequential benefits, according to the Award w.e.f. June 28, 1982. However, he has since already given in writing requesting the Management that he is mutually agreeable to settle the terms of implementation of the Award of reinstatement and payment of full back wages along with consequential benefits, the management has consider the request of the concerned person and the case is settled mutually as under:

According to this settlement, the person concerned now shall be reinstated and will be entitled for 50% (fifty percent) of total financial benefits in terms of back wages and other consequential benefits w.e.f. the date of his termination i.e. June 28, 1982, to the date of this settlement i.e. December 5.2000.

The person concerned hereby undertakes that except whatever benefits he is given hereunder, he shall not raise any claim whatsoever in respect of his back wages and other consequential benefits in future.

13. It is the specific case of the workman that Management threatened him to come to a settlement otherwise it would challenge the Award in the High Court and under such threat & coercion, the workman signed the memorandum of settlement. This averment finds support from para-8 of the Memorandum of Settlement quoted hereinabove which clearly indicates that the Management had the idea to challenge the Award passed by the Labour Court and to drag the workman into further litigation. The workman surrendered before the Management and signed the settlement. The fact is also evident from Annexure-5 which is the office order issued by the Management reinstating the workman with the condition that he shall not raise any claim whatsoever in respect of back wages. The office order dated 15.1.2000 reads as under:

An application dated August 14, 2000, was received from Md. Shamshad Ansari, Staff No. 458085, ex-Silo Man. CO & BPP Department, SAIL/Bokaro Steel Plant, for a settlement with the Management of SAIL/Bokoro Steel Plant, subsequent to the Award of the Labour Court dated June 19, 2000, requesting therein for mutually setting the terms of implementation of the Award.

And whereas the Management was considering to challenge the order of the Hon"ble Court dated June 19, 2000 under Reference Case No. 3/95, such request application, as received for consideration, the Management dropped the further

process of challenge to higher Court.

And whereas, on consideration, on out-of-court settlement was arrived at between the parties representing Employer, i.e. Management of SAIL, Bokaro Steel Plant, and representing workman, i.e. Md. Shamshad Ansari, the workman, himself, on December, 5. 2000.

Mr. Shamshad Ansari is hereby reinstated along with other consequential benefits, with pay protection at every stage, w.e.f. June 28, 1982. As per the terms of the out-of-court settlement. Md. Shamshad will be paid 50% (fifty percent) of total financial benefits in terms of back wages and other consequential benefits w.e.f. the date of his termination, i.e. June 28, 1982, to the date of this settlement i.e. December 5, 2000.

Md. Shamshad Ansari has undertaken that except whatever benefits he is given hereunder, he shall not raise any claim whatsoever in respect of his back wages and other consequential benefits.

Orders regarding payment, etc and other personal details will be issued by the concerned shop personnel functionary, Md. Shamshad Ansari will submit a declaration stating therein that he was not gainfully employed during the period he remained out of employment of BSL. This issues with the approval of the competent authority.

14. Section 2(p) of the Act defines the word "settlement" which reads as under:

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorized in this behalf by] the appropriate Government and the conciliation officer.

15. From reading of the aforesaid definition, it is clear that settlement may be arrived at either in course of conciliation proceeding or otherwise than in course of conciliation proceeding. The only difference is that in case of settlement arrived at otherwise than in course of conciliation proceeding, it is binding only against the actual parties to the agreement for settlement subject to application of other mandatory provisions of the Act and the rules made thereunder. It should be borne in mind that the settlement always relates to industrial dispute which is existing between the Management and the workman. Any settlement arrived at should be just and a fair one. The question of justness and fairness of the settlement should be examined with reference to the situation as it stood on the date on which it was arrived at.

16. In the instant case, as noticed above the workman was removed from service in 1982 not on the grave charges but on the ground that his attendance was found poor and his performance was not satisfactory. An industrial dispute was raised and finally the appropriate Govt. referred the dispute to the Labour Court

for adjudication in 1995 being Reference case No. 3/1995. The Management contested the reference case. The Labour Court found that the removal of the workman from service was illegal and unjustified. The Labour Court recorded a finding that the concerned workman was sick from 29.7.1982 and during the sick period, he wrote few letters which was admitted by the Management. The Labour Court, therefore, published the Award holding that the removal of the workman-respondent was illegal. The Labour Court consequently directed reinstatement of the respondent-workman in service with full back wages.

17. Curiously enough, although the Reference case remained pending for more than 15 years, the Management never tried to settle the dispute nor did it reinstate the workman at least with half back wages. After the Award was published and pronounced, the Management did not enforce the Award within the statutory period, rather, after the award became final and binding, it started bargaining with the workman on the threat of challenging the Award in the High Court. The workman who was not in a bargaining position, had no option but to surrender before the Management in order to get his livelihood. In such situation, he signed the settlement. The Labour Court, therefore, rightly held that the memorandum of settlement was not valid in as much as it was arrived at under coercion and undue influence after the Award became final.

18. Besides the above, when dispute has been finally adjudicated by a competent Court of law in a valid Reference case made by the appropriate Government, the Management which is in dominant position, cannot bargain with the respondent-workman and force him to come to a settlement. It also cannot waive the right of the respondent-workman which has been adjudicated in the Award given by the Labour Court.

19. Considering the entire facts of the case and the discussion made hereinabove, in my view, the impugned order passed by the Labour Court u/s 33-C(2) of the Act needs no interference by this Court.

20. For the aforesaid reasons, there is no merit in this writ application, which is accordingly dismissed.