
(2019) 09 JH CK 0094

In the Jharkhand High Court

Case No : Writ Petition (L) No. 4314 of 2001

Tata Iron & Steel Company Limited

APPELLANT

Vs

R.S. Singh And Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A
Constitution Of India, 1950 — Article 136, 226

Citation : (2019) 09 JH CK 0094

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : G.M. Mishra, Umesh Mishra, Manish Kumar, Ranjan Kumar, Sunil Kumar

Final Decision : Dismissed

Judgement

Heard learned counsel for the parties.

The present writ petition has been filed for quashing the Award dated 24.04.2001 passed by the Presiding Officer, Labour Court, Jamshedpur in Reference Case No.14/97 whereby reference has been answered in favour of the workman ordering reinstatement with full back wages except wages for the period from 01.09.1992 to 04.01.1996.

From pleading and argument, it appears that the respondent-workman was appointed as Temporary Mazdoor in May, 1961 and subsequently confirmed on 09.06.1964. On 09.07.1991 he was transferred to Blast Furnace Relining Store. On 11.07.1991 he joined the post but his predecessor Mr. S.S.Prasad has not handed over the charge of the Store to him. Workman was on leave from 12.07.1991 to 14.07.1991 and thereafter he joined the duty on 15.07.1991. On joining, he reported non handing over charge to the Superior Officer. On 16.07.1991, the respondent-workman found discrepancy in the Store and accordingly information has been given to the Superior Officer, namely, Sri Pradeep Sahay, who asked him to prepare a report. Accordingly a report has

been prepared and submitted vide report dated 18.07.1991 to the Superior Officer that about 40 numbers of bearing are missing.

On such report, the respondent No.1 has been charged vide memo of charge dated 12.08.1991 (Annexure-1). The respondent No.1 has been charged for not performing supervision and care, which resulted in loss of companies' property.

It appears that further discrepancy has been reported on 12.08.1991 by the respondent-workman. For this also, another charge-sheet has been issued vide memo of charge dated 29.08.1991 but no action has been taken pursuant to this charge-sheet. For the charge-sheet dated 12.08.1991 a domestic enquiry has been conducted and the respondent-workman has been found guilty and accordingly he has been dismissed from service w.e.f. 01.09.1992.

Being aggrieved the respondent-workman has filed a suit being Title Suit No.161/1992 for declaration that order of discharge was illegal and arbitrary. On dismissal of the said title suit, an industrial dispute has been raised on 04.01.1996 which has been referred vide order dated 05.11.1996 as Reference Case No.14/97.

The terms of reference is as follows:

"Whether the termination of services of Sri R.S.Singh, Store Keeper Balast Furnace, Relying Store, Ticket No.209119, P.No.47214, M/s Tisco Limited, Jamshedpur is proper? If not, relief the workman is entitled to?"

The workman has not contested regarding the fairness of the enquiry process rather the case has been contested on merit. Accordingly, the Labour Court has dealt the entire case on merit after considering the material available on record and finding has been recorded that neither predecessor of the petitioner, namely, Mr. S.S.Prasad nor Mr. Pradeep Sahay, to whom the workman has reported has been examined. Further proportionality of the punishment has also been considered. Considering the proportionality and the nature of allegations and evidence of record, the reference has been answered in following terms:

"In view of above discussed facts and circumstances, I find and hold that the punishment of dismissal/ termination of the workman is not just and proper and same is fit to be set-aside. At the same time, I find and hold that the workman is entitled for relief of reinstatement with back wages and consequential benefit except the back wages from 01.09.1992 to 04.01.1996."

Thus, the Labour Court has exercised its power under Section 11A of the Industrial Disputes Act, 1947.

Learned counsel for the petitioner-management has raised the issue that since there is no pleading by the respondent-workman that he was not gainfully employed and as such he is not entitled for full back wages.

Reference can be made to the judgment passed in this Court vide order dated 18.05.2019 in W.P.(L) No.7749/2011. Relevant para 9 is quoted hereinunder:

"9. The principles underlying payment of back wages has been succinctly laid down in the case of "Deepali Gundu Surwase" (supra) wherein it has been held as follows:

38. The propositions which can be culled out from the aforementioned judgments are:

38. 1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38. 2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38. 3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38. 4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38. 5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different

opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees*.

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches, referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

From perusal of above dictum of the Apex Court, it is evident that it is normal rule that back wages is automatic if the order of termination/dismissal is illegal and unjustified. If the termination is otherwise not illegal but declared so on the basis of lack of evidence or some other technical ground, in that case the concerned workman has to plead regarding non employment elsewhere.

Be that as it may be, the employee cannot get wages from two different sources but whether employee was getting wages or not it has to be established by bringing evidence on record.

The only dispute remains regarding onus i.e. who is supposed to discharge the onus regarding gainful employment or non employment.

Fact and circumstance of each case will be determinative that onus lies upon whom.

In the present case, admittedly the respondent-workman has been dismissed for misconduct, if any, of Mr. S.S.Prasad, predecessor of the respondent-workman. Neither Mr. S.S.Prasad has been examined nor Mr. Pradeep Sahay to whom the matter has been reported, still the respondent-workman has been dismissed

from service.

In facts of the present case, onus lies upon the employer to plead and prove, if they want to avoid the payment of back wages.

However, the Labour Court has taken into account the entire facts and has denied back wages for the period 01.09.1992 to 04.01.1996.

In view of above discussion, this Court finds no reason to interfere with the impugned Award dated 24.04.2001 passed by the Presiding Officer, Labour Court, Jamshedpur in Reference Case No.14/97.

Resultantly, the present writ petition stands dismissed.

Pending I.A., if any, stands disposed of.