

(2010) 01 JH CK 0168
In the Jharkhand High Court

Tata Steel Limited

APPELLANT

Vs

Suresh Prasad Singh and Others

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Industrial Disputes (Banking Companies) Decision (Repeal) Act, 2001 — Section 2
Industrial Disputes Act, 1947 — Section 10, 12, 2

Citation : (2010) 01 JH CK 0168

Hon'ble Judges : R.R. Prasad, J;M.Y. Eqbal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal under Clause 10 of letter patent is directed against the judgment dated 30.8.2008 passed in CWJC No. 1802 of 2000 (R), whereby the learned Single Judge allowed the writ petition, set aside the award passed by the Presiding Officer, Labour Court, Jamshedpur and remitted back the matter for deciding the Reference on merit.

2. The respondents who are the concerned workmen, were employed by the erstwhile Indian Tube Company in between 1983-85 and have been working since then. In 1989, the respondents raised a demand before the management through the Secretary Recreation Club of the appellant - TISCO Tube Division, Jamshedpur for parity and proper wages. In the conciliation proceeding before the statutory authority the management of appellant-TISCO also participated. Since the conciliation failed, a failure report was submitted. Thereupon the proper Government by Notification dated 19.6.1991 referred the following disputes to the Presiding Officer, Labour Court for adjudication:

1. Whether the workmen of TISCO Tubes Recreation Club, Baridih, Jamshedpur are entitled to get pay scale and other benefits admissible to the workmen of TISCO Welfare Department, Community Development Centre, Hospital, Health Department and Electrical Department? If affirmative, then what pay they are entitled to and from what?

2. Whether the workmen of TISCO Tubes Division Recreation Club, Baridih, Jamshedpur should be created as the workmen of TISCO Tubes Division or not?

3. The Labour Court finally passed the award holding that no industrial dispute as defined u/s 2(k) of the Industrial Disputes Act exists in between the claimants-respondents and the TISCO management. Aggrieved by the said award passed by the Labour Court the respondents filed the aforementioned writ petition. The learned Single Judge, after discussing the entire facts of the case, came to the following conclusion:

14. The fact remains that the Recreation Club is controlled, managed and looked after by respondent No. 2 and, thus, the finding recorded at paragraph No. 17 and 18 of the impugned award is contrary to the facts and documents on record and, thus, unsustainable in the eyes of law. The learned Presiding Officer has also failed to appreciate that it was required to adjudicate the reference instead of rejecting it on the ground of maintainability. In this regard it is relevant to refer to Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, , wherein, in a similar situation while interpreting Section 2(k) of the Industrial Disputes Act and the power of the Government, the Hon"ble Supreme Court held that the power to adjudicate vests with the Tribunal of a valid dispute and if the same is allowed for the government to do so, it will render Section 10 and Section 12(5) of the Act nugatory. Meaning thereby, the conferment of jurisdiction under the provisions of Industrial Disputes Act is clearly well defined that the Government has to refer the matter, it cannot delve into the merits or decide the issue. Simultaneously upon reference, the learned Tribunal is required to adjudicate the dispute referred after trial. In the instant case, the learned Presiding Officer, Labour Court, instead of adjudicating the dispute on merits has by a detailed speaking order rejected the same on the ground of maintainability and that also on an erroneous interpretation of facts and law.

16. Be that as it may, the fact remains that the erstwhile Indian Tube Company merged with TISCO Management in the year, 1986 and after merger, the Indian Tube Company has become Tube Division of TISCO, and the activities of erstwhile Company has been made as one of the Divisions of TISCO Ltd. and since then the persons employed in Tube Company became the employees of TISCO Ltd. Respondent No. 2 has got various departments under its own Welfare Department, which maintains the creativity, health, educational needs of the employees or their wards and provides housing accommodation and other allied facilities to its employees. In order to fulfill its obligation towards welfare of the employees and their family members, respondent no runs and maintains hospital, dispensary, schools, community centre and re-creation club and, thus, the employees in the re-creation club are also the employees of respondent No. 2 directly governed by the Department of Welfare. This is not a case of persons working in a canteen, run by a contractor, instead the Exhibits filed, which include payment slip, medical, identity card, notices issued by and on behalf of respondent No. 2, house allotment letter, other correspondences and also the

notices, issued by R.P.F. Commissioner, Bihar, clearly reflected that they were under direct employment and control of respondent No. 2 and there was no intermediary. The learned Presiding Officer, Labour Court, completely ignored and failed to consider the aforesaid documents, which were duly exhibited. The Re Club is totally governed by respondent No. 2, which also has a total disciplinary control over its workmen and even the wages are paid by it and, thus, the control is not only what to do but how to do. The learned Presiding Officer, Labour Court, was further not justified in holding the reference to be incompetent and not maintainable after pendency of the reference for more than eight years. The Hon''ble Supreme Court in the case of State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, while referring to relying upon the derision, rendered in the case of Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, at paragraph No. 42 held as under:

42. Yet recently, this Court in Rajasthan SRTC v. Zakir Hussain in the context of the jurisdiction of the Industrial Court vis-a-vis the civil court highlighted the object of the Industrial Disputes Act stating: (SCC p. 462, para 30).

30 The object of the Industrial Disputes Act, as its preamble indicates, is to make provision for the investigation and settlement of industrial disputes, which means adjudication of such disputes also....

4. In the light of the finding aforesaid, the learned Single Judge set aside the award passed by the Tribunal and remitted back the matter to the Labour Court for deciding the reference on merit.

5. Mr. Rajiv Ranjan learned Counsel for the appellant, assailed the impugned judgment mainly on the ground that the learned Single Judge ought not to have recorded a finding with regard to the relationship of employer and employee as the matter was remitted to the Labour Court for decision on merit. Learned Counsel submitted that the entire finding given by the learned Single Judge without referring to any evidence whatsoever is perverse and against the materials on record. We have gone through the impugned judgment and the findings recorded by the learned Single Judge.

6. Admittedly, the erstwhile Indian Tube Company merged with the TISCO management in the year 1986. The concerned respondents admittedly have been working since 1983-85. We, therefore, fully agree with the reasonings given by the learned Single Judge in the paragraphs quoted hereinabove and the findings recorded in the impugned judgment. It is high time the employees, who have been working since 1983 should be treated as an employee under the appellant-company.

7. The impugned judgment, therefore, needs no interference by this Court. However, we observed that the appellant may take all the points that may be available under the law before the Labour Judge, who will decide the reference after giving full opportunity of hearing to both the parties.

This appeal, therefore, having no merit is dismissed.

R.R. Prasad, J.

I agree.