

(2009) 12 JH CK 0093
In the Jharkhand High Court

The Eastern Coalfields Limited	Vs	APPELLANT
Gopal Chandra Mondal and Others		RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 12 JH CK 0093

Hon'ble Judges : Gyan Sudha Mishra, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the judgment and order dated 08.05.2009 passed by the learned Single Judge in W.P(S) No. 5913/06 which was passed along with W.P(S) No. 5923/06 by which the impugned order dated 19.8.1994 under which services of both the petitioners were terminated were set aside but the respondents were granted liberty to take a fresh decision in the matter in accordance with the procedure laid down under the law after granting reasonable opportunity of hearing to both the petitioners and allow them to submit their defence. Both the writ petitions were accordingly disposed of.

2. The appellant-management of Eastern Coalfields Limited has preferred this appeal against the aforesaid judgment and order and in support of the appeal, the counsel for the appellant inter alia submitted that the respondents-employees should have been directed by the learned Single Judge to approach the Industrial Tribunal for redressal of their grievances as that was the direction of the Division Bench of the Calcutta High Court in an appeal preferred by the Management against the order of Single Judge setting aside the order of termination. Order passed by the Division Bench of the Calcutta High Court was challenged by one of the respondents namely, Gopal Chandra Mondal before the Supreme Court vide SLP (Civil) No. 14069 of 2003 and the Supreme Court vide order dated 16.12.2005 passed in S.L.P.(Civil) No. 14069/2003 had been pleased to dismiss the SLP. However, it was observed that if so advised, the petitioner

may approach the appropriate Court for relief in accordance with law and therefore, the petitioner Gopa Chandra Mondal filed a writ petition bearing W.P(S) No. 5913/2006 out of which this appeal arises.

3. However, counsel for the management has submitted, as already indicated hereinbefore, that the respondent-employee should have approached the Industrial Tribunal for redressal of his grievance as this was the direction issued by the Division Bench of Calcutta High Court in F.M.A. No. 581/1999 vide Annexure-8 to the writ petition. But, the learned Counsel is missing that the respondent had approached the Supreme Court by filing the SLP referred to hereinbefore which though got dismissed but the Supreme Court had not categorically directed the petitioner/respondent herein to approach the Industrial Tribunal but had observed clearly "if so advised, the petitioner may approach the appropriate Court for relief in accordance with law."

4. Thus, the plea that the petitioner in terms of order of the Division Bench was bound to approach the Industrial Tribunal and not by way of a writ petition before the High Court cannot be allowed to be raised. Besides this, we have noticed that the learned Single Judge has been pleased to hold that the procedure for enquiry was not followed by the appellant-management and, therefore, the termination was set aside granting liberty to the appellant-management to take a fresh decision in the matter in accordance with law.

5. Thus, in effect the order of termination although has been set aside the respondent obviously could not have been reinstated as the enquiry is yet to be proceeded with. It is not one of those cases where the petitioner had raised a question of fact so as to direct him that he has to approach the Industrial Tribunal which he could not approach without initiation of reference in this regard under the Industrial Disputes Act. If the petitioner respondent herein thought it appropriate to assail the order of termination on a question of law and not on a question of fact, remedy of writ jurisdiction under Articles 226 and 227 of the Constitution of India was surely amenable and available to the petitioner-respondent herein.

6. In that view of the matter, the plea taken by the appellant-management that the respondent should have approached the Tribunal for challenging his termination is not justified.

7. Thus, we find no reason to interfere with the order passed by the learned Single Judge. The appeal is therefore dismissed.