

(2019) 08 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (L) No. 6627 Of 2018

Their workman Union represented through Sri Ram Ratan
Ram

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A, 2K, 10

Citation : (2019) 08 JH CK 0034

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Sarvendra Kumar, Anoop Kr. Mehta, Amit Kr. Sinha

Final Decision : Dismissed

Judgement

Heard counsel for the parties.

The present writ petition has been filed against the order of refusal as contained in letter dated 19.02.2018. The impugned order of refusal reads as under:-

"Shri Raj Kumar Ram, Ex. Miner Loader was dismissed by the Alakusa Colliery Under Kusunda Area M/s BCCL on 23.04.2004 due to unauthorized absence after conducting a proper enquiry against him as he was a habitual absentee. The action of management was not challenged by the union/ aggrieved person during the relevant time under the ID Act. The raising of issue after passage of more than 10 years from cause of action is highly belated. In this connection, the judgement of Hon'ble Supreme Court in the case of Nedungadi Bank Ltd. Vs K. P. Madhavan Kutty has held that - A dispute should be raised within a reasonable time."

The petitioner-workman was appointed on the post of Miner Loader under the respondent-BCCL on 11.02.1999. It further appears that the petitioner-workman became absent since 29.05.2001. On such absenteeism, departmental proceeding has been initiated and his service has been terminated vide order

dated 23.04.2005. This order of termination has been accepted by the petitioner-workman as it is evident from the Annexure-3 i.e. application dated 21.07.2008. Application is quoted hereinbelow:-

सेवा में,

अध्यक्ष-सह-प्रबंध निदेशक,

भारत कोकिंग कोल लिमिटेड,

धनबाद।

द्वारा- मर्सी अपील

उचित माध्यम।

महोदय,

सविनय निवेदन के साथ कहना है कि मैं राज कुमार राम 8 क्षेत्र के अंतर्गत अलकुसा कोलियरी में कार्यरत था। मुझे अनाधिकृत लंबी अनुपस्थिति के अभियोग साबित होने के कारण कंपनी की सेवा से दिनांक 23/04/05 से पत्र संख्या 112 दिनांक 23/04/05 द्वारा बर्खास्त कर दिया गया है। मुझे अपनी गली का एहसास हो गया है और मैं भविष्य में इस तरह की गलती नहीं करूंगा।

सूचना संख्या 3156-3256 दिनांक 3/07/08 के आलोक में श्रीमान् के समक्ष पुनर्नियोजन हेतु दया याचना समर्पित करता हूँ।

श्रीमान् से प्रार्थना है कि मेरी गलतियों को क्षमा करते हुए हमें पुनर्नियोजन देने की कृपा प्रदान की जाये ताकि हम अपने परिवार का भरण-पोषण ठीक ढंग से कर सकूँ।

इस कृपा के लिए मैं श्रीमान् का सदा आभारी रहूँगा।

धन्यवाद,

दिनांक 21/07/08

भवदीय,

राज कुमार राम

माईनर लोडर

अलकुसा कोलियरी

कर्मि नं0 03002177

प्रमाणित किया जाता है कि उपर्युक्त फोटोग्राफ श्री राज कुमार राम का है जिन्हें अनाधिकृत लंबी अनुपस्थिति के अभियोग प्रमाणित होने के कारण कंपनी की सेवा से बर्खास्त कर दिया गया है।

Thus, the petitioner-workman has approached the authority in the year 2008 for re-employment as he has got information from the paper that employee who has been dismissed on the ground of absenteeism are being re-employed.

Even after filing the above application, the respondent BCCL took no action and

subsequently after lapse of 9 years in the year 2017 an Industrial Disputes has been raised which has been negated by the impugned order, levelling the same as stale claim. Reference may be made to 2015 (15) SCC 1 in the case of Prabhakar Vrs. Joint Director, Sericulture Department & Anr. Relevant para-42 is quoted hereinunder:-

"42. On the basis of the aforesaid discussion, we summarise the legal position as under:

42.1. An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2-A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that "any industrial dispute exists or is apprehended". The words "industrial dispute exists" are of paramount importance, unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute.

42.2. Dispute or difference arises when one party makes a demand and the other party rejects the same. It is held by this Court in a number of cases that before raising the industrial dispute making of demand is a necessary precondition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exists.

42.3. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still

alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

42.4. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the Labour Authorities seeking reference or did not invoke the remedy under Section 2-A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for a number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection.

42.5. Take another example. A workman approaches the civil court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the civil court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum.

42.6. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an "existing dispute". In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

Thus, the law has been settled by the Apex Court, that the claim abandon by the employee becomes stale claim and no industrial dispute survives for reference.

Admittedly, in the present case the dismissal is of the year 2005. Petitioner-workman has accepted dismissal and he has filed a petition in the year 2008 for re-employment not disputing the order of dismissal. Thereafter, industrial dispute has been raised disputing the order of dismissal.

In view of above facts and judicial pronouncement, this Court finds no merit in the present writ petition. Accordingly, the same is, hereby, dismissed.