(2007) 05 JH CK 0003

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 1767 of 2000 R and Civil Writ Jurisdiction Case No. 2714 of 1997 R

Umesh Prasad Singh — APPELLANT

Vs

Coal India Limited and Others
 Sisir Kumar Sarkar Vs BCCL, Director (Personnel), BCCL, Personal Manager (EEPD), BCCL and Personal Manager (Admn.), BCCL — RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:
Mines Act, 1952 — Section 52(1), 52(10)

Citation : (2007) 2 BLJR 2428 : (2007) 4 JCR 200

Hon'ble Judges : Amareshswar Sahay, J

Bench : Single Bench

Advocate : R.S. Mazumdar and Rohit Roy, for the Appellant; A.K. Mehta, Rupesh Singh and P.K. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Since a common question is involved in both the writ applications and, therefore, both the writ petitions were heard together and are being disposed of by this common judgment.

Relevant facts of C.W.J.C. No. 1767 of 2000 (R)

2. The petitioner Umesh Prasad Singh joined Bharat Coking Coal Limited a subsidiary of Coal India Limited on 12/07/1984 as Junior Executive Trainee (JET) (Mining) and he worked as Junior Mining Engineer and Assistant Manager in between 1985 to 1994. From July 1994 to December 1998 he worked as Manager of Bastacolla Colliery and then as Superintendent of Mines from 25/12/1998 to 03/05/1999. He resigned from service on 04/05/1999.

3. The petitioner made a claim to the respondents as contained in Annexure-2 dated 08/11/1999 for payment of wages in lieu of 146 days due earned leave in terms of Section 52(10) of the Mines Act, 1952, which was rejected by the

respondent by issue of letter dated 15/04/2000 to the petitioner on the ground that in accordance with Para 7.1 of the Leave Encashment Scheme framed by the Coal India Limited for the executive cadre employees, the claim cannot be granted to the petitioner since he had resigned from the service.

Relevant facts of C.W.J.C No. 2714 of 1997 (R)

4. The petitioner Sisir Kumar Sarkar an employee of Executive cadre of Bharat Coking Coal Limited, a subsidiary of Coal India Limited resigned from the Service of Coal India Limited on 13/10/1995, which was accepted on 03/06/1996 by the Management and the same was communicated to the petitioner on 08/06/1996 and he was relieved from duty on 02/07/1996. Since he was not paid his Gratuity, Leave Encashment and other dues, he filed a writ petition before the High Court being CWJC No. 3744 of 1996 (R), which was disposed of in terms of the following order on 15/01/1997, the extract of which are quoted herein below:

In that view of the matter, this writ petition is disposed of directing the respondents, specially respondent No. 4 to make available the admitted dues of the petitioner along with the salary for the month of June, 1996, if available, on the condition as mentioned above, within tow months next positively from the date of presentation of a copy of this order from the side of the petitioner. If the same amount is not made available to the petitioner within the time aforesaid, then the respondents shall have to pay interest at the rate of 10 per cent fro the date of due till the date of payment.

The writ petition is disposed of accordingly.

5. After the disposal of the aforesaid writ petition, an application was filed by B.C.C.L. before the High Court to recall the order dated 15/0 1/1997, which was also disposal of by order dated 04/02/ 1997 with the following order:

Perused the petition filed by the respondents.

The writ petition was disposed of asking the respondents to pay the admitted dues alongwith the salary of June, 1996, if available.

Now, a request has been raised in the petition filed by the respondents for recalling the order by showing leave Encashment Scheme at Annexure-2, I am not convinced that the Leave Encashment Scheme is totally not admissible lo the petitioner. However, whatever is the admitted dues, that should be paid to the petitioner as per the order of this Court.

Question of recalling of order does not arise.

6. There is no dispute of the fact that the other dues have already been paid to the petitioners except the leave encashment and, therefore, the petitioners have filed this writ application for issuance of direction to the respondents to pay Leave Encashment in terms of Leave Encashment Scheme of Coal India Limited alongwith interest.

7. On the other hand the case of the respondents is that the Leave Encashment Scheme, which has been framed by the Coal India Limited, is applicable to the Executive Cadre employees. Para 7.1 of the said scheme specifically says that leave at credit shall not be granted for encashment if any employee resigns from service and, therefore, in view of the above provision of the Leave Encashment Scheme framed by the Coal India Limited, the petitioners in both the writ applications, who had resigned from the service of the Coal India Limited, cannot be allowed the benefit of leave encashment.

Relevant paragraphs, i.e. 7.0 and 7.1 of the Leave Encashment Scheme, framed by the Coal India Limited are quoted herein below:

7.0 Encashment of Leave on Termination of Service Retirement.

7.1 Leave at credit shall not be granted for encashment if an employee resigns from the service.

Note: According to Para 7.1 of the Leave Encashment Scheme for Executive Cadre Employees, leave at credit shall not be granted for encashment if an employee resigns from the service.

A question in this connection has been raised as to whether "resigns from the service" would mean the date on which the resignation has been submitted or the date on which the resignation is effective, i.e. the date of final quitting service.

The matter was examined in consultation with Finance and it is clarified that since there is no restriction on granting of leave to an employee during the period prior to the date of his actual quitting of/ release from service on submission of resignation, the words "resigns from service" would mean the actual date of quitting of service and hence the facility of encashment of leave may, if allowed be available before an up to that date and not beyond the date of actual quitting of the service.

(Authority: CIL OM No. C-5(B)/52056/182 dated 12/15-6-1978.

8. Mr. Mehta, learned Counsel appearing for the respondents submitted that the facility of encashment of leave is allowed before the date of actual quitting of service and not beyond that date. It was further submitted that the contention of the petitioners that they are entitled to get leave wages in accordance with Section 52(1) of the Mines Act, 1952 is not maintainable. The Leave Encashment Scheme framed by the Coal India Limited provides much better leave facility than what has been provided under the Mines Act and the Scheme of Leave Encashment formulated by the Coal India Limited are applicable exclusively for the Executive Cadre employees of Coal India Limited. The petitioners during their service period had been availing the Leave Encashment Scheme framed by the Coal India Limited and, therefore, alter such a long lapse of time of their resignation from service they cannot be allowed to say that they would be guided by the provisions of the Mines Act, 1952.

9. There is no dispute of the fact that the resignation of the petitioner Umesh Prasad Singh was accepted on 04/05/1999, whereas he submitted his application for encashment of his leave on 08/11/1999. Admittedly, the writ petitioners of both the writ petitions belonged to the Executive Cadre of Bharat Coking Coal Limited before they resigned from the service of the B.C.C.L. It has not been disputed by the petitioners that the Mines Act provides for 15 days paid sick leave in a calendar year whereas as per the Executive Leave Rules of executive cadre employee of Coal India Limited an executive is entitled to 30 days Earned Leave, 20 days Sick Leave and 12 days Casual Leave in a calendar year and the writ petitioners for their whole service period were availing leave every year under the Executive Leave Rules and, therefore, in my view, after their resignation from the service they cannot claim the benefit of leave encashment under the Mines Act.

10. As already noticed above, under the leave encashment scheme of Coal India Limited under para-7.1 the benefit of leave encashment cannot be granted for encashment if the employees of executive cadre resign from service.

11. In this view of the matter, I am of the view that the writ petitioners are not entitled to the relief as claimed in these writ applications. Accordingly, having found no merit, both the writ applications are dismissed.

However, in the facts and circumstances of the case there shall be no order as to cost.

