
(2004) 01 JH CK 0094
In the Jharkhand High Court
Case No : CWJC No. 4261 of 1996 (R)

Workman, Bachu Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 07-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2004) 1 JCR 415

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : S.N. Das, for the Appellant; M.M. Banerjee, Indrajit Sinha and Rajan Ray, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sattay, J.—The present writ application is directed against the award dated 6.4.1996, passed by the Presiding Officer, Labour Court, Dhanbad in Ref. Case No. 18 of 1994, whereby in reference to dispute referred by the Government of Bihar to decide as to whether the termination of the service of the concerned workman namely Bachu Singh, Mechanized Operator was proper or not? The learned Labour Court has held that the concerned workman Bachu Singh has been found guilty of serious misconduct of instigating the workers to adopt go slow and thereby caused loss to the management and thereby he was rightly dismissed from service.

2. The management of M/S Hindustan Malleables and Forgings Limited i.e., respondent No. 2 issued charge sheet to concerned workman under the Certified Standing Order of the Company, alleging therein that the petitioner instigated Shri Kali Singh to depose falsely as defence witness in domestic enquiry against one Mangru Mahto and accordingly the said Kali Singh falsely stated on 4.5.1989, that the normal production of Socket cap per day as 110 to 120 numbers only. It is further alleged that the concerned workman also instigated

him to produce less pieces of socket caps, accordingly, Shri Kali Singh produced 125 pieces of Socket Caps only instead of 170 pieces, which was normal rate of production. The other co-workers also followed the same advise given by the concerned workman and produced only 125 Nos. of Socket caps and thereby caused loss to the Management.

3. The concerned workman submitted his reply denying the charges levelled against him and since the reply submitted by him was not found to be satisfactory, then enquiry was held wherein the concerned workman was found to be guilty of the charges levelled against him and thereby the Managing Director of the said company dismissed the concerned workman from service with effect from 19.9.1989, after issuing second notice to show cause. Since an Industrial Dispute was pending before the Industrial Tribunal, Ranchi, an application u/s 33(2)(b) of the Industrial Dispute Act, 1947 was filed before the Industrial Tribunal, Ranchi for approval of their action taken in regard to the dismissal of workman. Ultimately the Industrial Tribunal held that enquiry was fair and proper and it was conducted in accordance with the provision of law. However, action taken by the Management in regard to dismissal of the concerned workman was not approved and therefore, the application filed by the Management u/s 33(2)(b) of the Industrial Dispute Act was dismissed. Against the said order of the Tribunal, the Management preferred writ application before the Patna High Court, Ranchi Bench being C.W.J.C. No. 840 of 1995 (R). The High Court without going into the details of the case passed an order on 26.4.1995, to the effect that since a Ref. Case u/s 10 of the I.D. Act, 1947 over the dismissal of the concerned workman is pending before the Labour Court, Dhandbad which shall be decided strictly on the basis of the materials, both oral and documentary, on records. Accordingly as per the order of the High Court the present award has been passed by the learned Labour Court on the basis of the materials, both oral and documentary, on records.

4. The learned counsel for the petitioner has assailed the finding of facts arrived at by the learned Labour Court on the ground that the concerned workman has been victimized by the Management because of his union activities and further on the ground that a person who actually committed wrong has been spared after he filed an apology but the petitioner against whom there was allegation of instigation only, has been dismissed from service. In this regard the statements of Kali Singh which has been annexed as Annexure-9 to writ petition has been referred by "the learned counsel for the petitioner. Lastly it has been submitted that the punishment is disproportionate to the charges and therefore, in view of the facts and circumstances of the case, dismissal from service is too harsh.

5. I have carefully gone through the award under challenge passed by the Labour Court and I find that the learned Labour Court has given finding of facts after considering the materials both oral and documentary on records. Now it is a well settled of law by series of decision of the Supreme Court that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or

Tribunals; where the orders passed by the inferior Courts or Tribunals are found without jurisdiction or is in excess of it or as a result of failure to exercise of jurisdiction. It is also a settled law that Jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court and finding of fact reached by inferior Courts or Tribunals as a result of the appreciation of evidence cannot be re-opened in writ proceedings. The error of law which is apparent of the fact of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be.

6. In view of the law as laid down by the Supreme Court on the decision in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, , onwards I find that the petitioner has failed to make out a case for interference by this Court and to bring its case within the parameters as stated herein above and therefore, I do not find it to be a fit case in which any interference by this Court is required on the finding of facts arrived at by the learned Labour Court. In my opinion, the impugned award is perfectly legal and valid. Accordingly this writ application is dismissed but without costs.