
(2020) 05 JH CK 0005

In the Jharkhand High Court

Case No : Writ Petition (L) No. 3994 of 2014

workmen of Balihari Colliery under Putkee Balihari Area of M/
s. Bharat Coking Coal Ltd

APPELLANT

Vs

Management in relation to the Balihari Colliery

RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(D), 25F

Citation : (2020) 05 JH CK 0005

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Sarju Prasad, Nikhil Ranjan

Final Decision : Dismissed

Judgement

Heard Mr. Sarju Prasad, learned counsel for the petitioner and Mr. Nikhil Ranjan, learned counsel for the respondent - BCCL.

2. This writ application is directed against the Award dated 07.10.2013 passed by the learned Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad in Reference Case No. 22 of 2000 whereby and whereunder the reference has been answered against the workman.

3. The Government of India, Ministry of Labour in exercise of the powers conferred under Section 10 (1) (D) of the Industrial Disputes Act had referred the following dispute for adjudication.

"Whether the demand of the Union before the Management of Balihari Colliery under P.B. Area of M/s. BCCL for reinstatement of S/Sri Pradeep Orang and 35 others as per the list enclosed with full back wages in service of the company is proper and justified? If so, to what relief the concerned workman are entitled and from what date."

4. Written statement was filed on behalf of the workmen in which it has been

stated that the workmen concerned had been working at Balihari colliery since long. Their nature of work is permanent in the underground mines under the direct control and supervision of the Management. It has been stated that the concerned workmen had been performing the job of khanja cutting, stone dusting, isolation stopping, line packing, road cleaning, stones dust spreading, sump cleaning and other permanent nature of job. It has further been stated that the concerned workmen had been performing a permanent and prohibited category of job continuously and they had put in more than 190/240 days attendances in each calendar year. All the implementations for execution of the job were being supplied by the Management. The Management has been paying the wages below the rate fixed by NCWA in the name of different intermediaries. It is the grievance of the workmen concerned that repeated insistence made by them for regularization and payment of wages as per NCWA had led the Management in terminating the services of the concerned workmen. It has further been stated that the termination of the services of the concerned workmen was violative to Section 25 F of the Industrial Disputes Act, 1947.

5. In the written statement filed on behalf of the Management, it has been stated that no employer - employee relation exists between the Management and the workmen concerned. The workmen concerned were never employed by the Management of Balihari Colliery. They were not on the rolls of the company nor were they discharged/dismissed/retrenched and as such the question of reinstatement does not arise. The management has further stated that the Union has claimed that the management was paying wages through intermediaries, but the Union has not given the name of any of such intermediary. The workmen concerned according to the management did not disclose the name of the contractor under whom they were working and the Union has also not mentioned the year in which the workmen had completed 240 days of attendance and when the work was stopped by the management. It has also been stated that the Union has not given the details of the workmen concerned.

6. The learned Presiding Officer, Central Government Industrial Tribunal No. 2 at Dhanbad vide Award dated 07.10.2013 had answered the reference against the workmen concerned which led to the present writ application.

7. It appears that in course of proceeding before the Industrial Tribunal, two witnesses have been examined on behalf of the Union, whereas a solitary witness has been examined on behalf of the management. The learned Tribunal had come to a conclusion that there was no employer - employee relation between the management and the concerned workmen. The reason for arriving at such finding was that the concerned workmen did not have any documentary proof regarding their appointment in the company. So far as the slips submitted regarding their engagement, out of 36 workmen, only 26 workmen had worked intermittently for the period of 1 to 6 days in the year 1994. The other slips which were produced did not concern the list of 36 workmen.

There appears to be an absolute dearth of evidence which has been brought

forward by the Union. There is nothing on record to suggest that their appointment as a contractual worker was a camouflage or it was a sham transaction. Moreover, the Union has failed to show that the work in which the concerned workmen were engaged was a perennial and permanent nature of job and that management had full control and supervision over the said workmen.

8. The learned Tribunal had therefore rightly come to a conclusion that the demand raised by the Union is unjustified and illegal and accordingly had answered the reference in favour of the management.

9. There being no reason to conclude otherwise, this writ application fails and the same is hereby dismissed.