

Employers in Relation to Manag Vs. Their Workmen Being Represente

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Court : Jharkhand

Decided On : Apr-28-2015

Appellant : Employers in Relation to Manag

Respondent : Their Workmen Being Represente

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (L) No. 6002 of 2009 Employers in relation to the Management of Kusunda Area of M/s Bharat Coking Coal Limited, PO Kusunda, PS Putkee, Distrcit Dhanbad, through Sri Anoop Kumar Sengupta, S/o Late Abani Kumar Sengupta, Chief General Manager, Kusunda Area No. VI, BCCL, Kusunda, Putkee, Dhanbad Petitioner Versus Their Workmen being represented by the President, National Colliery Congress, Water Board Colony, Hari Mandir Road, Hirapur, Dhanbad ... Respondent ----- CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioner : Mr. Anoop Kumar Mehta, Advocate Mr. Amit Kumar Sinha, Advocate For the Respondent : Mr. Pradeep Modi, Advocate Mr. Sarvendra Kumar, Advocate 18/28.04.2015 Aggrieved by Award dated 01.07.2009 in Reference No. 280 of 2000, the management of Kusunda Area of M/s Bharat Coking Coal Limited has preferred the present petition.

2. The brief facts of the case are that, on 16.02.1994 a criminal case was registered against the workman for offence under Sections 379 and 411 I.P.C. on the allegation of committing theft of armoured cable with joint box. On the next day i.e. on 17.02.1994 a chargememo was served upon the workman for committing

misconduct under Clause 26.1.11 and 26.1.15 of the Certified Standing Orders for Workmen of Establishments under BCCL. During the domestic enquiry the management examined three witnesses in support of the charge framed against the workman. The workman participated in the domestic enquiry and examined himself. By issuing a second showcause notice 2 dated 31.08.1994, a copy of enquiry report dated 02.07.1994 was served upon the workman requiring him to submit his objection to the finding recorded by the enquiry officer. The Disciplinary Authority passed order of dismissal from service on 02.11.1994. It is stated that the criminal court by judgment and order dated 25.02.1999 acquitted the workman of criminal charges framed against him. Thereafter, an industrial dispute was raised by the workman on 26.04.1999 and the Appropriate Government in exercise of power under Section 10 of the Industrial Disputes Act made reference to the Industrial Tribunal on 18.09.2000. Before the Industrial Tribunal, the record of domestic enquiry was produced by the management. Taking note of acquittal of workman in criminal case, the Industrial Tribunal recorded a finding that in view of the misconduct committed by the workman, order of dismissal from service was not justified rather, the management could have imposed minor penalty such as, stoppage of increment etc. against the workman. The reference was answered in favour of the workman granting 60% backwages however, without benefit of increment and promotion till, the joining of workman. 3. Heard the learned counsel for the parties and perused the documents on record.

4. Mr. Anoop Kumar Mehta, the learned counsel for the petitioner submits that during the domestic enquiry the management witness namely, D.R. Palit stated that he caught the respondentworkman red handed while the workman was committing theft. Other two witnesses who were examined by the management have also supported the charges framed against the workman. The domestic enquiry was conducted in a fair and 3 proper manner and after complying with the requirement of principles of natural justice, the order of dismissal has been passed against the workman and therefore, the Industrial Tribunal erred in law in recording finding contrary to the findings recorded during the domestic enquiry. The evidences produced before the enquiry officer and before the criminal court were different. It is submitted that the finding of the criminal court is not binding on the domestic enquiry and therefore, merely because the workman has been acquitted

by the criminal court, the finding recorded in the domestic enquiry cannot be interfered with. Moreover, the criminal court acquitted the workman giving benefit of doubt and thus, it was not a honourable acquittal of the workman by the criminal court. Taking exception to long delay in raising industrial dispute, the learned counsel for the petitioner relies on decision in Pandiyan Roadways Corpn. Ltd. v. N. Balakrishnan, reported in (2007) 9 SCC 755 and in Divisional Controller Karnataka State Road Transport Corp. Vs. M.G. Vittal Rao, reported in (2012) 1 SCC 442 5. As against the above, the learned counsel for the respondentworkman submits that during the domestic enquiry, the witness namely, D.R. Palit has only stated that he saw the workman and informed the management about the occurrence. The said witness has not stated in the domestic enquiry that he caught the workman red handed while committing theft. The evidences before the domestic enquiry and criminal court are identical because the charge against the workman during the department enquiry as well as before the criminal court were same. It is further submitted that the order of acquittal recorded 4 by the criminal court is not merely on account of benefit of doubt rather, the criminal court has adverted to the evidence of the informant and thereafter, recorded a finding of acquittal of the workman. It is further submitted that it is the specific case of the workman that the CISF personnels are inimical to him as he was found drunk on several occasions and fighting with the CISF personnels and therefore, they had a grievance to settle with the workman. It is further submitted that all the witnesses examined by the management during the department enquiry were hear say witnesses and merely on the basis of hearsay evidence, order of dismissal from service cannot be passed. It is submitted that in view of the evidence produced before the department enquiry and the quantum of alleged theft committed by the workman, award dated 01.07.2009 does not require interference by the Court.

6. In so far as, the procedure adopted during the departmental enquiry is concerned, by no stretch of imagination it can be concluded that the workman was not afforded reasonable opportunity to defend himself. The respondentworkman participated in the departmental enquiry and crossexamined the witnesses produced by the management. The management witness namely, D.R. Palit is an eye witness, is admitted by both the parties. On his information, the management initiated departmental enquiry against the workman by issuing a chargememo

dated 17.02.1994. During the departmental enquiry, the evidence of other two witnesses examined by the management has not been shaken. The enquiry officer found charges framed against the workman proved. A copy of the enquiry report was served upon the workman and 5 after noticing the objection of the workman, order of dismissal has been passed. Clause 30 of the Certified Standing Orders provides that the workman served with punishment under Clause 28 of the standing order can prefer an appeal. However, the respondent workman did not prefer appeal against the order of dismissal and six years after the order of dismissal, an industrial dispute was raised by the union on behalf of the concerned workman.

7. Adverting to the findings recorded by the Industrial Tribunal, I find that the finding recorded by the Industrial Tribunal in paragraph no. 9 of the award dated 01.07.2009 indicates that the Industrial Tribunal was conscious of the misconduct committed by the workman as well as the findings recorded by the enquiry officer during the domestic enquiry. The Industrial Tribunal itself has opined that in view of the minor nature of the misconduct committed by the workman, instead of dismissing him from service, the management could have imposed punishment of stoppage of increment etc. upon the workman.

8. Referring to the contention raised on behalf of the workman that on hearsay evidence produced before the departmental enquiry, order of dismissal cannot be passed, I find that oral evidence adduced on behalf of the management cannot be said to be hearsay evidence. The witness namely, D.R. Palit, is an eye witness and other two witnesses have corroborated his evidence. It is well settled that a finding recorded by criminal court is not binding upon the departmental authority. Moreover, in the present case, the order of acquittal was passed five years after the dismissal order dated 02.11.1994 was passed by the 6 Disciplinary Authority and therefore, there was no occasion for the Disciplinary Authority to take note of acquittal of the workman by the criminal court. Subsequent order of acquittal of the workman cannot be a ground for interfering with the order passed by the Disciplinary Authority. Moreover, I find that the criminal court has categorically recorded a finding that the accused is acquitted from charges by giving benefit of doubt and thus, it was not an order of acquittal passed on merits. In view of

decision of the Hon'ble Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited, reported in (1999) 3 SCC 679, departmental authorities can consider the order passed by the criminal court only and only if, it is established that the evidence produced during the departmental enquiry and the criminal court were identical. In the present case, I find that the charge against the workman in the domestic enquiry was for committing misconduct under Clause 26.1.11 and 26.1.15 which are extracted below :

26. 1.11 Theft, fraud or dishonesty in connection with Company's business or property. 26.1.15 Causing wilful damage to work in progress or to the property of the employer. 9. In the criminal case, the petitioner was chargesheeted for offence under Sections 379 and 411 IPC. During the departmental enquiry, the management examined three witnesses whereas, in the criminal court the prosecution examined Bansidhar Pandey, who was the informant and thus, it cannot be concluded that the evidences produced before the departmental enquiry and the criminal court were identical. In so far as, the question of gravity of misconduct and the quantum of punishment are concerned, in view of the evidence led during the departmental enquiry and the findings recorded by the enquiry officer it was not open to the Tribunal to substitute its own opinion. 10. In view of the aforesaid discussion, I am of the opinion that award dated 01.07.2009 suffers from serious infirmity in law and therefore, warrants interference by the Court and is hereby quashed. In the result, the writ petition is allowed. (Shree Chandrashekhar, J.) Tanuj/ A.F.R.

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