

Chittranjan Sen Vs. National Coal Development Corporation and ors.

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Court : Jharkhand

Decided On : Jan-15-2003

Reported in : [2003(1)JCR588(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100; [Specific Relief Act, 1963](#) - Sections 14B; Industrial Employment (Standing Order) Act, 1946

Appeal No. : A.F.A.D. No. 39 of 1991 (R)

Appellant : Chittranjan Sen

Respondent : National Coal Development Corporation and ors.

Advocate for Def. : Inderjit Sinha, Adv.

Advocate for Pet/Ap. : Deepak Bharti, Adv.

Disposition : Appeal dismissed

Judgement :

M.Y. Eqbal, J.

1. This second appeal by the plaintiff-appellant is against the judgment of affirmance. The plaintiff filed tile suit No. 180/70 for declaration that the order of dismissal dated 13.12.1969 passed by the defendant is illegal, mala fide motivated

and is a nullity.

2. The plaintiff was appointed as a stowing mozdoor in the collieries of the respondent in 1968. The appellant was charge-sheeted by serving several charge-sheets. The Enquiry Committee so constituted submitted its report to the effect that the charges levelled against the appellant were proved and on that basis the appellant was dismissed from service.

3. The trial Court, after recording a finding that the plaintiff was rightly held guilty of the charges and was given sufficient opportunity to defend his case and the order of dismissal was not illegal or motivated, dismissed the suit.

4. Aggrieved by the said judgment and decree of the trial Court the plaintiff preferred title appeal No. 18/80 which was finally dismissed by the 2nd Additional District Judge, Giridih affirming the finding recorded by the trial Court. The appellate Court further held that the suit in respect of mere declaration is not maintainable. Hence this Second Appeal.

5. On 23.5.1991 this appeal was admitted on the following question of law.

'I. Whether in view of the fact that the order of dismissal was passed not only in respect of the charge-sheet dated 13.12.1968 and 4.12.1968 but also in respect of the charge-sheet dated 11.4.1969 in respect where of no inquiry was held, the learned Courts below were correct in passing the impugned order without taking into consideration the question as to whether the order of dismissal was passed taking into consideration the cumulative effect of all the charges leveled as against the appellant, in view of the decision of the Supreme Court in *Binni Ltd. v. Their Workmen*, reported in AIR 1972 SC 1975.

II. Whether in view of the fact that the plaintiff sought for a declaration that the order of his dismissal from services was illegal the suit was barred under Section 14B of [Specific Relief Act, 1963](#) as also barred under necessary in view of the provision of the Industrial Employment (Standing Order) Act, 1946 as has been held in *Jitendra Nath Biswas v. The Empire of India and Ceylone Tea Company*, reported in 1989 (3) SCC 582.'

6. As noticed above both the Courts below have come to a concurrent finding of fact that as against the charge-sheet served upon the plaintiff appellant reasonable opportunity of hearing was given to him and he fully participated in the proceeding.

7. The only substantial question of law which has been formulated at the time of hearing is whether the plaintiff was dismissed from service on the ground of misconduct alleged in the charge-sheet dated 11.4.1969 without giving reasonable opportunity of hearing. From perusal of the order passed by the appellate Court it appears that the appellate Court has gone into this issue and recorded a finding that the charge-sheet dated 11.4.1969 was served upon the plaintiff and the Enquiry Committee headed by one R.M. Singh was constituted. As against that charge-sheet, the plaintiff filed his show cause and participated in that inquiry. The appellate Court further found that the recommendation of the Deputy Superintendent of Collieries sent to Area Manager, Kargali marked as Ext. 'Ka' has been proved by the witnesses and the genuineness of the said document has not been disputed by the plaintiff-appellant in the cross-examination. The appellate Court further found that the plaintiff was found guilty for other charges which was communicated to the plaintiff by charge-sheet dated 13.12.1968 and 4.12.1968.

8. In view of the findings recorded by the appellate Court, in my opinion, the first question of law formulated at the time of admission of this appeal does not arise and needs no answer.

9. So far the second substantial question of law is concerned, in view of the decision reported in 1976 (1) SCC 496 and Jitendra Nath's case, 1989 (3) SCC 582, I am of the opinion that the Court of appeal below rightly held that the relief sought for in the suit was barred under Section 14(b) of the Specific Relief Act and under the Industrial Employment (Standing Order) Act, 1946 for the reasons that appropriate forum under the said Act was available to the plaintiff-appellant for a declaration that the order of dismissal was bad and also for a direction for reinstatement in service.

10. For the aforesaid reason I find no merit in this appeal which is, accordingly dismissed.

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