

Sheo Narayan Singh Vs. the Mining Area Development Authority, Through Its Secretary and ors.

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Court : Jharkhand

Decided On : Jan-12-2004

Reported in : [2004(2)JCR110(Jhr)]

Judge : R.K. Merathia, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 1501 of 1997 (R)

Appellant : Sheo Narayan Singh

Respondent : The Mining Area Development Authority, Through Its Secretary and ors.

Advocate for Def. : Aparesh Kumar Singh, Adv.

Advocate for Pet/Ap. : V.P. Singh, Sr. Adv. and; A.K. Sinha, Adv.

Disposition : Petition dismissed

Judgement :

R.K. Merathia, J.

1. Heard the parties.

2. The prayer of the petitioner substantially is that he should have been reinstated on the post of 'Encroachment Inspector' and not as an 'Encroachment Guard,' after the judgment of this Court, passed in CWJC No. 887 of 1987 (R) on 25th January, 1991 (Annexure-9). For determining this issue, it was necessary to look into the award under challenge in that writ petition. Accordingly a copy of the award dated 12th March, 1987, passed in Reference Case No. 11/1983 by the Presiding Officer, Bokaro Steel City, Bokaro was produced by the respondents and is kept on the record.

3. When the petitioner was terminated, he raised an Industrial Dispute and accordingly the following reference was made for adjudication.

'Whether the termination of services of Shri Sheo Narain Singh, Encroachment Inspector is legal and justified? if not, what relief he is entitled to?'

4. The Labour Court held that the termination was legal and Justified. The findings recorded in paragraphs 8 and 9 of the award are relevant. They are to the following effect.

The petitioner applied on 21.9.1973, (Ext. M-1) for the post of Inspector, but by letter dated 26.9.1973 (Ext. M-2) he was appointed on a consolidated salary of Rs. 190/- without any designation as 'Encroachment Guard or Encroachment Inspector.' By a Resolution dated 6.11.1973 (Ext. M-3), the Chairman proposed for creation of a post of Guard on consolidated salary of Rs. 190/- per month and the Chairman had already appointed the petitioner to that post. The said proposal was approved with certain change i.e., the petitioner was designated as an Inspector. However, the pay-scale of Rs. 190/- consolidated was not altered. The petitioner made representation on 18.11.1973 (exhibit M-4) for giving him the grade of Lower Division Clerk (LDC) and giving him designation of 'Land Inspector' and for regularising his service and to make him permanent in his post. The petitioner was allowed by the Chairman to continue till further orders. He made a further request on 13.3.1974 (Ext. M-5) for giving him the pay-scale of LDC. But no order was passed by the Board on this application. Then by letter dated 29.12.1974 (Ext. M-6) the petitioner requested that he should be allowed to draw the pay-scale of LDC in anticipation of approval of the Board in the next meeting. The Chairman ordered

to put the petitioner as LDC from 1.1.1975 temporarily. On 24.5.1975. the Board in its meeting disapproved the appointment of the petitioner as 'Encroachment Inspector' in the pay-scale of LDC, he was, however, allowed to draw Rs. 5/- in a month in addition to Rs. 190/- and he was also re-designated as 'Encroachment Guard' vide Ext. M-8. Subsequently, when the petitioner was asked to work according to the instructions of the State Supervisor, the petitioner did not obey the said order for which he was asked to explain as to why disciplinary action should not be taken against him.

Thus, it is clear that the petitioner was appointed temporarily without any designation. Then he was designated as Inspector but ultimately under the Board's Resolution dated 24.5. 1975, the order of the Chairman giving the petitioner temporarily the grade of LDC was disapproved and he was re-designated at 'Encroachment Guard'. But his pay-scale of Rs. 190/- per month remained same, with Rs. 5/- per month extra.

After recording the said findings, the Labour Court proceeded to consider the dispute regarding the termination and found that the termination was legal and justified.

5. The petitioner challenged the said award by filing the aforesaid CWJC No. 887 of 1987 (R). This Court in the said writ petition found that the order of termination was that of termination simpliciter, which was malafide. It was further found that a second show cause notice was also not served on the petitioner and that the plea of termination of services of the petitioner, on the ground of misconduct, appears to be by way of an after thought. Moreover, the petitioner might have some justification in not obeying the order as his representation was pending. In view of these findings, this Court did not consider other points raised at the bar and the award was modified to the effect that the petitioner was directed to be reinstated in service without any back wages. Thus the said findings recorded in paragraphs 8 and 9 of the award remained undisturbed.

6. Mr. Singh, laid much emphasis on the word 'Encroachment Inspector' mentioned in terms of reference and submitted that the petitioner was in fact working as Encroachment Inspector, when he was terminated and therefore the

reinstatement could be done only on the post of Encroachment Inspector.

7. From the findings recorded by the Labour Court, as noted above, it is clear that the order dated 24.5.1975 of the Board (Ext. M-8) disapproving the appointment of the petitioner as Encroachment Inspector and re-designating him as Encroachment Guard was passed, before he was terminated. In other words, when he was terminated, he was Encroachment Guard. The said findings that the petitioner was Encroachment Guard was not disturbed by this Court. Therefore, mention of the words 'Encroachment Inspector', after the name of the petitioner, in the terms of reference is of no help to the petitioner in contending that the petitioner was an 'Encroachment Inspector.' Further, there is no difference in the pay-scale of a Encroachment Guard or Inspector. The contention of the petitioner that he was reduced in rank by designating him as Encroachment Guard cannot be accepted.

8. After hearing the parties and considering the materials on record, I am of the view that the petitioner was rightly re-instated on the post of Encroachment Guard. Accordingly, I do not find any merit in this writ petition which is dismissed.