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Employers in Relation to the Management of Nirsa Area of Eastern Coalfields Ltd. Vs. Presiding Officer C.G.i.T. No. 1 and anr.

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Court : Jharkhand

Decided On : Jun-18-2003

Reported in : 2003(2)BLJR1602; [2003(3)JCR189(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1); [Constitution of India](#) - Article 226

Appeal No. : CWJC Nos. 2247 and 2249 of 1997(R)

Appellant : Employers in Relation to the Management of Nirsa Area of Eastern Coalfields Ltd.;workman Represented

Respondent : Presiding Officer C.G.i.T. No. 1 and anr.;employers in Relation to the Management of Nirsa Area of E

Advocate for Def. : M.M. Banerjee and; Ananda Sen, Advs. in CWJC No. 2047/97(R) and;

Advocate for Pet/Ap. : M.M. Banerjee and; Ananda Sen, Advs. in CWJC No. 2249/97(R) and;

Judgement :

S.J. Mukhopadhaya, J.

1. Both the petitioners-Management of Nirsa Area of M/s, Eastern Coalfields Ltd. (for short-ECL) and the workmen have preferred the writ petitions against the common award dated 17th January, 1977 passed by the learned Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad in Reference No. 43/1990, whereby and whereunder, while he held the action of the Management of Badjna Colliery in denying employment to Basudeo Bhuiyan and 682 others not justified, directed the petitioner management to employ at least 105 to 110 workmen w.e.f. 1979, within two months from the date of publication of award.

About 683 workmen sponsored by their Union, i.e., petitioner of CWJC No. 2047 of 1997(R) pleaded that all the 683 workmen as shown in the chart presented by them, were employed in Durga Boka Pahari Colliery, now a part of Badjna Colliery since before nationalization of coal mines in the year 1973. Before nationalization, there was some dispute between one Shri R.K. Agarwalla, owner of Durga Boka Pahari Colliery and M/s. Oriental Coal Company regarding title and ownership of the Colliery. Apart from a suit for title and ownership filed, a criminal case was also lodged. In the meantime, after nationalization of M/s. Oriental Coal, the adjacent Badjna Colliery was taken over by the Central Government and vested with the M/s. ECL w.e.f. 1.5.1973.

It was also pleaded by them that even after nationalization, as the Durga Boka Pahari Colliery remained in the possession of Shri R.K. Agarwalla, he continued to take work through his workers. A Civil Suit No. 5/1974 was filed by Shri R.K. Agarwalla with a plea that the Durga Boka Pahari Colliery has not been vested in the Central Government.

2. Further case of the sponsoring Union of workmen was that in the year 1979 by intervention of the state authority, Shri R.K. Agarwalla relented and the possession of Durga Boka Pahari Colliery passed over to M/s. ECL and merged with Badjna Colliery in the year 1979. It was stated that the ownership of the Durga Boka Pahari Colliery having vested with M/s. ECL and thereafter though it merged with Badjna Colliery in the year 1979, the Management of M/s. ECL did not take over the services of the 683 workmen inspite of repeated representation.

Earlier, the Central Government refused to refer the dispute to the Tribunal under Section 10(1)(d) of the Industrial Disputes Act. The workmen had to file a writ petition, CWJC No.365 of 1989 before the Ranchi Bench of the Patna High Court, wherein the Court vide order dated 26th April, 1989 directed the Central Government to reconsider the matter.

Another similar case was pending before the Supreme Court in Writ Petition (Civil) No. 417 of 1989 filed by the 'Bihar Pradesh Colliery Mazdoor Congress and another against the Union of India and M/s. ECL'. in which the workmen of Durga Boka Colliery claimed for their reinstatement in the services of M/s. ECL. After hearing the parties, the Supreme Court, passed the following orders on 24th July, 1989 :--

'After hearing the learned counsel for both the parties, we direct that if the respondents start the Colliery, they will recruit the petitioners to the extent of their requirement. The writ petition is disposed of accordingly. There will be no order as to costs.'

3. It appears that the order of the Supreme Court was not brought to the notice of the Central Government, which taking into consideration the order dated 26th April, 1989 passed by the Ranchi Bench of Patna High Court in C'WJC No. 365 of 1989(R), referred the following dispute for adjudication by the Tribunal vide its order dated 5th February, 1990 :--

'Whether the action, of the Management of Badjna Colliery of M/s. Eastern Coalfields Ltd. in denying employment to Shri Basudeo Bhuiyan and 682 others shown in the annexure is justified? If not, to what relief are workmen entitled to

4. From the impugned award dated 17th January, 1997 passed in Reference No. 43 of 1990, it will be evident that on appreciation of evidence, on record, the learned Presiding Officer came to a finding that only 40 to 50 workers were working in the Durga Boka Pahari Colliery in the year 1979. In spite of such finding, for the reasons best known to the learned Presiding Officer, it was presumed that at least 100 workers would have been working as the Colliery was running in two shifts. On the basis of such presumption, a finding was given that the action of the

Management of Badjna Colliery of M/s. ECL in denying employment to Basudeo Bhuiyan and 682 others is not justified, as is evident from the observations of the learned Presiding Officer and quoted hereunder :--

'27. In view of the evidence on record it is clear that even the evidence of the management's witnesses is relied upon them only 40 to 50 workers were working in the said Durga Pokapahari Colliery in the year 1979 and the colliery was running in two shifts naturally at-least 100 workers would have been working there and some more workmen would be required to do miscellaneous job. The sponsoring union has asked work of 507 workmen in the written argument. It is true that 683 or 507 workmen could not be engaged In a small open cast mine, like said Durga Bakapahari Colliery which is a part of Badjna Colliery. Considering all these facts this Tribunal is of the opinion that atleast 105 to 110 eligible and able bodied workmen should be taken into employment under the management of Badjna Colliery for running Durga Pokapahari Colliery immediately after providing necessary infrastructure there.

28. It is, therefore, held that the action of the management of Badjna Colliery in not giving employment the workmen cannot be said to be justified and the workmen to the extent of number as given above are entitled for their employment on the identification by the President/Secretary of the sponsoring union.

29. Hence the following award :--

The action of the management of Badjna Colliery of M/s. E.G. Ltd. in denying employment to Basudeo Bhuiya and 682 others as per Annexure is not justified. The above management is further directed to employ at least 105 to 110 workmen from the date of their stoppage from work in the year 1979 within two months from the date of publication of the award on their identification by the President/Secretary of the sponsoring Union. But they will not be entitled for their back wages on the principle of no work no pay.

In the circumstances of the case, there will be no order as to cost.'

5. It is a settled law that no finding of fact can be given on mere presumption and surmises. On the basis the evidence, if the learned Single Judge came to a conclusion that only 40 to 50 workers were working in the Durga Boka Pahari Colliery in the year 1979, even if there were two or three shifts of working, the number of workmen cannot increase or double on mathematical calculation, nor on the basis of such presumed finding, one can hold the denial of employment to all 683 persons as unjustified.

From the last portion of the award, it will be evident that the learned Presiding Officer directed to employ 105-110 workmen, but no finding was given as to who are the workmen to be employed nor any modality was prescribed to identify 105 to 110 workmen out of the list of 683 workmen.

The learned Presiding Officer also erred and failed to take into consideration the Supreme Court decision and direction in respect to the workmen, in question, wherein no decision or direction was given to straightaway take over the services of the workmen, but it was only ordered that if the Respondents restart the Colliery, they will recruit the workmen to the extent of their requirement. Without taking into consideration the aforesaid fact and without deciding whether there is need for any further recruitment in the Colliery or not, the learned Presiding Officer directed to absorb 105-110 persons without any basis.

6. Learned counsel for the Management of M/s. ECL rightly pointed out that, the award is not specific but vague and a vague direction given with respect to unidentified 105-110 persons.

7. For the reasons aforesaid, this Court has not other option, but to set aside the award dated 17th January, 1997 passed by the learned Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad in Reference No. 43 of 1990. Now about 30 years having passed after take over of the Colliery, in question, this Court is not inclined to refer the matter for reconsideration. The Management of M/s. ECL is expected to consider the cases of all the workmen for appointment as per order of the Supreme Court dated 24th July, 1989 passed in Writ Petition (Civil) No. 417 of 1989, if not yet complied.

8. Both the writ petition stand disposed of with the aforesaid observations. However, there shall be no order, as to costs.

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