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Court : Jharkhand

Decided On : Jul-18-2006

Reported in : [2007(1)JCR152(Jhr)]

Judge : Permod Kohli, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1)

Appeal No. : W.P.(S) No. 580 of 2004

Appellant : Sureshwar Nath Tripathi

Respondent : Mineral Area Development Authority and ors.

Advocate for Def. : Apresh Kumar Singh, Adv.

Advocate for Pet/Ap. : Ashok Kumar Sinha, Adv.;J.C. to S.C.(Mines)

Disposition : Petition allowed

Judgement :

Permod Kohli, J.

1. Validity of the impugned order dated 16th December, 2003, reverting the petitioner to the post of Meter Reader, has been called, in question, in the present case. Only ground for reversion indicated in the impugned order is the direction of Hon'ble Supreme Court in an earlier writ application. It is appropriate to refer to the

factual background leading to the filing of present petition.

2. Petitioner, a workman with Respondent No. 1-Authority, was terminated from its service on 25th February, 1977. The workman raised an industrial dispute regarding his termination and a reference came to be made to the Labour Court in terms of Section 10(1)(c) of the [Industrial Disputes Act, 1947](#).

3. Labour Court after holding an enquiry answered the reference vide its award dated 13th March, 1987. Labour Court found the termination unjustified and ordered reinstatement of the petitioner (workman) to the post of Meter Reader wherefrom he was terminated and. granted full back wages and consequential benefits with a direction to implement the award within three months.

4. Respondent-Authority preferred a writ petition, being C.W.J.C. No. 1089 of 1987(R), before this Court. This petition came to be dismissed in limine vide order dated 11th August, 1987 by a Division Bench of Patna High Court and a special leave petition filed before the Hon'ble Supreme Court also remained unsuccessful. However, Hon'ble Supreme Court vide its order dated 19th January, 1993, while concurring with the award and the judgment of the High Court, modified the award to the extent of back wages and instead of full back wages, as directed by the Labour Court, 50% back wages were allowed. Consequently, petitioner was reinstated to the service.

5. It appears that at the instance of the petitioner, the Authority considered his case for promotion to the post of Assistant in view of his promotion earlier granted to his juniors before and after his termination. Accordingly, Secretary of the Authority initiated the proposal for promotion of the petitioner to be placed before the Establishment Committee, as is evident from Annexure-4 (Page-51-52). This proposal was examined by the Establishment Committee and recommended the petitioner for his promotion to the post of Assistant on the ground that two Meter Readers, namely, Anil Kumar Singh and Mahesh Kumar Madhup, who were junior to the petitioner, were promoted to the post of Assistant with effect from 26th January, 1975. On receipt of recommendations of the Establishment Committee, Board approved the recommendations and asked the Managing Director to proceed in accordance with rules. Managing Director and Secretary of the

Authority passed order dated 6th January, 1996 granting promotion to the petitioner to the post of Assistant. This order was followed by another order dated 2nd February, 1996, whereunder retrospective promotion was granted to the petitioner to the post of Assistant with effect from 30th April, 1974 and later on his pay scale was also fixed.

6. It was in the year 2003 that the impugned order came to be passed. Learned Counsel appearing for the petitioner has assailed the impugned order on the following of amongst other grounds;

i. that the order is in contravention to the directions of the Labour Court in the award dated 13th March, 1987, which was upheld up to the Hon'ble Supreme Court, and reference to the judgment of the Hon'ble Supreme Court is totally misplaced;

ii. that the petitioner has been reverted back to the post of Meter Reader in gross violation of principles of natural justice.

7. Learned Counsel appearing for the respondents has resisted this petition and justified the impugned order on the ground that the promotion granted to the petitioner itself was bad in law and contrary to the rules in vogue. It is further stated in Para-24 of the counter affidavit that the petitioner did not pass the mandatory examination of Hindi noting and drafting to earn promotion to Class-III post and, accordingly, in the month of November, 2000, an order was passed by the Authority for recovery of Rs. 1,833.40 (rupees one thousand eight hundred thirty three and paise forty) from the salary of the petitioner on account of illegal and excess payment made to him due to irregular promotion granted to him in the year 1996.

8. I have heard learned Counsel for the parties at length and perused records.

9. Termination order of the petitioner came to be set aside by the Labour Court with a direction to reinstate the petitioner to the post of Meter Reader/While restoring the service. Labour Court also further observed that the question of his reversion from the post of Tax Collector to Meter Reader being not in dispute

before the Labour Court, no direction can be issued. This clearly indicates that the petitioner had raised the question of his reversion, even when proceedings were pending before the Labour court. By setting aside the termination order, the directions of the Labour Court having attained finality, respondents had no option but to reinstate him. Petitioner was reinstated in the year 1987. His case for promotion to the higher post of Assistant came to be considered only in the year 1996. This consideration is independent of the directions of the Labour Court for reinstatement. On consideration of the case of the petitioner for promotion by various authorities, he was granted promotion primarily on the ground that two persons, junior to him, were promoted to the next higher post in the year 1975 and on examination, it was found that the petitioner was entitled to be promoted in the year 1974.

10. Consequently, while promoting the petitioner to the post of Assistant, he was also given retrospective benefits of such promotion with effect from 30th April, 1974. In this background, the impugned order for reversion of the petitioner is totally misconceived and based upon misinterpretation and misconstruction of the judgment of the Hon'ble Supreme Court.

11. As a matter of fact, Hon'ble Supreme Court only concurred with the findings of the Labour Court and modified the same in so far the grant of back wages is concerned. Therefore, there was no question of issuing any direction by the Apex Court for reinstatement of the petitioner to a particular post or office.

12. I am not impressed with the argument of the learned Counsel appearing for the respondents that the promotion granted to the petitioner in the year 1996 was itself illegal and bad. Such an argument is not sustainable for the simple reason that the reversion of the petitioner is not on the ground of his failure to qualify the mandatory examination of Hindi noting and drafting.

13. It is settled law that the respondents cannot supplement the grounds of the impugned order. Any other ground urged in the counter affidavit to support the impugned order is extraneous. Hon'ble Supreme Court in the case of Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. reported in : [1978]2SCR272 has clearly laid down:

8. The second equally, relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

14. Otherwise also, the impugned order has been passed in gross violation of the doctrine of audi alteram partem. Even if there existed of any valid ground to revoke the promotion of the petitioner, he was required to be put to notice and after.

15. Affording an opportunity of being heard, he should have been reverted. Admittedly, principles of natural justice have been given go by in the present case.

16. For all the above reasons, the impugned order is not sustainable in law and is liable to be quashed. I order accordingly. In view of the interim order dated 4th February, 2004 staying operation of the impugned order, petitioner has continued on the promotional post and he is entitled to all consequential benefits available to him under law.

17. This petition is allowed.