

Ajoy Kumar Mitra Vs. Steel Authority of India Limited and ors.

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Court : Orissa

Decided On : Apr-22-2004

Reported in : 97(2004)CLT801; (2004)IIILLJ1114Ori

Judge : Sujit Barman Roy, C.J. and ;P.K. Mohanty, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 114 - Order 47, Rule 1

Appeal No. : Civil Revision Nos. 108 of 2000 and 32 of 2001

Appellant : Ajoy Kumar Mitra

Respondent : Steel Authority of India Limited and ors.

Advocate for Def. : J.K. Tripathy, B.P. Tripathy, A.K. Panda, S.N. Mishra, P.K. Chand and C. Satapathy

Advocate for Pet/Ap. : In Person

Disposition : Application dismissed

Judgement :

P.K. Mohanty, J.

1. Civil Review No. 108 of 2000 is by the opposite parties Steel Authority of India Limited and its functionaries, whereas Civil Review No. 32 of 2001 is by the writ petitioner seeking review of the judgment of this Court passed in O.J.C. No. 16921

of 1997 dated 23.6.2000.

2. The writ petitioner seeks review of the judgment mainly on the ground that the entire reliefs prayed for by him have not been granted to him even though the first part of his claim has been allowed in the writ petition. The petitioner, who has argued in person, submits that he had prayed for several reliefs as enumerated in the writ petitions whereas he has been granted only relief on prayer No. 1, inasmuch as, prayer Nos. 3 and 4 having been considered, no relief has been granted and the other prayer Nos. 2, 5 and 6 have not been considered at all. The petitioner has made a lengthy and elaborate argument to impress that he was entitled to all the claims made in the writ petition, but he has not been granted so, and as such the judgment needs review. The petition for review of the judgment on the ground stated is misconceived in law and on facts. If the petitioner is aggrieved because some of the reliefs claimed in the writ petition have not been granted to him that does not call for a review of the judgment on that ground alone.

3. The writ petitioner had prayed for the following relief in the writ petition :

'(a) The permanent Medical Unfit Benefit shall not be given from 4.11.1987 (Annexure-1) instead of same benefit of permanent Medical Unfit Benefit from 7.9.1996 (Annexure-9) given by the opposite party on same medical report.

(b) Proper Medical Treatment for eyesight shall not be given according to the advice of Shankara Netralaya, Madras for both the cases (Annexures-6 and 21).

(c) I shall not be given the promotion of E.O. (Junior Executive) grade from the year 1992 with all consequential benefits.

(d) All the absentisms mainly due to harassments, misuse of power or not allowed to join duty, directly or indirectly, since last 17/18 years by the opposite parties shall not be treated as present mark.

(e) I shall not given the losses of leave facilities, injury leave, referred cases expenses, all due L.T.C. Pooja Bonus, expenses for non-referred cases for eye treatment etc.

(f) I shall not be allowed to get salary as interim relief and necessary order(s) / direction(s) are passed as I deem fit and proper to do complete relief to me.'

4. The petitioner was proceeded against in a departmental proceeding and was found guilty of misconduct, for his habitual unauthorized absence from duties. The management moved an application under Section 33(2)(b) of the Industrial Disputes Act before the learned Industrial Tribunal, seeking approval of the Management's decision for removal of the petitioner from service having found guilty in the Departmental Proceeding. However, during the pendency of the industrial dispute in I.D. Misc. Case No. 6 of 1988, the Management and the Workman-petitioner arrived at a settlement and accordingly, filed a memorandum of Settlement dated 11.4.1990. The Memorandum of Settlement, which was annexed as Annexure-A to the counter to the writ petition was in the following terms :

(a) A. K. Mitra will be reinstated in service without back wages or any other benefits financial or otherwise except as provided at para-5 hereunder. Sri Mitra will be posted to Roll Shop subject to being found medically fit by Company's Officer.

(b) The basic pay of Sri Mitra will be fixed at Rs. 1909/- in the scale of pay of Rs. 1690-73-2201-80-2761/- (L-8) from the date of his reinstatement. He will be entitled to get his next increment from July, 1990.

(c) He will be charged normal rent for the period he was in occupation of the company's quarters during the period he was out of employment, i.e. with effect from 31.3.1988.

(d) Sri Mitra will be allowed to avail bus facilities as he was availing prior to his removal from service. .

(e) He will be paid a lumpsum amount of Rs. 15,000/- (Rupees Fifteen Thousand only). Sri Mitra will not raise any dispute in future regarding his past service and punishment(s) imposed on him in the past. He will also not raise any claim financial or otherwise for the period of his past service or for the period he was out

of employment.

(f) The settlement fully and finally settles the dispute in I.D. Misc. Case No. 6 of 1988.

(g) A joint application will be filed by both the parties before the Hon'ble Industrial Tribunal praying for passing orders in terms of the settlement in I.D. Misc. Case No. 6 of 1988.

(h) The settlement will be implemented within 30 days of receipt of the orders of the Hon'ble Tribunal.

5. In view of the settlement, the Court found that the Memorandum of Settlement as well as the order of the Presiding Officer, Industrial Tribunal, Bhubaneswar dated 14.6.1990 having been acted upon by the petitioner as well as the management, petitioner having received the benefits thereunder and joined the post of reinstatement, it is not open to him to turn round at this stage to say that it was illegal and arbitrary. The petitioner having obtained the benefits under the order dated 11.4.1990 of the Industrial Tribunal was held not entitled to resile from the same and claim other benefits. It has been held that any claim prior to the date 31.3.1988 and the settlement made was not open to challenge and cannot be gone into in the writ petition.

6. On the question as to whether the action of the management in discharging the petitioner from service with effect from 7.9.1996 in accordance with the Standing Orders 23 of Rourkela Steel Plant was sustainable in law, the Court on elaborate consideration, held that it was not open to the petitioner to claim any benefit for a period anterior to 11.4.1990. It was further held that the medical examination held on 31.1.1986 and the request for re-medical check up having not been disputed, question of allowing him to be declared medically unfit from 11.4.1987 does not arise for consideration.

The order of discharge from service of the petitioner by the Rourkela Steel Plant in accordance with the Standing Orders 23, with effect from 7.9.1996, copy whereof is Annexure-9, was held to be valid and legal mainly on the findings that even after

the reinstatement in accordance with the settlement before the Industrial Tribunal, the petitioner again frequently remained absent from duties, for which he was communicated the adverse entry in his C.C.R. for the years 1991, 1992, 1993, 1994 and 1995. He was counseled several times for improving his conduct. The petitioner complained of his inability to work, because of his eye ailment and since the petitioner was working as a Senior Operator in the Roll Job, a vital production unit, it was risky for life of the petitioner as well as other persons working therein. So also, it was unsafe for the Plant Machineries, to deploy the petitioner with the complain of his deficiency in eyesight. The petitioner was referred for medical examination and the Medical Board of the Company having examined him on 30.1.1996, found him permanently unfit for the job. The request of the petitioner made to the Management to refer him again to the Medical Board for re-examination, which was accepted and he was asked to report to the Medical Board on 17.4.1996, which he failed to attend, however, he was again given another chance to appear before the Board on 7.5.1996, but he also failed to do so. The petitioner having failed to attend the Medical Board for re-examination arranged and fixed on his own request, the Management was left with no option except asking him to show cause, why he shall not be terminated from service because of his permanent medical disability under the provisions of certified Standing Order of the Company. In the notice, the petitioner was also intimated that if he is discharged from service, he may apply for benefit under the Family Benefit Scheme. The petitioner again requested for medical re-examination by the Board, which was accepted by the Management and he was directed in letter dated 10.7.1996 to attend the Medical Board, but the petitioner avoided to receive the communication sent by Registered Post as well as by Special Messenger and failed to attend the Board. He was again requested by letter dated 20.8.1996 to appear before the Medical Board on 4.9.1996. The petitioner received the communication on 21.8.1996, but did not attend the Board for medical examination, which was arranged on his request.

The Court thus, found no illegality or infirmity in the order of discharge in Annexure-9. Consequently, the prayer of the petitioner for allowing him to be declared medically unfit from 11.8.1987 was rejected.

However, in the writ application, the Court on consideration of the claim of the petitioner to the benefits under certified Standing Order of the Company and the Employees' Family Benefit Scheme in pursuance of N.J.C.S. Agreement dated 5th July, 1989 in getting his nominee employed, he having prematurely become medically unfit and discharged from service as such and relying on the decision of the Apex Court in *Balbir Kaur and Anr. v. Steel Authority of India Limited and Ors.*, AIR 2000 SCW 1745, this Court directed the opposite party-management to ask for option from the petitioner as to whether he would opt under the Family Benefit Scheme for compassionate appointment as contemplated under the Second Priority Cases or for benefit contemplated under Clause 4 of the Employees' Family Benefit Scheme for monthly payment of equivalent to his basic pay and DA last drawn till the actual date of superannuation of the petitioner. The management was directed to consider the option so obtained in accordance with the circular/tripartite agreement referred to in, the judgment in its proper perspective and in accordance with the observations made therein and grant the benefits as are admissible within a period of one month from the date of receipt of the option and on fulfilment of the conditions laid therein, extend the benefit promptly to the petitioner. Thus the contention of the writ petitioner is that, his case or his prayer was not fully considered, has to be rejected. A review of a judgment rendered in the writ petition, solely on the ground that all the prayers, have not been allowed, is impermissible in law.

7. The management in its Review Application No. 108 of 2000 seeks review of the judgment mainly on the ground that the writ petitioner having not made any grievance for any compassionate appointment, either before the management or in this Court, such relief could not be granted. It is further contended that, in order to get the benefits under second and third priorities cases in terms of the Tripartite Agreement, the petitioner is required to have good grading in the C.C.R.'s of last three years and must not have been awarded major punishment but the petitioner having to his credit adverse entries in the C.C.R.'s of the year 1991 to 1995, he does not qualify to avail the benefits inasmuch as he does not possess qualifying years of service. According to the learned Sr. Counsel for the management, the aforesaid factors were not noticed by this Court and as such, a review is called for. This. Court on elaborate and detailed discussion of the terms of Tripartite

Agreement in question and in view of the judgment of the Apex Court (supra) having found that the petitioner was entitled to such benefits, directed the opposite parties to extend such benefits. The adverse entry in the C.C.R. referred to, were solely due to the fact that the petitioner remained absent from duty. It is not in dispute that the petitioner was consistently complaining of defects in his eyesight and ill health for which the management had constituted Medical Board on several occasions as discussed earlier. The C.C.R. entries relate to his intermittent absence from duty only. In such peculiar circumstances, when ultimately the petitioner has been dislodged from service because he was found medically unfit, such entries in the C.C.R. could not be treated as adverse even for the purpose of entitlement to the benefits under the Tripartite Agreement and deprive him of the benefit of compassionate appointment to his nominee. The contention with regard to requisite number of years of service for eligibility to the benefit of compassionate appointment also cannot be accepted since the question before the Court was whether the petitioner's reinstatement in service on 16.4.1990 in terms of the settlement before the Industrial Forum was binding on him. Undisputedly, the petitioner was to retire in May, 2000 on superannuation and as such, calculated from, the date of reinstatement in April, 1990, it is well within the eligibility criteria fixed. The contention of the learned Sr. Counsel, therefore, is misconceived. In any event, a wrong interpretation or misinterpretation of a settlement would not justify a review of the judgment unless it suffers from errors apparent on the face of record. Nothing has been brought on record to show that the decision was due to some such error of record to justify a review.

In any view of the matter, we do not find any merit in either of the Review Applications and accordingly, both the Review Applications are dismissed, but there shall be no order as to cost.

Sujit Barman Roy, C.J.

I agree.