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Court : Jharkhand

Decided On : Oct-28-2015

Appellant : Most Bimla Devi

Respondent : Bharat Coking Coal Limited Through Its Chief Managing Director and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 3412 of 2013
Most Bimla Devi Petitioner Vrs. 1.Bharat Coking Coal Limited through its Chief Managing Director, Dhanbad 2.General Manager(P&IR), BCCL, Dhanbad 3.Project Officer, Patherdih Coal Washery, Dhanbad 4.Personnel Manager, Patherdih Coal Washery, Dhanbad Respondents CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : Mr. Sidhartha Roy For the Respondents : M/s A.K.Mehta, Amit Kr. Sinha 03/28.10.2015 Heard learned counsel for the parties. Petitioner is the widow of late Nityanand Singh, who fought and succeeded against the respondent- Bharat Coking Coal Limited (B.C.C.L) on the question of premature retirement based upon the entry of his date of birth contested between the parties. Her husband i.e., employee was made to retire on 31.1.2001, which he claimed to be unsustainable on the strength of entries recorded by his erstwhile Employer, Steel Authority of India Ltd.(SAIL) relating to his date of birth i.e. 1.1.1943. Subsequently the Patherdih Colliery and other

establishments was transferred to B.C.C.L by S.A.I.L and he became an employee of B.C.C.L. Twice he approached this Court in W.P.S. No. 1984 of 2000 and thereafter in W.P.S. No. 4973 of 2002 after rejection of his representation. Learned Single Judge in W.P.S. No. 4973 of 2002 opined that assessment of date of birth could not be decided in writ petition and relegated the petitioner to seek redressal from appropriate Forum. The employee instituted Title Suit No. 131 of 2003 for declaration that his date of birth is 1.1.1943 and he would therefore be deemed to continue in service till he attained the date of superannuation with further declaration that order of superannuation passed by the respondent- Employer was illegal, arbitrary and without jurisdiction. The suit was hotly contested by the defendant / respondent- BCCL but was decreed in favour of the plaintiff / employee based upon appreciation of relevant material evidence produced on behalf of both the parties. The -2- defendant- BCCL preferred First Appeal(S.J.) No. 23 of 2005 being aggrieved by the judgment dated 25.9.2004 and decree dated 1.10.2004 passed by Sub Judge-VI, Dhanbad in T.S. No. 131 of 2003. Learned Single Judge of this Court vide detailed judgment dated 22.5.2010 upon due consideration of the relevant pleas, (Annexure-1) found no illegality in the judgment and decree passed by the learned Trial Court and dismissed the appeal finding no merit in it. All material facts and evidences have been elaborately discussed in the appellate judgment. Thereafter, widow of the employee i.e. present petitioner approached this Court in W.P.S. No. 1012 of 2012 for direction upon the respondents to make payment of the wages for the period from 31.1.2001 to 31.3.2003 with all consequential benefits for the said period. She also sought refund of the penal rent to the tune of Rs. 31,500 which was deducted from the dues of the deceased employee. The said writ petition was disposed of vide Annexure-2 judgment dated 27.3.2012 directing the respondents to decide the petitioner's representation in accordance with law within stipulated period. The order at Annexure -3 dated 31.10.2012 has decided the plea of arrears of salary against the petitioner but allowed refund of penal rent of Rs.30,786. This order has been assailed by the petitioner in the present writ petition, who also has prayed for arrears of salary for the period 31.1.2001 to 31.1.2003. Respondent- BCCL in their counter affidavit have taken a plea that the judgment and decree of the Trial Court was only a declaration of date of birth of the employee as 1.1.1943 but he was not

entitled to wages for the idle period on the principle of 'No Work No Pay'. No directions were passed in the title suit for payment of back wages nor were they claimed. In view of the relevant provision of Order II Rule 2 of the Civil Procedure Code employee / present petitioner is therefore precluded from raising this plea in an -3- independent proceeding like the present. Learned counsel for the respondent has also stated that the employee was occupying the company's quarter after his retirement and eviction proceeding was initiated against him under the provisions of the Public Premises(Eviction of Unauthorized Occupants) Act, 1971, but on declaration of his age, respondents have on due consideration refunded the amount of penal rent deducted earlier from the death cum retiral dues of the employee. However no claim for wages for the idle period should be allowed to the petitioner. In reply to the counter affidavit, petitioner has reiterated her statements. Having taken into account the relevant material facts and the submission of the parties, the irresistible conclusion that can be drawn is that the present petitioner or her husband were in no manner found to be lacking in due diligence in prosecuting the cause of action which arose on account of premature retirement of the employee on 31.1.2001. The employee preferred two writ petitions and after the representation was decided against him, pursuant to the observations passed in the first writ petition, in his second writ petition W.P.S. No. 4973 of 2002, he was relegated to the appropriate forum as the question relating to the facts and entries in date of birth could not be decided in writ jurisdiction. He diligently pursued the matter before the Trial Court by instituting Title Suit. Perusal of the appellate order passed by the learned Single Judge in the appeal preferred by the losing defendant- BCCL shows that all relevant material facts were pleaded and documents and witnesses were adduced by both parties, but the suit was decided in favour of the employee. Learned Single Judge upheld the judgment and decree of the Trial Court where under employee's premature retirement was held to be bad in law in view of the declaration of date of birth as 1.1.1943 instead of 1.1.1941. -4- In the wake of aforesaid facts, it is beyond doubt that the employee suffered cessation of service before the due date of retirement only on account of the action of the respondent- Employer. Loss of wages suffered by the employee i.e. husband of the petitioner therefore have to be restituted by the Employer, otherwise it would entail miscarriage of justice. The respondents

cannot be allowed to take a plea that though their action of premature retirement of the employee was held untenable, petitioner would still have to suffer two years of back wages, which her husband would have been otherwise entitled. In that circumstances, in view of the ratio laid down by the Hon'ble Apex Court in the case Deepali Gundu Surwase Vrs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & others reported in 2013(10) SCC324(Para 38.1 to 38.6), respondents should not deny the back wages to the petitioner. Therefore, the writ petition has to succeed. Accordingly, the impugned order so far as it denies the wages for the period from 31.1.2001 to 31.1.2003 cannot be sustained in law and it is quashed. Needless to say that respondents would release the admissible wages to the petitioner- widow within a period of 10 weeks from the date of receipt of the copy of this order. Any other consequential benefits in the matter of death cum retirement dues, which may accrue there upon should also be released in her favour within the same period. The writ petition is allowed in the manner and to the extent indicated herein above. (Aparesh Kumar Singh, J.) A. Mohanty

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