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Akali Chamar Token. Vs. General Manager.

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Court : Madhya Pradesh

Decided On : Jun-28-2010

Judge : R. S. Jha, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 294, 332, 506-B ; Industrial Disputes Act, 1947 ;

Appeal No. : W.P No.7427/2007 (S).

Appellant : Akali Chamar Token.

Respondent : General Manager.

Advocate for Def. : Smt. Kanak Gaharwar, Adv.

Advocate for Pet/Ap. : hri D. C. Jain, Adv.

Judgement :

1. Shri D. C. Jain, learned counsel for the petitioner. Smt. Kanak Gaharwar, learned counsel for respondent no.1. With the consent of the parties, the matter is heard finally. The facts, leading to the filing of the present petition, are that the petitioner, who was working as General Mazdoor in the Umaria Colliery of the respondent, was dismissed from service on 4.10.1984 after conducting a domestic enquiry in which he was found guilty of gross misconduct in respect of an incident in which he had misbehaved and had an altercation with the Manager. The petitioner assailed the order of termination by raising a dispute, which was dismissed by award dated 28.2.1990, in which it was held that the domestic

enquiry and the punishment imposed upon the petitioner were proper and legal and that the termination of the petitioner was justified. Simultaneously, the respondent had also lodged a first information report, pursuant to which a criminal trial was instituted against the petitioner for alleged offences punishable under sections 294, 332 and 506-B of the Indian Penal Code, in which the petitioner was ultimately acquitted by judgment dated 27.11.1996.

2. The petitioner, pursuant to his acquittal, had approached the authorities for his reinstatement which representation was not decided and, therefore, the petitioner filed a petition before this Court which was registered as W.P No.1471/1999, but this writ petition was withdrawn by the petitioner on 1.9.1999 without seeking any liberty to take up or pursue the matter before the authorities.

3. It is, however, evident from the documents filed by the petitioner in the present petition that, subsequently, the petitioner again approached the authorities for reconsideration of his case and the matter was also taken up by the Government of India, Ministry of Coal on 5.12.2001 and recommended for further action. It appears that as the respondent did not take any action, the petitioner filed an application for referring the dispute to the proper forum under the provisions of the Industrial Disputes Act but the Government of India, Ministry of Labour by its communication dated 30.10.2006 refused to refer the dispute for adjudication again on the ground that the petitioner's termination dated 5.10.1984 had already been upheld by the C.J.I.T. Jabalpur by award dated 28.2.1990.

4. Being aggrieved by the aforesaid, the petitioner has filed the present petition praying that the order rejecting the reference and the award of the C.J.I.T Jabalpur be quashed and the petitioner be taken back in service to resume his own duties. It is submitted by the learned counsel for the petitioner that in view of the acquittal of the petitioner by judgment dated 27.11.1996, the respondent authority are required to take him back in service. The petition is vehemently opposed by the learned counsel for the respondent on the ground that the petitioner had previously filed W.P No.1471/1999 in which all the issues raised by the petitioner in the present petition were raised by him and the award dated 28.2.1990 was challenged on the basis of the fact that the petitioner had been acquitted by

judgment dated 27.11.1996 but the said petition was withdrawn by the petitioner unconditionally and in such circumstances the petitioner cannot be permitted to file the present petition which deserves to be dismissed. It is further submitted that the dispute raised by the petitioner before the Labour Court was in respect of the domestic enquiry conducted against him and his order of termination was upheld by the Labour Court by award dated 28.2.1990 and in such circumstances, as the said award has remained unassailed and unchallenged by the petitioner, the petition filed by the petitioner is misconceived. It is submitted that the rejection of the request of the petitioner to again refer the matter for adjudication of the dispute by communication dated 30.10.2006 is unassailable in view of the aforesaid facts and circumstances.

5. I have heard the learned counsel for the parties at length. From a perusal of the record of the present petition as well as the record of W.P No.1471/1999 which was called for by this Court, it is clear that in respect of the incident that occurred two proceedings were initiated against the petitioner. First was the criminal proceedings in which the petitioner was acquitted by judgment dated 27.11.1996 and; second was the dispute raised by the petitioner in respect of his termination on the basis of the domestic enquiry which termination has been upheld by award dated 28.2.1990.

6. It is apparent from a perusal of the award dated 28.2.1990, which is Annexure A-3 in the record of W.P No.1471/1999, that the charges levelled upon the petitioner in the domestic enquiry held against him were not identical to the charges framed in the criminal trial but were in respect of the misconduct committed by him while in service and that the C.J.I.T., after extensively going through the entire record and the evidence, has arrived at the finding that the domestic enquiry against the petitioner was in accordance with law and that the consequent punishment and termination of his service were also proper and justified. It is further clear from a perusal of W.P No.1471/1999 that the petitioner had, prior to filing W.P No.1471/1999, filed another petition which was registered as M.P. No.2933/1990 challenging the award dated 28.2.1990. What was the fate of that petition has not been stated by the petitioner. It is also clear that subsequent to the acquittal of the petitioner by the criminal court he had filed a

representation before the authorities which was rejected on 15.2.1997, a copy of which has been filed as Annexure P-5 by the petitioner in W.P No.1471/1999. It is also apparent that the petitioner withdrew W.P No.1471/1999 unconditionally and, therefore, the award dated 28.2.1990 affirming the termination of the petitioner has gone unassailed. It is also clear that the present petition has been filed by the petitioner on the strength of Annexure P-1 dated 5.12.2001 wherein the Government of India, Ministry of Coal has directed the respondent authorities to take action on the representation filed by the petitioner. From a perusal of the record it is evident that the petitioner thereafter filed an application for referring the dispute to the Labour Court, but in view of the award dated 28.2.1990 upholding his termination dated 5.10.1984 the request of the petitioner has been rejected and the petitioner has been informed by communication dated 30.10.2006 that the dispute raised by him has not been found fit for adjudication.

7. In such circumstances, I am of the considered opinion that the present petition, filed by the petitioner is misconceived. The claim of the petitioner, based on his acquittal in the criminal case, is totally unjustified as his acquittal in the criminal charges levelled against him have no bearing on the domestic enquiry and the departmental proceedings which were initiated against him on charges of gross misconduct and have been upheld by the C.J.I.T by award dated 28.2.1990 which award has gone unassailed by the petitioner. In such circumstances, the contention of the petitioner that he is entitled to be considered for being taken back in service on his being acquitted in the criminal case is patently misconceived. The petition, filed by the petitioner, being meritless deserves to be and is, accordingly, dismissed. In the peculiar facts and circumstances of the case there shall be no order as to costs.

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