

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 144 of 2016**

Surendra Pratap Singh S/o Late Shri Vishwanath, aged about 63 years, Occupation Retd. Senior Clerk Grade- I, (S L U) at Jhilmili, S E C L, Sub Area, Baikunthpur area, Distt. Korea (Chhattisgarh), R/o At & PO Badsara, District Surajpur, (Chhattisgarh)

---- Petitioner**Versus**

1. Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur through the Presiding Officer, Central Government Industrial Tribunal-Cum- Labour Court, 1230 Gole Bazar Ward, Wright Town, Jabalpur, (Madhya Pradesh)
2. South Eastern Coalfields Limited, through the Chairman- Cum- Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur, (Chhattisgarh)
3. Chief General Manager, South Eastern Coalfields Limited, Baikunthpur Area, P O Baikunthpur, Dist. Korea, (Chhattisgarh)
4. Sub Area Manager, South Eastern Coalfields Limited, P O Pandavpara (Patna), Distt. Korea, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Dhaniram Patel, Advocate
For Respondents 2 to 4	:	Shri Vinod Deshmukh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/03/2017**

The petitioner through the writ petition has assailed the order dated 15.02.2016 Annexure P-1 passed by the Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur (hereinafter referred as 'CGIT/LC') in case No. CGIT/LC/R/105/2011. Vide the said order, the CGIT/LC in a reference case has refused to grant relief to the petitioner holding that it was not wrong on the part of the Management in not granting the full wages to the petitioner for the period from 26.10.2009 to 15.12.2009.

2. Brief facts relevant for adjudication of the petition are that the petitioner in the instant case was working as a senior clerk in the office under respondents 2 to 4. On 13.12.2007 the petitioner got arrested in connection with a criminal case for the offence under Section 302/34 IPC. The petitioner immediately applied for casual leave for the period from 14.12.2007 to 22.12.2007. The petitioner remained in jail up to 21.10.2009 on which date by the judgment of the trial Court the petitioner was acquitted from the charges levelled against him. Immediately thereafter, the petitioner reported for joining on 26.10.2009 and it was only w.e.f. 16.12.2009 he was permitted to join his duty. Therefore, he should be entitled for full wages for the period from 26.10.2009 to 15.12.2009. The petitioner raised a dispute in this regard before the appropriate authority who in turn referred the matter to the Central Govt. Industrial Tribunal-Cum-Labour Court, Jabalpur where the case was registered as Case No. CGIT/LC/R/105/2011. Either of the parties to the dispute entered appearance and submitted their respective claims.

3. The Court below after considering the pleadings of the parties and also considering the evidences which had come on record vide its order dated 15.02.2016 reached to the conclusion that the petitioner is not entitled for the relief that he has sought for as the Court below did not find any unreasonable delay caused on the part of the Management in accepting the joining of the employee. Since there was no inordinate delay, the reference was answered in negative holding that the petitioner is not entitled for any relief.

4. It is this award which is under challenge in the present petition.

5. It was the contention of the counsel for the petitioner that since the petitioner was illegally put under judicial restraint, he could not resume his duty from 14.12.2007 to 25.10.2009 and immediately on his being released

from jail after acquittal he returned on duty on 26.10.2009 but the Management took 1 ½ months in permitting him to join. Therefore, the petitioner is entitled for full wages for the said intervening period of 1 ½ months.

6. Per contra, counsel appearing for the Management submitted that the petition is totally devoid of merit as a plain reading of the award of the CGIT/LC itself would show that the Court below has given justifiable reasons for denying the claim raised by the petitioner. According to the counsel for the management, there is no dispute on the factual aspect of the case that the petitioner was involved in a criminal case and he was in judicial custody from 14.12.2007 till the date of his acquittal i.e. 21.10.2009. Subsequently, he reported for duty on 26.10.2009. Since there was a long absence of the petitioner for a period of about two years, the Officers under whom the petitioner was working could not have granted joining immediately without obtaining necessary instruction or orders from the superior authorities. Finally, after obtaining permission and approval from the higher Authorities, the petitioner was permitted to resume his duty w.e.f. 16.12.2009 and as such there has not been any inordinate delay in permitting the petitioner for joining his duty, therefore the CGIT/LC has rightly denied the relief sought for by the petitioner.

7. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record if we go through the order under challenge it would clearly reflect that the learned CGIT/LC has passed the award on the basis of the evidences which have come on record. In the instant case, the Management witness was not cross-examined by the petitioner employee. The Management witness had exhibited a large number of documents in his evidence whereby it was shown as to what steps had been taken by the Management immediately upon the petitioner reporting for

duty on 26.10.2009. Only then the learned CGIT/LC reached to the conclusion that the time which took in permitting the petitioner to resume the duty was reasonable time consumed in getting approval and sanction from the superior authorities and that there is no unreasonable delay nor is it a case where the so called delay of about 50 days was without any explanation. There was no evidence before the CGIT/LC to show that the Management did not take any action upon the petitioner giving joining. If the CGIT/LC considering these evidences which have come on record has taken a decision holding that the petitioner is not entitled for any benefit for the intervening period, it cannot be said that the CGIT/LC has in any manner committed illegality in reaching to the said conclusion.

8. The view of this Court stands fortified by the decision of the Supreme Court reported in (2004) 1 SCC 121 (Union of India and others v. Jaipal Singh) wherein in paragraphs 3 & 4 it has been held as under:

“3. Heard Mr. Raju Ramachandran, learned Additional Solicitor General appearing for the appellants, who placed strong reliance upon the decision of this Court in *Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board*¹ wherein this Court, in a case identical to the facts of the present case, has chosen to order only reinstatement but denied back wages on the ground that the Department was in no way concerned with the criminal case and, therefore, cannot be saddled with the liability also for back wages for the period when he was out of service during/after conviction suffered by the respondent in the criminal case.”

“4.On going through the same, we are in respectful agreement with the view taken in *Ranchhodji* (supra)..... if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the

1 (1996) 11 SCC 603

period for which they could not avail of the services of the respondent.”

9. It is settled position of law that this Court under Article 226/227 of the Constitution of India does not sit as an Appellate Authority over the award passed by the Labour Court. All that this Court has to see is whether there has been any jurisdictional error or a perversity in its finding. This Court would not disturb the finding of the Tribunal or the Labour Court if the finding is a plausible finding. This Court would not substitute its finding only because another view can also be taken. The petitioner has failed to show either a jurisdictional error or a perversity in the finding of the Court below.

10. For the aforesaid reasons, this Court does not find any strong case made out for interfering with the impugned order passed by the CGIT/LC. Thus, the present writ petition being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE