

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.19992 OF 2006 & 24147 Of 2016

COMMON ORDER:

Heard Mr.J.Prabakar for petitioners and Mr.P.Sidhar Rao for respondent No.2.

The General Manager, Singareni Collieries Company Limited (SCCL) and its officers are the petitioners in these two writ petitions. M.Komaraiah/workman is the 2nd respondent.

It is stated by the learned counsel appearing for the parties that W.P.No.24147 of 2016 is dependent on the outcome of W.P.No.19992 of 2006 and addressed the Court in W.P.No.19992 of 2006. The petitioners pray for the following reliefs:

W.P.No.19992 of 2006:

....to issue appropriate writ order or direction particularly one in nature of writ of Certiorari after calling for the records from the 1st respondent pertaining to I.D.No.148 of 2004 and quash the same as illegal, arbitrary and without jurisdiction, and pass such other order or orders.....

W.P.No.24147 of 2016:

....this Hon'ble Court may be pleased to issue a writ, or direction more particularly one in the nature of Writ of Certiorari calling for the records from the 1st respondent pertaining to the orders dated 16.02.2016 passed in E.P.No.16/2014 and consequential order dated 07.06.2016 passed in E.A.No.2/2016 in E.P.No.16/2014 in I.D.No.148/2004 and quash the same as the same are illegal, arbitrary and without jurisdiction.....

The circumstances preceding to filing of the writ petition are not in dispute.

On 27.02.1993, the 2nd respondent was appointed as Badli Filler in SCCL. On 11.09.1998, the petitioners served show cause notice along with copies of enquiry report initiated pursuant to show cause notice dated 11.09.1998. On 15.10.1998, the 2nd respondent submitted reply. The management since was not satisfied with the reply, through proceedings dated 09.12.1998 (Ex.M6) dismissed the 2nd respondent from service. While matter stood thus, on 24.02.2000 (Ex.M7) memorandum of settlements was arrived at and signed between the management of SCCL and the union. One of the clauses in the settlement deals with re-employment of workers dismissed between 01.01.1997 to 31.12.1999 on account of absenteeism. The clause reads as follows:

“The management has stated that disciplinary action was taken against the chronic long absentees in accordance with the procedure laid down in Company’s Standing Orders.

In view of the persistent request made by the union, it is hereby agreed that a High Power Committee headed by Director (P.A & W) will examine the cases of workmen dismissed on account of absenteeism during the period from 01.01.1997 to 31.12.1999.

Such of those dismissed workmen who deserve favourable consideration on merits and recommended by the committee will be appointed as Badli Fillers for a period of one year on trial basis. If the workmen of such re-employment not put in satisfactory attendance of 190 actual musters in a year (trial period) their services would stand terminated at the end of one year without any notice”.

On 28.06.2001, the petitioner was re-employed as Badli Filler subject to following conditions:

“Your services shall stand terminated automatically on completion of 12 months period from the date of your appointment. You have to put in 190 actual musters during the trial period of 12 months to consider for your re-appointment afresh as Badli Filler.

Please note that this appointment is purely temporary and your previous will carry no weightage”.

It is matter of record that the services of 2nd respondent were disengaged by reference to the clauses read above, for the 2nd respondent could not secure required number of attendance to qualify for re-appointment as Badli Filler.

The 2nd respondent, under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short ‘the Act’), raised I.D.No.148 of 2004 challenging the termination order dated 09.12.1998 (Ex.M.6). The grounds of challenge against dismissal order are that sufficient cause for not attending the work, though shown, is not properly appreciated and in the fact situation of the case, it cannot be treated as misconduct. The domestic enquiry conducted is farcical. The 2nd respondent, it is alleged, was victimized. The punishment of dismissal is shockingly disproportionate. Pursuant to his re-employment vide order dated 28.06.2001, the 2nd respondent claims to have been working regularly, but on account of unfortunate accident, the 2nd respondent could not satisfy the muster for re-appointment. Therefore, he challenges the first dismissal order, set aside the same and prays for reinstatement.

The petitioners filed counter affidavit and contended that the industrial dispute under Section 2-A (2) of the Act is not maintainable. It is alleged that the 2nd respondent attended the

enquiry conducted on 21.03.1998 and admitted the charges. The 2nd respondent was given full and fair opportunity in the domestic enquiry. The management since was dissatisfied with the explanation of 2nd respondent, through order dated 09.12.1998 dismissed the petitioner from service. On re-appointment, it is maintained that there need not be termination, for if a workman re-employed under the settlement does not qualify with required number of days, the services are automatically terminated. Therefore, the letter of termination is automatic and no exception can be taken. The parties have adduced evidence before the labour court. Exs.W-1 to W-27 were marked on behalf of 2nd respondent and Exs.M-1 to M-8 were marked on behalf of petitioners.

The 1st respondent framed the following points for consideration:

- I. Whether the petition is maintainable under Section 2-A(2) of the I.D. Act?
- II. Whether the domestic enquiry is valid?
- III. Whether the petitioner is entitled for re-instatement into service as prayed for?

The 1st respondent on point No.1 held that the dispute is maintainable. On point No.2, the Tribunal held that the domestic enquiry was conducted fairly and as per rules. On point No.3, the 1st respondent observed that the settlement in Ex.M-7 is a general agreement between the parties, deals with reinstatement of employees terminated on the ground of absenteeism. Therefore, the case of 2nd respondent was not specifically considered for

re-employment under a specific settlement, for reinstatement of 2nd respondent was at the instance of union and by the management.

Having regard to the disability which prevented the 2nd respondent from attending the duty, the failure to consider the documents placed by the 2nd respondent and on being satisfied that the punishment of dismissal is disproportionate to the misconduct alleged against the petitioner, ordered reinstatement without backwages and imposed punishment of stoppage of two annual increments without effecting future increments. Hence, the writ petition.

Mr.J.Prabhakar confined the challenge to the award by contending that in view of I.D.No.148 of 2004 reinstatement is not maintainable. According to him, the 2nd respondent was dismissed from service through Ex.M-6 dated 09.12.1998. On 28.06.2001, the management reinstated the petitioner into service. After reinstatement under a settlement, the 2nd respondent cannot raise I.D.No.148 of 2004 challenging termination dated 09.12.1998, for the settlement is binding between parties. He further contended that the 2nd respondent is estopped from challenging the order dated 09.12.1998. Therefore, he prays for setting aside the award impugned in the writ petition.

On the other hand, Mr.Sidhar Rao contends that the objection now raised by the petitioners was not specifically raised before the Labour Court. Therefore, this Court cannot consider a

new fact or legal ground against the legality or validity of award dated 01.04.2006. According to him, the 2nd respondent was justified both in law and fact in invoking the jurisdiction of Labour Court under Section 2-A (2) of the Act. According to him, there is no estoppel against statute. Secondly, according to sub-section (3) of Section 2-A (2) of the Act, the dispute shall be raised before expiry of 3 years. The estoppel is unfounded and the reinstatement ordered by the 1st respondent is in exercise of its jurisdiction under Section 11-A of the Act and no mistake *per se*, much less patent illegality is pointed out against the award. It is further contended that the question of disproportionality of punishment is within the jurisdiction of 1st respondent. Whether the punishment imposed is disproportionate or not is tested from the explanation offered by the 2nd respondent together with documentary evidence showing the circumstances under which the 2nd respondent could not attend duty. According to him, there cannot be an agreement to waive the right under Section 2-A(2) of the Act available to a workman. As the plea now raised was not taken before the 1st respondent, the same is unavailable and prays for dismissing the writ petition.

He further contended that the findings in award are based on acceptable evidence and thereafter the proportionality of punishment was considered. Even assuming that the discretion was exercised, still no case warranting interference under Article 226 of the Constitution of India is made out against such exercise of discretion. He prays for dismissing the writ petition.

Now the points for consideration are –

- a) whether I.D.No.148 of 2004 is maintainable or the 2nd respondent is estopped from raising a dispute under Section 2-A(2) of the Act?
- b) Whether the 1st respondent has properly exercised its jurisdiction under Section 11-A of the Act while modifying the punishment?

The circumstances are stated in sufficient detail in the preceding paragraphs. The contention is raised, I am satisfied, can be examined from the admitted circumstances. The petitioner was appointed as Badli Worker on 27.02.1993. The petitioner has put in about six years of service when he was charge sheeted for unauthorized absence, which resulted in dismissal from service. The dismissal from service, in the considered view of this Court, constitutes independent cause of action. The 2nd respondent has remedy under section 2-A of the Act to raise a dispute within three years from 09.12.1998. It is not the case of petitioners that the dispute is raised beyond three years. Likewise, the settlement arrived at on 24.02.2000 provides for re-employment with certain conditions. In cases where a workman loses length of substantial service, by accepting the re-employment, to infer such conclusion there ought to be something specific in the settlement showing that the dismissed employees have agreed to forgo the past service and availed the benefit under Memorandum of Settlement.

Mr.Prabhakar has fairly conceded that he is unable to draw the attention of the Court to a provision dealing with the above situation. He further submits that in spite of best research he is unable to get an authority on the waiver of right under Section 2-A(2) of the Act. Further, after perusing the written statement filed

by the petitioners herein in I.D.No.148 of 2004, I am satisfied that the objection now projected was not taken before the 1st respondent. These circumstances taken together or separately, this Court is of the view that the petitioners could not successfully challenge the findings recorded by the 1st respondent. The points are answered accordingly. W.P.No.19992 of 2006 fails and is, accordingly, dismissed.

In view of submission that the outcome of W.P.No.24147 of 2016 follows the result in W.P.No.19992 of 2006, the writ petitions are dismissed. There shall be no order as costs.

Consequently, pending miscellaneous petitions, if any, stand closed.

18th April, 2017
Lrkm



S.V.BHATT, J