

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 456 OF 2014

IA No. CAN 1 OF 2015(Old no. CAN 11747 of 2015)

Eastern Coalfields Ltd.

VS.

Lachman Bhuiya & Ors.

For the Petitioner : Mr. R.N.Majumdar,
Mr. Sudhakar Prasad,
Mr. Pradipta Boseadvocates

For the Respondents : Mr. Balaram Patra,
Mr. R.Guha Thakurta,
Mr. S.Senguptaadvocates

Heard on : 28.04.2022

Judgment on : 13.05.2022

Hiranmay Bhattacharyya, J.:-

1. Eastern Coal Fields Limited (hereinafter referred to as “management”) filed this writ petition challenging the award dated April 17, 2013 passed by the Presiding Officer Central Industrial Tribunal can Labour Court, Asansol (for short “the Tribunal”) in Reference Case no. 18 of 2004. By the impugned award, management was directed to reinstate the workman i.e., the respondent no. 1 herein from the date of dismissal that i.e., 18/20-05-1999 with stoppage of two increment and to withhold 50% back wages.

2. In exercise of powers conferred by Clause (d) of Sub-section 1 and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (for short “the ID Act”), the Government of India vide order dated February 25, 2004 referred the dispute as to whether the action of the management in dismissing Sri Lachman Bhuiya from service vide letter dated 18/20.05.1999 is legal and justified for adjudication by the Tribunal. Tribunal upon receipt of the order dated February 25, 2004 initiated the Reference Case no. 18 of 2004 and issued notices to the respective parties.
3. The case of the union in the written statement filed before the Tribunal is that the workman was a permanent employee of the company. He absented from his duty with effect from December 18, 1998 due to sickness and being declared fit he reported to the management but he was not allowed to resume his duty. The workman was informed that his service has been terminated. It is the further case of the union that in spite of the fact that the workman kept informed to the management about his sickness, even then he was chargesheeted for alleged unauthorised absence from duty. The workman was not served with the copy of the chargesheet, notice of enquiry and the principles of natural justice was denied to him and it was contended that he was illegally and unlawfully dismissed from service by the management. He accordingly prayed for reinstatement in his service with all consequential benefits arising therefrom with effect from the date of his dismissal.

4. The management in its written statement contended that the workman absented from his duties since 18.12.1998 without any permission or informing the competent authority. It is the further case of the management that the workman concerned had been very irregular in attending his duties for which the employer issued the chargesheet dated 08.01.1999 for habitual absentism. The workman did not file any reply to chargesheet. Subsequently, an Enquiry Officer was appointed to conduct the domestic enquiry. Since the workman did not attend the domestic enquiry in spite of several notices being served upon him, an ex-parte enquiry was conducted and the Enquiry Officer held the workman guilty for the charges established. The management accordingly dismissed the workman from his service on 18.05.1999. Thus, according to the management the workman is not entitled to any relief.
5. An award was passed by the then Presiding Officer on July 18, 2007 upholding the aforesaid punishment against the workman. The workman challenged the said award dated July 18, 2008 by filing a writ petition being WP 663 of 2008. The said writ petition was allowed by a co-ordinate bench of this Hon'ble Court by an order dated June 14, 2010 by setting aside the part of the order regarding punishment with a direction upon the Tribunal to pass a reasoned order upon revising the original order. The co-ordinate bench was pleased to make the following observation-

“I find from the said order of the learned Judge that the charge against the delinquent workman is more or less established, without any contest.

I am not satisfied with the finding regarding punishment. In 1996 there is absence of 69 days, in 1997 of 50 days and in 1998 of 20 days. Punishment should be proportionate to the guilt. It should never be excessive. It ought not to be such as would sound unreasonable. After all, there is the question of employment of a workman who is earning income from that employment and maintaining his family. Dismissal from employment is bound to create great financial hardship to him and his family. In some cases, this hardship becomes permanent because of unavailability of alternative employment. This question regarding proportionality of punishment has not been considered. Therefore, that part of the order regarding punishment is set aside with a direction upon the Presiding Officer of the said Tribunal to pass a reasoned order regarding the punishment after taking into account the above principles, after giving an opportunity of hearing to the parties concerned within eight weeks from the date of communication of this order.”

6. After remand the learned Tribunal passed the impugned award dated April 17, 2013 by directing management to reinstate the workman from the date of dismissal with stoppage of two increments and to withhold 50% back wages. Being aggrieved, the management filed the instant writ petition.
7. Mr. Majumdar, learned advocate for the management submitted that he is restricting the challenge against the Award only with regard to grant of back wages. Mr. Majumdar contended that in the case on hand the

punishment of dismissal from service was considered to be excessive and the learned Tribunal imposed a lesser punishment by directing reinstatement in service and withholding two increments. He contended that when reinstatement is a consequence of imposition of a lesser punishment, grant of back wages do not follow as a natural or necessary consequence of such reinstatement and therefore back wages was not warranted in the instant case. In support of such contention, Mr. Majumdar placed reliance on a judgment of the Hon'ble Supreme Court in the case of *J.K. Synthetics Ltd. vs. K.P. Agrawal and Another* reported at (2007)2 SCC 433.

8. Mr. Guha Thakurta, learned advocate for the respondent workman contended that this Hon'ble Court exercising the power of Judicial Review under Article 226 of the Constitution of India need not interfere with an award granting back wages. He contended that the management could not prove that the workman was gainfully employed post termination of service and as such he is entitled to back wages. He placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Allahabad Jal Sansthan vs. Daya Shankar Rai and Another* reported at 2005-II-LLJ 847 and in the case of *Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd.* reported at 2014-III-LLJ 478(SC) in support of his claim for back wages. He also referred to a decision of the Hon'ble Supreme Court in the case of *The K.C.P. Employees' Association, Madras vs. The*

Management of K.C.P. Ltd. Madras and others reported at 1978(36)217 in support of his contention that industrial law is to be interpreted and applied in a manner that the benefit of reasonable doubt on law and facts must go to the weaker section i.e., the labour.

9. Heard the learned advocates for the parties and perused the materials placed.
10. It is not in dispute that initially the learned Tribunal passed an award on July 18, 2007 thereby dismissing the Reference Case against the union upon holding that the workman is not entitled to get any relief sought for. However, a co-ordinate bench of this Hon'ble Court by an order dated June 14, 2010 in WP No. 663 of 2008 was pleased to set aside the part of the award regarding punishment upon holding that the question regarding proportionality of punishment has not been considered. It was further held that punishment should be proportionate to the guilt and it should never be excessive.
11. After remand, the learned Tribunal passed the impugned award dated April 17, 2013 directing reinstatement of the workman with stoppage of two increments and withholding 50% back wages. Thus, the direction for reinstatement in the case on hand is a consequence of imposition of a lesser punishment upon the charge against the workman in respect of a misconduct having been proved.
12. Now, the question arises to whether in such a case, the Tribunal could have granted back wages to the workman.

13. In *J.K.Synthetics Ltd.* (supra) it has been held that where it was felt that the punishment of dismissal was not warranted and a lesser punishment was inflicted by directing reinstatement in service with stoppage of two increments, in such a case grant of back wages was not warranted at all. The reasons in support of such observation of the Hon'ble Supreme Court is that where finding of misconduct is affirmed and only the punishment is interfered with, there is no automatic reinstatement and if reinstatement is directed, it is not automatic with retrospective effect from the date of termination. It was further observed that even where continuity of service is directed it should only be for the purpose of pensionary/ retirement benefits and not for other benefits like increments, promotions etc.
14. The Hon'ble Supreme Court while considering the issue regarding payment of back wages in the case of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak and ors.* reported at (2013) 10 SCC 324 took note of the decision in the case of *J.K.Synthetics Ltd.* (supra) and held as follows:-

"The observation made in J.K.Synthetics Ltd. v. K.P.Agrawal that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

15. Thus, the observation made in *J.K.Synthetics* (supra) that on reinstatement, the workman cannot claim continuity of service as of right was treated to be not a good law. Thus, this court is unable to accept the submission of Mr. Majumder that the workman is not entitled to grant of back wages.
16. In *Allahabad Jal Sansthan* (supra) the Hon'ble Supreme Court after taking note of the fact that the workman has not raised any plea or adduced any evidence to the effect that he remained unemployed was of the opinion that the interest of justice would be subserved if the respondent is directed to be paid 50% of the back wages.
17. In *Bhuvnesh Kumar Dwivedi* (supra) the Hon'ble Supreme Court after holding that the claim of the management that the workman is gainfully employed somewhere is vague and cannot be considered and accepted held that the appellant is entitled to full back wages from the date of termination of his service till the date of his reinstatement.
18. In the case on hand, the learned Tribunal directed withholding of 50% back wages and the said award has not been challenged by the workman. Therefore, in the absence of any challenge to the said award at the instance of the workman, this court is of the considered view that the workman cannot claim full back wages.
19. Moreover, the learned Tribunal took note of the fact that the negligence on the part of the workman showed that it hampered the production work and accordingly thought fit to withhold two increments and 50% back wages. It is well

settled that the scope of interference under Article 226 of the Constitution of India while exercising the powers of judicial review is very limited and this court while exercising the power of judicial review should be slow in interfering with the findings of fact arrived at by the Tribunal unless the same suffers from perversity. In the case on hand it cannot be said that the award of the Tribunal suffers from perversity. The Tribunal also applied the law to the facts of this case correctly.

20. There is, however, no quarrel to the proposition laid down in *K.C.P. Employees Association* (supra), but the same has no manner of application as no doubt arises either on law or facts in the instant case.

21. For the reasons as aforesaid no interference is called for under Article 226 of the Constitution of India. WPA No. 456 of 2014 accordingly, stands dismissed without, however, any order as to costs. The application also stands disposed of.

22. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)