IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 3969 of 2018

Food Corporation of India through its General Manager (Region), Sandeep Kumar Pandey, aged about 43 years, Son of R.S. Pandey, working at Regional Office, Arunachal Bhawan, Exhibition Road, P.O. & P.S. Gandhi Maidan, District-Patna (Bihar)

… … Petitioner

Versus

Krishna Bihari Mishra, son Late Shivjee Mishra, resident of Badkagaon, P.S., P.O. and District Buxar, Bihar.

… … Respondent

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Shubham Sinha,
AC to Mr. Nipun Bakshi, Advocate

For the Respondent : Mr. Manoj Kumar Sinha, Advocate

17/**12.12.2024**

1. Heard the learned counsel appearing on behalf of the parties.

2. This petition has been filed challenging the award dated 20.10.2017 passed by learned Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad in Complaint Case No. 05 of 2014 whereby orders of penalty dated 24.07.2012 and 17.09.2013 imposed by the disciplinary authority in two different departmental proceedings for charges of grave misconduct have been set aside.

Arguments of the petitioner.

3. The learned counsel for the petitioner has submitted that the impugned award has been passed upon wrongful assumption of jurisdiction. He has submitted that a petition was filed by the concerned workman before the learned Central Government Industrial Tribunal being Complaint Case No. 05 of 2014 under Section 33A of Industrial Disputes Act by referring to the fact that a Reference Case No. 138 of 1997 was pending and no prior approval was taken for initiating the proceedings or for imposition of penalty.

4. He has further submitted that the Reference Case No. 138 of 1997 was in connection with ‘overtime allowance’ and the

disciplinary proceedings against the respondent employee and was in relation to misconduct of shortage of food grain and the punishment was neither dismissal nor discharge but punishment was certain recovery and reduction in pay. The learned counsel submits that the learned tribunal has set aside the order of punishments solely on the ground that the prior permission of the tribunal was not taken as the Reference Case No. 138 of 1997 was pending.

5. He submits that the present case is squarely covered by order of this Court in W.P(L) No. 2703 of 2018 dated 01.07.2024. He has submitted that in the said case also the connected reference case was Reference Case 138 of 1997 which would be apparent from paragraph 8 of the said judgment and this Court after considering the provisions of law in paragraph 20 has specifically recorded that bare reading of the provisions of Sections 33 and 33A clearly indicated that the alleged misconduct ought to be linked with the pending dispute and if the final outcome has any bearing with respect to the pay scale, the same by itself cannot be said to be linked with the dispute regarding overtime allowance. The provision of law does not contemplate any prior or post-approval in unconnected dispute if the punishment is not of dismissal.

6. The learned counsel submits that similar order passed by the same tribunal has been interfered by this Court in the said writ petition. The learned counsel has further submitted that the concerned workman had also filed appeal and the appeal has been dismissed but he has not availed the statutory remedy of review so far. He submits that he has no objection if the concerned workman avails the statutory remedy of review which can be decided in accordance with law.

Arguments of the respondent.

7. The learned counsel appearing on behalf of the respondent has submitted that the dispute cannot be said to be unconnected in view of the fact that the matter in the earlier reference case was relating overtime allowance and the impugned order of penalty has the effect of reduction in the pay scale. However, he is not in a position to

distinguish his case from the judgment passed by this Court in W.P. (L) 2703 of 2018 dated 01.07.2024.

Findings of this Court.

8. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, during the course of argument it is not in dispute that two orders of penalty were imposed against the respondent pursuant to the disciplinary proceedings arising out of misconduct of shortage of food grains. Admittedly, the penalty was neither dismissal nor discharge from service rather the penalty was essentially relating to recovery and reduction in pay.

9. This Court also finds that the concerned workman had availed the statutory remedy of appeal and it is not in dispute that appeal has been dismissed. However, he has not availed the statutory remedy of review so far.

10. The records of this case reveal that the orders of punishment were directly challenged before the Industrial Tribunal by alleging that no prior permission was taken from the tribunal before initiating the proceeding or inflicting the order of punishment and there was a violation of Section 33A of Industrial Disputes Act. The said plea was opposed by the petitioner-employer by filing a written statement and it was the specific case of the petitioner-employer that no such permission was required. It is not in dispute that the earlier Reference Case no. 138 of 1997 was relating to overtime allowance. However, the learned tribunal recorded that the prior approval was required to be obtained and ultimately has set aside the orders of punishment.

11. This Court finds identical issue came up for consideration before this Court in W.P.(L) No. 2703 of 2018 in which also the present petitioner was the writ petitioner and in the said case also the concerned pending reference case was Reference Case No. 138 of 1997 and the disputed allegation was in connection with fake procurement of food-grains. This Court ultimately in paragraph 20 held that the allegation of fake procurement of food-grains was not connected to the pending dispute relating to overtime allowance in

Reference Case No. 138 of 1997. The findings of this Court have been recorded in Paragraph 20,21 and 22 are as under: -

> *"20. This Court is of the considered view that the allegation in the disciplinary proceeding with regard to fake procurement of rice had no connection whatsoever with the general dispute between the workman and the present petitioner and therefore it cannot be said that the dispute in connection with fake procurement was linked with overtime allowance. This Court is of the considered view that merely because the order of punishment which has been imposed as a consequence of the disciplinary proceeding had a bearing in the pay scale of the respondent and consequently may have bearing in overtime allowance, the same was not sufficient to maintain the petition under Section 33 of the Industrial Dispute Act. On bare reading of the provisions of Section 33 and 33A, they clearly indicate that the alleged misconduct ought to be linked with the pending dispute and if the final outcome has any bearing with respect to the pay scale, the same by itself cannot be said to be linked with the dispute regarding overtime allowance. The provision of law does not contemplate any prior or post-approval in unconnected dispute if the punishment is not of dismissal.*
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> *21. This Court is of the considered view that the finding of the learned Tribunal that compliance of Section 33 by the petitioner management is mandatory merely because the complainant is workmen and is concerned with reference 138/97 and that by reducing his pay & post his entitlement of overtime allowance is also reduced, cannot be sustained in law as the pending dispute regarding overtime allowance has no connection with the dispute regarding fake procurement of food grains. This Court is of the considered view that even if the punishment imposed has a bearing on pay scale and correspondingly on entitlement on overtime allowance the general dispute regarding overtime allowance to all workmen cannot be said to be connected to the dispute regarding fake procurement of food grains for which the workman was punished.*
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> *22. Having held that the dispute in connection with fake procurement of rice had no connection with the dispute relating to overtime allowance, this Court is of the considered view that the complaint filed by the respondent workman under section 33 of Industrial Dispute Act was not maintainable and the finding of the learned Tribunal that the petition filed under section 33 of the Industrial Disputes Act, 1947 was maintainable is perverse and therefore, the impugned award is set aside."*

12. In aforesaid facts and circumstances of this case, this Court finds that the present case is squarely covered by W.P.(L) 2703 of 2018 decided on 01.07.2024. Accordingly, the complaint filed by the respondent employee relating to the disciplinary proceedings arising out of misconduct of shortage of food grains on the ground that no prior approval was taken from the learned tribunal where reference case no. 138 of 1997 was pending, was not maintainable and the finding of the learned Tribunal that the complaint filed under the Industrial Disputes Act, 1947 was maintainable is perverse and therefore, the impugned award is set aside.

13. However, the concerned workman has not availed the statutory remedy of review and therefore, if such a review petition is filed by the respondent employee by 28th of February 2025, the review petition shall be considered by the competent authority in accordance with law and be disposed of expeditiously within three months from the date of filing the review petition.

14. This writ petition is disposed of in the aforesaid terms.

15. Pending interlocutory application, if any, is closed.

16. Let the original records be sent back to the court concerned.

(Anubha Rawat Choudhary, J.)

Rakesh/-