



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 5490 OF 2011

Rashtriya Koyla Khadan Majdoor Sangh (INTUC),
604, Giripeth, Nagpur, through its
Joint General Secretary.

...PETITIONER

Versus

Western Coalfields Limited,
Coal Estate Civil Lines, Nagpur,
through its Chief of Security.

...RESPONDENT

Mr. R.N. Deshpande, Counsel for the petitioner.
Mr. R.E. Moharir, Counsel for the respondent.

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 7, 2025

ORAL JUDGMENT :

The petitioner, who was working as security guard with the respondent – Western Coalfields Limited, was removed from service on account of his involvement in theft of scrap copper wire. Along with the petitioner, three more employees were removed.

2] The argument is that two out of three employees were re-appointed, and the remaining was given benefit of retirement because he retired on superannuation in the

intervening period. However, the petitioner was not considered for re-appointment. This argument is advanced in addition to the basic argument that the impugned award has been passed against the petitioner despite there being no evidence of his involvement in theft.

3] I have gone through the award under question with the help of the learned Counsels appearing for the parties to find that the Tribunal has relied upon evidence of two witnesses, namely, Mr. Tiwari and Mr. Roshan, whose evidence was found to be trustworthy and sufficient to establish the charges levelled against the petitioner.

4] On this count, I have gone through the petition to find that the petitioner has not even raised the ground that the evidence of Mr. Tiwari and Mr. Roshan was either inadmissible or not sufficient to establish the charges. What has been said by the petitioner is that the respondent ought to have examined other witnesses, *viz.*, two security guards employed at the relevant time and should have also produced the stock register. This theory is unacceptable. If the employer thought it proper to examine two witnesses to prove the charges, the employee

can not insist employer to examine additional witnesses. If necessary, employer could have examined these witnesses or sought production of documents. In any case, if examination of two witnesses was sufficient to prove the charges, the employee can not challenge the judgment on the ground of non-examination of additional witness.

5] In addition, another ground is raised that the appointing authority of the workman was Chief Security Officer, while the chargesheet, memo and dismissal order, have been issued by Deputy Chief Security Officer.

6] This aspect has been considered by the Tribunal in paragraph 10 of its judgment. According to the Tribunal, this point was raised while considering validity of enquiry and the Tribunal had found that the Management was right in saying that in absence of Chief Security Officer, powers were exercised by Deputy Security Officer. It was pointed out that the Deputy Security Officer was in-charge of the post of Chief Security Officer. Thus, it is evident that the order of dismissal was passed by Chief Security Officer and not by Deputy Security Officer, as claimed by the petitioner.

7] That being so and in absence of any error apparent on the face of record or any material to show that the finding rendered by the Industrial Tribunal is perverse, I do not find any reason to interfere with the well reasoned judgment of the Industrial Tribunal.

8] That apart, the learned Counsel for the respondent has invited my attention to the reference made to the Industrial Tribunal. The reference reads as under :

“2. “Whether the action of the management of Western Coalfields Ltd. through its Chief of Security, Coal Estate, Nagpur in dismissing the services of Shri Manzoor Ahmed, Security Guard is legal and justified? If not, to what relief he is entitled to?”

9] The learned Counsel for respondent no.2 submits that considering the reference, the Industrial Court was under obligation to conduct enquiry to the extent of what has been referred to it. In the circumstances, the Industrial Court could not have, and in fact, has rightly not rendered a finding as regards the alleged discriminating treatment given to the petitioner. This argument has been made in context with the submissions made by the petitioner’s Counsel that four employees were chargesheeted for similar charge and the other

three were given different treatment.

10] On this point, I was informed that all the employees were dismissed by the employer. Thus, similar treatment was given to all the employees. It appears that subsequently, two employees were appointed again in terms of the settlement entered into between the unions of which the said employees were the Members. The petitioner being Member of another union, was not considered as there was no settlement with the employer.

11] In this regard, the learned Counsel for the respondent is correct in contending that since this aspect was not referred to the Industrial Tribunal and since it had no occasion to deal with the said issue, the arguments put forth by the petitioner's Counsel can not be considered. In fact, nothing prevented the petitioner to put forth the alleged grievance before the conciliation officer, where the proceedings were initiated. Had this grievance been raised before the conciliation officer, the reference would have been made in different terms. Further, the petitioner could have requested to amend the reference, if he intended to raise a plea of discrimination as an

unfair labour practice. Having not done so, it will be impermissible for the petitioner to raise this ground for the first time in writ jurisdiction.

12] At this stage, the learned Counsel for the petitioner makes a request to permit the petitioner to raise this ground by remanding the matter back.

13] This request cannot be acceded to inasmuch as the order of dismissal is dated 21/10/2000. The petitioner must have reached the age of superannuation, in fact, I am informed that he has.

14] In the circumstances and in absence of any reason why was this plea not raised before the Industrial Tribunal well in time, I am not inclined to give another opportunity to the petitioner.

15] Put all together, there appears no merit in the petition. The petition is dismissed. Rule is discharged. No order as to costs.

JUDGE