

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Writ Jurisdiction)
W.P.(L) No. 237 of 2009

.....
Aswini Kumar Mishra **Petitioner**
Versus
The Management of M/S Bokaro Steel Plant, Bokaro Steel City
..... **Respondent**

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

.....
For the Petitioner : Mr. Sanjay Prasad, Advocate.
For the Respondent : Mr. G. M. Mishra, Advocate.
.....

10/09.09.2021.

Heard, learned counsel for the petitioner, Mr. Sanjay Prasad and learned counsel for the respondent, Mr. G. M. Mishra.

Petitioner, Aswini Kumar Mishra has preferred this writ petition against the Award dated 29.03.2008 (pronounced on 07.08.2008) in Reference Case No.02/2003 passed by learned Presiding Officer, Labour Court, Bokaro. The reference made under Section 10 of the Industrial Dispute Act is as follows:-

“Whether the dismissal of Shri Ashwini Kumar Mishra, Khalasi, Staff no.61516, S.M.S.-2(Electric 1 op) of Bokaro Steel Plant by the office order No. PARAS/(op)-2/91-2431, dated 2.1.91 is justified? If not what relief he is entitled to ?”

Learned counsel for the petitioner, Mr. Sanjay Prasad has submitted that learned Tribunal has not considered the charge framed against the employee in the domestic enquiry and apart from that the punishment, which has been awarded against the petitioner is not commensurate with the alleged offence, if any, committed by him by remaining himself absentee, as such, the impugned order may be set aside.

Learned counsel for the respondent, Mr. G. M. Mishra has submitted that counter affidavit has already been filed on 18.03.2009 and as per the case of the petitioner, he was a habitual absentee and those have been considered by the learned Tribunal while deciding all the issues framed, which are mentioned hereunder:-

- “(i) Whether the reference is maintainable ?*
(ii) Whether the workman has got any valid cause to raise Industrial Dispute ?
(iii) Whether the workman is the habitual absence ?

(iv) *Whether the dismissal of Shri Ashwini Kumar Mishra, Khalasi, staff no.615916, S.M.S.-2 (Electric Iop) of Bokaro Steel Plant by the office order No. PARAS/(op)-2/91-2431, dated 2.1.91 is justified? If not what relief he is entitled to ?”*

Learned counsel for the respondent has further submitted that Chargesheet / notice dated 13.12.1990 Exhibit-M-1 and enquiry report Exhibit- M-2 have been proved, but nothing has been elucidated from the same to declare perverse finding.

The M.W.- 2, Mukteshwar Prasad, Senior Manager has proved the previous chargesheet dated 20/22.10.86 Exhibit-M-3, whereby he has proved the statement of the absence that in the month of April, he remained absent for 4 days, in the month of May for 28 days, in the month of June for 25 days, in the month of July for 7 days, in the month of August for 0 days and in the month of September 13 days.

So far, the warning letter dated 23.4.1987 Exhibit-M-5 is concerned, the reply to the chargesheet dated 20/22.10.86 was not found satisfactory, hence he was warned not to repeat such act in future.

But from perusal of the chargesheet dated 23.08.1989 Exhibit-M-6, alongwith the statement of allegation of absence Exhibit-7, it was found that petitioner remained absent in April, 1989 for 22 days, in May 1989 for 9 days and June 1989 for 3 days.

As per the chargesheet dated 21.09.1990 Exhibit-M-8 along with statements of absence Exhibit-M-9, the petitioner remained absent in January for 17 days, in February for 21 days, in March for 12 days, in April for 22 days, in May for 21 days, June 15 days and in July for 17 days.

So far the termination order dated 28.12.1990 Exhibit- M-10 is concerned, which has been communicated vide letter dated 2.1.1991 Exhibit-M-11, it appears that the petitioner was terminated from the service.

Learned counsel for the respondent has submitted that learned Tribunal has rightly dismissed the claim of the petitioner by negating the reference, as such, this Court may not interfere with the same, in view of the Judgment passed by the Apex Court in the case of ***S.V. Chandra Pandian and Ors. Vs. S.V. Sivalinga Nadar and Ors. reported in (2006)1***

SCC 589 and in the case of ***Official Liquidator Vs. Dayanand and Others reported in (2008) 1 SCC 224.***

It appears from the materials placed on record, that petitioner was habitual absentee, he was given chargesheet on number of times, he was also warned, but he has not improved.

The reference, which has been made under Section 10 of the Industrial Disputes Act, has been negated by the learned Labour Court on the basis of appraisal of the evidence and judgment passed by the Apex Court, as such, this Court is not inclined to interfere with such finding recorded by the learned Labour Court.

So far, submissions made by learned counsel for the petitioner that chargesheet in the domestic enquiry was not in accordance with law, the Labour Court cannot travel beyond the Reference in view of Section 10(4) of the Industrial Disputes Act and in view of the judgment passed by the Apex Court in the case of ***Oshiar Prasad and Others Vs. The Employers in relation to Management of Sudamdih Coal Washery of M/s BCCL, Dhanbad (Jharkhand)*** reported in **(2015) 4 SCC 71** and in view of the judgment passed by the Apex Court in the case of ***TISCO Ltd. Vs. State of Jharkhand*** reported in **(2014) 1 SCC536.**

Para-22 of the judgment of the Apex Court passed in the case of ***Oshiar Prasad (Supra)*** is profitably quoted hereunder:-

“22. It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when “industrial dispute exists” or “is apprehended between the parties”. Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference.”

Accordingly, the instant writ petition is hereby dismissed.

(Kailash Prasad Deo, J.)