

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 119 of 2022

Md. Kasim aged about 64 years son of Late Kabir Mistri, resident of 65, Bhadrachack, Belatanr, P.O. Sijua, P.S. Jogta, District Dhanbad
... ... **Petitioner**

Versus

1. M/s Tata Steel Limited, Jharia Collieries Jamadoba, Dhanbad, registered office Bombay House, 24, Homi Mody Street, Mumbai
2. The General Manager (Jh.), M/s Tata Steel Limited, at & P.O. Jamadoba, District Dhanbad
3. Manager (Personal), M/s Tata Steel Limited, at & P.O. Jamadoba, District Dhanbad
4. Chief Human Resource Manager, Jharia, M/s Tata Steel Limited, P.O. and P.S. Jharia, District Dhanbad.

... ... **Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Dilip Kr. Chakraverty, Advocate
For the Respondents : Mrs. Prerna Jhunjhunwala, Advocate

06/28.10.2024 Heard the learned counsels for the parties.

2. This writ petition has been filed challenging the award dated 30.12.2019 passed by learned Presiding Officer, Central Government Industrial Tribunal No. 1, in Reference Case No. 20 of 2013.

3. The petitioner is aggrieved by the operative portion of the award wherein the petitioner has been granted only 50% of the back wages from the date of superannuation of the workman on 30.11.2008 till completion of 60 years of age i.e. 30.11.2017 by considering his date of birth as 05.11.1957. The learned counsel submits that there is no finding by the Tribunal that the petitioner was gainfully employed, and consequently, the restrictions of back wages to 50% is perverse and calls for interference.

4. The learned counsel has relied upon a judgement passed by this Court in **LPA No.484 of 2008** dated 02.02.2017 reported in **2017 (3) JCR 331 (Jhr) (The Management of Regional Chief Engineer, PHED Ranchi Vs. Their Workmen represented by District Secretary, Ranchi)** paragraphs 9 and 10 and submitted that the award granting full back wage was refused to be set aside by this Court. The learned counsel has further submitted that the date of birth of the petitioner

was in dispute, and the claim of the petitioner that he was born on 05.11.1957 was ultimately accepted by the learned Tribunal. He has also submitted that the petitioner was made to retire on 30.11.2008, and the industrial dispute was referred on 08.07.2013. However, from perusal of the award, it appears that the petitioner had raised the industrial dispute on 10.06.2009.

5. The learned counsel for the respondents, on the other hand, while opposing the prayer has submitted that, pursuant to the award dated 30.12.2019, the petitioner duly accepted the awarded amount as back as on 25.03.2021, without any objection, and ultimately challenged the award by this petition filed on 17.01.2022. She has also relied upon the judgment passed by the Hon'ble Supreme Court, reported in *(2018) 18 SCC 299 (Rajasthan State Road Transport Corporation, Jaipur v. Phool Chand)*, paragraph 12, and submitted that it was for the petitioner to plead and prove that he was not gainfully employed during the period from 01.12.2008 till 30.11.2017; the initial onus was on the petitioner. There is neither any pleading, much less any proof, with regard to the petitioner remaining unemployed. She has also submitted that the judgement passed by the Hon'ble Supreme Court in *Rajasthan State Road Transport Corporation, Jaipur (supra)* has been passed after the judgement passed by the Hon'ble Division Bench in LPA No.484 of 2008. The learned counsel submits that there is no illegality or perversity in the impugned award. Rather, the petitioner has been given 50% back wages without there being any proof or pleading regarding his unemployment during the period from 01.12.2008 till 30.11.2017.

6. The learned counsel for the respondents has also submitted that the award passed in the present case has not been challenged by the respondents only because of the reason that the workman had accepted the amount paid by the respondents and only thereafter having accepted the amount, has filed the present writ petition.

7. After hearing the learned counsel for the parties and considering the facts and circumstances, this Court finds that a reference under clause (d) of sub-section (1) and sub-section (2A) of

Section 10 of the Industrial Dispute Act was made by the Central Government vide reference dated 08.07.2013 and, consequently, a Reference Case No. 20 of 2013 was instituted. The impugned award reveals that both the parties appeared and filed their written statements. The petitioner filed the written statement on 09.12.2013 and the management filed the written statement on 26.08.2014. The petitioner thereafter filed rejoinder to the written statement of the management on 09.04.2015. From perusal of the impugned award, this Court finds that the learned Tribunal has taken into consideration the materials placed on record, and ultimately held that the date of birth of the petitioner was 05.11.1957.

8. From perusal of the entire award and in spite of repeated opportunities granted to the petitioner, the petitioner has not been able to show any material wherein the petitioner had raised a plea that the petitioner was not gainfully employed during the period from 01.12.2008 till his age of superannuation on 30.11.2017, taking his date of birth as 05.11.1957. This Court further finds that in spite of there being no such plea from the side of the petitioner, the learned Tribunal has granted 50% back wages. In the judgment passed by the Hon'ble Supreme Court in the case of **Rajasthan State Road Transport Corporation, Jaipur (supra)**, it has been held that the initial burden regarding unemployment after dismissal is on the workman. Paragraph 12 of the said judgment is quoted as under:

"12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee."

So far as the judgment passed by this Court, which has been relied upon by the petitioner in **LPA No. 484 of 2008 (supra)** is concerned, the subject matter of consideration, was the order passed in writ petition being **W.P.(L) No. 3962 of 2006**, wherein the court dismissed the writ petition and refused to interfere with the award. As per the

award, in the said case, the order of termination of 37 daily wagers without following the procedure prescribed under Section 25F of Industrial Disputes Act, 1947 was held to be null and void ab initio and full back wages was allowed. The Hon'ble Division Bench also refused to interfere with the order passed by the learned writ court and the award was upheld.

9. This Court is of the considered view that the award of full back wages is not automatic and many aspects of the matter are required to be taken into consideration including the fact of victimization, unfair labour practice, whether the employee was gainfully employed elsewhere during the period he was out of service etc. There cannot be any straight jacket formula. In the judgement passed by the Hon'ble Supreme Court in the case of **BSNL v. Bhurumal, (2014) 7 SCC 177**, it has been held that the ordinary principle of grant of reinstatement with full back wages when the termination is found to be illegal is not applied mechanically in all cases. The relevant paragraph of the aforesaid judgment is quoted as under:

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.”

10. Considering the aforesaid judgement passed by the Hon'ble Supreme Court in the case of **Rajasthan State Road Transport Corporation, Jaipur (supra)** and also the judgement passed in the case of **BSNL v. Bhurumal (supra)**, this Court finds that the learned court has applied sound discretion in granting 50% back wages. It has come on record that the petitioner was examined by the medical board and his period of service was extended till 31.11.2008 and the

industrial dispute was raised after 31.11.2008 vide representation dated 10.06.2009. The petitioner had also filed a suit being Title Suit No.103 of 2008 demanding correction of his date of birth which was dismissed for non-compliance of order passed by the concerned court.

11. In view of the aforesaid facts and circumstances, this Court finds no illegality or perversity in the matter of grant of 50% back wages to the petitioner calling for interference by this Court under Article 226 of the Constitution of India.

12. This writ petition is accordingly dismissed.

13. Pending interlocutory application, if any, stands closed.

(Anubha Rawat Choudhary, J.)

Saurav/-