

A RASHTRIYA COLLIERY MAZDOOR SANGH, DHANBAD

v.

EMPLOYERS IN RELATION TO MANAGEMENT OF
KENDUADIH COLLIERY OF M/S BCCL & ORS.

B (Civil Appeal No. 11003 of 2016)

NOVEMBER 21, 2016

[T. S. THAKUR, CJI, DR. D.Y. CHANDRACHUD AND
L. NAGESWARA RAO, JJ.]

C *Industrial Dispute – Absorption or regularization – 88*
workmen worked as Tyndals at Colliery – Industrial dispute seeking
employment – Modified award by the Industrial Tribunal wherein
issuance of direction to the management that as and when they intend
to employ regular workmen, preference would be given to these
workmen – Said order attained finality – Thereafter, workmen sought
D *implementation of order passed by the High Court – However, no*
vacancy had arisen ever since the order of the High Court –
Undertaking by the management that if vacancy arises in future
and post is advertised, for which workmen apply, they would be
considered – On appeal, held: Judgment of the High Court modifying
E *the award by the tribunal attained finality and the workmen sought*
its implementation in the writ – Entitlement that the workmen claim
must flow out of the judgment of the High Court by which the
workmen were entitled to the grant of a preference in future
employment by the management – Reliance by appellant on certain
F *proceedings by Union of one of the collieries of the first respondent,*
wherein the Supreme Court, set aside the order of Division Bench
and restored the award of the tribunal granting reinstatement without
backwages, not correct – Further, report by a Committee that there
was no vacancy in the post of Tyndal, in which 88 workmen were
working – In view thereof, direction issued to first respondent to
G *pay compensation of Rs. Four lakhs each to 88 workmen being of*
skilled category of Tyndals, in full and final settlement of all their
claims.

H Eighty eight workmen worked as Tyndals at the Colliery of the first respondent. Colliery Mazdoor Sangh raised an Industrial dispute seeking employment of 88 workmen. The tribunal passed an award.

The management was directed to form a panel of the workmen in accordance with seniority and to absorb or regularize them either in the work of Tyndal/suitable category within one year. The first respondent filed a writ petition. The High Court modified the award, directing the management that as and when they intend to employ regular workmen, preference would be given to these workmen. The said order attained finality. Thereafter, the Union representing workmen filed a writ petition seeking implementation of order passed by the High Court. The High Court disposed of the writ petition as no vacancy had arisen ever since the last order. The management gave an undertaking that if vacancy arises in future and post is advertised, for which workmen apply, they would be considered for the post. Thereafter, Review petition was also disposed of on similar terms. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 Appellant has relied on certain proceedings which took place in another distinct reference to the Industrial Tribunal, at the behest of the Union representing the workmen engaged in one of the collieries of the first respondent, wherein an Award was passed directing regularization of seventy workmen in general mazdoor category No.1. This Court set aside the judgment of the Division Bench of the High Court and restored the Award of the Tribunal granting reinstatement without backwages. The above judgment of this Court cannot come to the aid of the Appellant for the simple reason that in that case, the Union had challenged the judgment of the Division Bench of the High Court before this Court. In the instant case, the judgment of the High Court dated 18.05.2004 modifying the Award of the Tribunal attained finality. The entitlement that the workmen claim must hence flow out of the judgment of the High Court by which the workmen were entitled to the grant of a preference in future employment by the management. [Paras 5, 6] [224-B-C, D-G]

1.2 A Committee was constituted by the first respondent which by its report observed that there is no vacancy in the post of Tyndal, category IV either in respect of Kenduadih Colliery or the Pootkee Balihari area as a whole. Kenduadih Colliery is stated to be a closed mine. In the Judgment of this Court *Workmen Rastriya Colliery Mazdoor Sangh v Bharat Coking Coal Ltd. CA 13953 of 2015* dated 3 October 2016, reasons were indicated as

A to why it would not be practicable to grant reinstatement particularly since such relief was denied in the judgment of the High Court dated 18 May 2004, which has not been challenged. This Court while declining to grant reinstatement ordered payment of compensation of Rupees two lakhs each to the workmen. However, while taking note of the fact that two sets of workmen in the same colliery and under the same company have received unequal treatment, the workmen in that case were employed as general mazdoors and in the instant case belong to the skilled category of Tyndals which are comprised in category IV. Having due regard to this position, it would be appropriate to direct that the first respondent shall in full and final settlement of all the claims and outstandings of the eighty eight workmen concerned in the reference deposit an amount of Rupees four lakhs each per workman before the Central Government Industrial Tribunal (No.2). [Paras 7, 8] [226-C-G]

D *Workmen Rastriya Colliery Mazdoor Sangh v Bharat Coking Coal Ltd.* CA 13953 of 2015 dated October 3, 2016 – relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11003 of 2016.

E From the Judgment and Order dated 31.07.2013 of the High Court of Jharkhand at Ranchi in Civil Review No. 118 of 2010.

R. Dash, Sr. Adv., Kautabh Shukla, Vinodh Kanna B., Advs. with him for the Appellant.

Ms. Madhumita Bhattacharjee, Adv. for the Respondents.

F The Judgment of the Court was delivered by

DR. D. Y. CHANDRACHUD, J. 1. Leave granted.

G 2. The dispute in the present case relates to eighty eight workmen who had worked as ‘Tyndals’ at the Kenduadih Colliery (of the first respondent). On 14 May 1993 a Reference was made to the Industrial Tribunal by the appropriate government under Section 10(1)(d) of the Industrial Disputes Act, 1947, of the following dispute :

“Whether the demand of Rashtriya Colliery Mazdoor Sangh for employment of Shri Arjun Paswan and 87 others, as per list attached is justified? If so to what relief the workers are entitled”.

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The job description of Tyndals required these workmen to be engaged in moving engineering stores, drums of oil and grease and they were also responsible for setting up and dismantling of structures, as well as the installation and withdrawal of machinery. The Industrial Tribunal by its Award dated 16 July 1996 held that :

“it is beyond the question that the persons worked under the contractor are genuine one who are the present workmen and they performed the job which was of permanent and perennial in nature and the person performing the same type of job in other collieries were regularized and so no doubt a stepmotherly attitude was taken so far these concerned workmen are concerned”.

The Tribunal directed the management to form a panel of the concerned workmen in accordance with seniority and to absorb or regularize them either in the work of Tyndal or in any suitable category so that the list is exhausted within a period of one year. Backwages were denied.

3. The first respondent filed a writ petition before the Jharkhand High Court to challenge the Award (CWJC 1655 of 1997). On 18 May 2004 a learned Single Judge of the Jharkhand High Court modified the Award of the Industrial Tribunal and directed that as and when the management intends to employ regular workmen, it shall grant preference to the workmen governed by the Award if they are otherwise suitable by relaxing the requirements of age and academic qualifications. This order of the High Court attained finality.

4. In 2007 the Union representing the workmen filed a writ petition before the High Court (WP(L) 4915 of 2007) seeking implementation of the order dated 18 May 2004. While disposing of the writ petition on 24 September 2010 the High Court recorded the statement of the management that no vacancy had occurred in the post of Tyndal since the judgment which was rendered on 18 May 2004. However, the High Court recorded the undertaking of the management that if any vacancy arises in future and the post is advertised for which the workmen apply, they would be considered for the post and that the management would also accommodate them if there was a vacancy under any other category. Thereafter, a Review Petition was filed before the High Court based on information which was obtained under the Right to Information Act. The learned Single Judge held that the employment which was granted by the management between 2004 and 2008 (as disclosed in the response to the RTI query on 11 September 2008) indicated that the appointment

A was made only on compassionate grounds. Once again, while disposing of the Review Petition the statement of the management was recorded that if and when posts were advertised, the workmen would be entitled to apply and would be considered. The rejection of the Review Petition has led to the filing of these proceedings.

B 5. The Appellant has relied on certain proceedings which took place in another distinct reference to the Industrial Tribunal, Reference 204 of 1994. The reference was at the behest of the Union representing the workmen engaged in one of the collieries of the first respondent. An Award was made by the Industrial Tribunal on 14 August 2000 directing regularization of seventy workmen in general mazdoor category No.1.
C The Award was confirmed by a learned Single Judge of the High Court on 26 July 2001 while dismissing the writ petition of the management. However, in a Letters Patent Appeal the Award was modified by directing that as and when the management intended to appoint regular workmen, it would grant preference to the workmen concerned in the reference, if
D necessary, by relaxing the conditions of age and academic qualifications. The Union filed a Special Leave Petition under Article 136 of the Constitution before this Court. This Court by a Judgment and Order dated 18 November 2009, set aside the judgment of the Division Bench of the High Court and restored the Award of the Tribunal granting reinstatement without backwages.

E 6. The above judgment of this Court cannot come to the aid of the Appellant for the simple reason that in that case, the Union had challenged the judgment of the Division Bench of the High Court before this Court. In the present case, the judgment of the High Court dated 18 May 2004 modifying the Award of the Industrial Tribunal attained finality. In fact,
F in their writ petition of 2007 the workmen sought implementation of the judgment rendered on 18 May 2004. The entitlement that the workmen claim must hence flow out of the judgment of the High Court by which the workmen were entitled to the grant of a preference in future employment by the management by relaxing conditions of age and educational qualifications. This distinction has, in fact, been noted in
G a judgment recently delivered by this Court on 3 October 2016, in **Workmen Rastriya Colliery Mazdoor Sangh v. Bharat Coking Coal Ltd.** (C.A. 13953 of 1015). This Court while declining to grant reinstatement allowed compensation to fourteen workmen whose services were in issue, each in the amount of Rupees two lakhs in full and final
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settlement of all claims for compensation. The relevant part of the judgment rendered by this Court on 3 October 2016 is extracted below : A

“7 The basic grievance of the workmen is that as a result of the position which has ensued, the workmen governed by the present proceedings of whom only 14 are left in the fray, are virtually without any relief or remedy in practical terms. The workmen were engaged between 1987 and 1989. Nearly 27 years have elapsed since then. Many of the 14 workmen would be on the verge of attaining the age of retirement. There is no occasion at present to grant them reinstatement since in any event, such relief has been denied in the judgment of the High Court dated 18 May 2004 which has not been challenged. However, the predicament of the workmen is real. Two sets of workmen in the same colliery under the same company have received unequal treatment. The present group of workmen has faced attrition in numbers and has been left with no practical relief. This situation should be remedied, to the extent that is now permissible in law, having regard to the above background. In order to render full, final and complete justice, we are of the view that an order for the payment of compensation in final settlement of all the claims, dues and outstandings payable to the 14 workmen in question would meet the ends of justice. B C D E

8 We accordingly direct that the Respondents shall deposit with the Central Government Tribunal (No.2) at Dhanbad an amount of Rs. Two lakhs each towards compensation payable to each one of the 14 workmen. This amount shall be in full and final satisfaction of all the claims, demands and outstandings. Upon deposit of the amount, the Award of the Industrial Tribunal dated 9 September 1996, as modified by the High Court on 18 May 2004 shall be marked as satisfied. The Respondents shall deposit the amount as directed hereinabove, within a period of two months from today before the Central Government Industrial Tribunal (No.2) Dhanbad in Reference 26 of 1993. The amount shall be disbursed to the workmen concerned subject to due verification of identity by the Industrial Tribunal”. F G

7. In the present case, the counter affidavit filed by the first respondent before this Court contains a specific admission that the eighty eight workmen governed by the reference were working as ‘Tyndals’ H

A on surface as well as in underground mines through contractors at Kenduadih Colliery. The counter affidavit states that the reliance which is sought to be placed by the workmen on replies to queries under the Right to Information Act is misleading and that the appointments in those cases were made by the first respondent in category I whereas 'Tyndals' are appointed in category IV. We may note at this stage, that during the pendency of these proceedings an order was passed on 11 December 2015 to enable the respondents to ascertain the position with regard to the vacancies in the above category. A Committee was constituted by the first respondent which by its report dated 2 January 2016 has observed that there is no vacancy in the post of Tyndal, category IV either in respect of Kenduadih Colliery or the Pootkee Balihari area as a whole. Kenduadih Colliery is stated to be a closed mine. A statement has been annexed indicating the existence of surplus manpower.

8. In the Judgment of this Court rendered on 3 October 2016, noted earlier, reasons have been indicated as to why it would not be practicable to grant reinstatement particularly since such relief was denied in the judgment of the High Court dated 18 May 2004, which has not been challenged. The workmen in that case were engaged between 1987-1989. Nearly twenty seven years had elapsed and many of the workmen would have been on the verge of retirement. However, while taking note of the fact that two sets of workmen in the same colliery and under the same company have received unequal treatment, this Court ordered payment of compensation each in the amount of Rupees two lakhs to the workmen. The workmen in that case were employed as general mazdoors. The workmen in the present case belong to the skilled category of Tyndals which as noted earlier are comprised in category IV. Having due regard to this position, in the present case, it would be appropriate to direct that the first respondent shall in full and final settlement of all the claims and outstandings of the eighty eight workmen concerned in the reference deposit an amount of Rupees four lakhs each per workman before the Central Government Industrial Tribunal (No.2) Dhanbad in Reference 54 of 1993. The amount shall be disbursed to the workmen concerned subject to due verification of their identity by the Industrial Tribunal. This amount shall be in full and final satisfaction of all claims, demands and outstandings payable to the workmen.

9. The Civil Appeal shall stand allowed in the above terms. There shall be no orders as to costs.