IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No.362 of 2024
With
I.A No. 5827 of 2024

---

1. M/s. Bharat Coking Coal Ltd., through its Chairman-cum-Managing Director, having its office at Koyla Nagar, P.O. Koyla Nagar, P.S. Saraidhela, District Dhanbad.
2. Chief Manager (P) MP R, M/s. Bharat Coking Coal Limited, Koyla Nagar, P.O. Koyla Nagar, P.S. Saraidhela, District Dhanbad.
3. The General Manager (PF/Pension), M/s. Bharat Coking Coal Limited, Koyla Nagar, P.O. Koyla Nagar, P.S. Saraidhela, District Dhanbad.
4. The General Manager, M/s. Bharat Coking Coal Limited, Koyla Nagar, P.O. Koyla Nagar, P.S. Saraidhela, District Dhanbad.
5. The Area Personnel Manager, Govindpur Area-III, M/s. Bharat Coking Coal Limited, P.O. & P.S. Govindpur, District Dhanbad.

..... Appellants.

-Versus-

1. Kailash Chandra Mukherjee, S/o Late Lakhan Chandra Mukherjee, village Nabagram, P.O. Nildih, P.S. Raghunathpur, District Purulia (West Bengal).
2. Coal Mines Provident Fund, through its Regional Director, Regional Office D-II, office at Hirapur, P.O. & P.S. Dhanbad, District Dhanbad.

..... Respondents.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Appellants : Mr. Anoop Kumar Mehta, Advocate
For Res. No.1 : Mr. Saibal Mitra, Advocate
For Res. No.2 : Mr. Prashant Kumar Singh, Advocate

Reserved on 17.04.2025 **Pronounced on 29.04.2025**

Per: Rajesh Shankar, J.

1. The present appeal is directed against the judgment dated 15.03.2024 passed in W.P.(S) No. 31 of 2021 whereby the learned Single Judge of this court has allowed the writ petition filed by the petitioner/respondent no.1 and has directed the respondents/appellants to fix the pension of the respondent no. 1 after fulfilment of the formalities as per requirements of law.

2. The factual background of the case is that the respondent no. 1 was appointed in Barora Area of M/s BCCL, however, he along with other workmen were retrenched with effect from 19.12.1983 which led to raising of an industrial dispute by the sponsoring Union. Subsequently, the said dispute was referred to the Central Government Industrial Tribunal No.1, Dhanbad (in short CGIT-1) which was registered as Ref No. 151 of 1989. The Reference was answered by the Tribunal vide its Award dated 21.02.1992 directing the management of BCCL to reinstate the respondent no. 1 and other workmen in service with effect from 22.12.1983 and pay them back wages.

3. The award of reinstatement passed by the learned CGIT was upheld up to the Hon'ble Supreme Court of India. The management of BCCL entered into a settlement with the concerned Union representing the respondent no.1 and other workmen on 27.06.2014 to comply the award of reinstatement dated 21.02.1992 passed by the CGIT No.1, Dhanbad in Ref. No. 151 of 1989 and thereafter M/s BCCL reinstated the respondent no. 1 with effect from the date of award dated 21.02.1992. The service of respondent no. 1 was confirmed with effect from 01.02.2015 on the post of General Mazdoor (Surface) Category-1 and as per the pension scheme, the appellants deducted some amount from the monthly salary of the respondent no.1 towards contribution of pension.

4. The respondent no. 1 retired from service on 30.06.2016 and he was paid Gratuity and Provident Fund amount, however Pension

was not paid to him. The respondent no. 1 filed writ petition being W.P.(S) No. 31 of 2021 with a prayer to release his pension from the date of retirement from service as well as for payment of arrear of pension with interest @ 10% per annum. The said writ petition has been allowed by the learned Single Judge vide impugned order dated 15.03.2024 observing that the petitioner had completed ten years of service which was the requirement of pensionable service and as such he is entitled to pension calculating the period of service rendered by him with effect from 21.02.1992 as per Clause 4 of the Settlement dated 27.06.2014.

5. The learned counsel for the appellants has assailed the impugned order primarily on the ground that on combined reading of Para 2(o) and Para 2(q) of the Coal Mines Pension Scheme, 1998 it would be evident that for entitlement of pension, an employee has to render actual service for 10 years as well as he is required to pay at least 120 months of contribution towards pension under the Scheme 1998, however, admittedly the respondent no. 1 has neither rendered actual service of 10 years nor the contribution towards pension has been deducted from his monthly pay slip for a period of 120 months. As such, he is not entitled to pension under CMPS, 1998. It is further submitted that one time pension has been computed under para 10(4) of the CMPS 1998 and the amount of contribution payable to the respondent no.1 by way of return was determined as Rs. 44,350/- and was paid to him in the month of December, 2016 itself.

6. The learned counsel for the CMPFO submits that CMPFO acts upon the recommendation of the BCCL and will take steps as soon as the recommendation is made.

7. The learned counsel for the respondent no. 1 submits that as per Para 4 of the settlement arrived at between the Management of BCCL and the concerned Union on 27.06.2014, the concerned workmen were notionally reinstated w.e.f. 21.02.1992 and therefore his pensionable service should be counted from the said date itself. It is further submitted that certain amount has also been deducted from the salary of the respondent no. 1 for contribution towards pension.

8. Heard the learned counsel for the parties and perused the materials placed on record.

9. Thrust of the argument of the learned counsel for the appellants is that the respondent no. 1 was given appointment on 12.07.2014 in compliance of the award passed by the learned CGIT-1 which was affirmed up to the Hon'ble Supreme Court and he retired from service on 30.06.2016 without completing 10 years of pensionable service and as such the claim of the respondent no. 1 for payment of pension is not tenable.

10. We do not find any substance in the contention of the learned counsel for the appellants. If the appointment of the petitioner is treated from 12.07.2014, the same would be gross violation of the award passed by the CGIT-1 as it was not for fresh appointment, rather was for reinstatement which would mean that the respondent no. 1 was to be treated in service since the

date of his initial appointment. Thus, if the fiction created by the award of reinstatement passed by the learned CGIT-1 is taken to its logical conclusion, the respondent no.1 would be treated to have been in service since the date of his initial appointment irrespective of the fact that he did not work from the date of retrenchment till 11.07.2014. Thus, completion of ten years of pensionable service, which is a condition precedent under the CMPS, 1998 for entitlement of pension, does not come in the way of the claim of the respondent no. 1.

11. So far as non-deposit of the contribution towards pension is concerned, the award was passed on 21.02.1992 directing the management to reinstate the respondent no. 1 and other retrenched workmen in service w.e.f. 22.12.1983, however the management complied the said award only on 12.07.2014 by permitting the respondent no.1 to join the post of General Mazdoor (Surface) Category-I. Thus, due to the own fault of the appellants, the respondent no.1 could not complete ten years of pensionable service. There is a well-known maxim *"commodum ex injuria sua nemo habere debet"* which means that no one should get benefit of its own wrongdoing.

12. In the present case, since the appellants themselves were at fault in not permitting the respondent no. 1 to join within a reasonable period after passing of the award dated 21.2.1992, they cannot be allowed to take benefit of their own fault. The respondent no. 1 could not work for the qualifying period only because he was not allowed to work by the appellants. If he had been allowed to

work, the requirement of 120 months of contribution towards pension would have also been fulfilled. Moreover, on perusal of the impugned order passed in W.P.(S) No. 31 of 2021, it would be evident that the respondent no. 1 is ready to deposit his contribution as well as the amount paid to him as one time pension. As such, the said contention of the appellants also does not survive.

13. In view of the discussions made hereinabove, we do not find any infirmity in the order passed by the learned Single Judge in directing the appellants to fix pension of the respondent no. 1, however, the direction issued to the management of BCCL to consider the claim of the respondent no. 1 regarding refund of the received amount by him as per requirement so as to extend the pensionary benefits appears to be needless. Once it was held that the respondent no.1 was entitled to be paid the pension, there was no need to direct the appellants to consider the claim of the petitioner which otherwise will be an empty formality as the respondent no.1 will merely knock his head against the impenetrable wall of prejudged opinion of the appellants.

14. Hence, the respondent no.1 is directed to deposit his contribution towards pension for qualifying period along with the amount of Rs. 44,350/- paid to him under para 10(4) of the CMPS 1998 with the appellants within four weeks from the date of passing of this order and on receipt of the same the appellants shall forward it along with their contribution to CMPFO. The CMPFO shall thereafter fix and pay pension along with the arrears to the

respondent no.1 within one month from the date of receipt of the said contribution.

15. The present appeal is dismissed with the aforesaid directions and observations.

16. I.A No. 5827 of 2024 is also dismissed accordingly.

(M.S. Ramachandra Rao, C.J.)

(Rajesh Shankar, J.)

A.F.R.
Sanjay/