

Writ Of Certiorari Can't Be Issued To Examine Adequacy Of Evidence Adduced Before Lower Court/Tribunal: Orissa High Court Reiterates

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IN THE HIGH COURT OF ORISSA AT CUTTACK
ARINDAM SINHA; J., SANJAY KUMAR MISHRA; J.
W.P.(C) No. 32377 of 2020; 02.12.2022

Project Officer, Bharatpur Open Cast Project of Mahanadi Coalfields Ltd.

versus

Darsani Kumar Sahoo and another

For petitioner - Mr. S.D. Das, Senior Advocate.

For Opp. Parties - Mr. P.K. Parhi, Deputy Solicitor General Mr. J. Nayak, CGC Mr. A. Mishra, Advocate.

J U D G M E N T

ARINDAM SINHA, J.

1. Mr. Das, learned senior advocate appears on behalf of petitioner-management. He submits, impugned is award dated 9th June, 2017 carrying direction to advance promotion of opposite party no.2 (workman) as shall be effective on the date, in which his junior Sri Pothal was given promotion in different cadre of Dumper Operators. Further direction was entitlement to all consequential financial benefits in the higher cadre from that date.

2. He draws attention to his client's written statement, in particular paragraph-5, where there is mention that the workman was informed by letter dated 8th September, 2004, with reference to his representation dated 24th April, 2003, his case was considered along with others by the Department Promotion Committee (DPC) but was not recommended. Said letter was annexed to the written statement.

"In reference to your application in regards to review of promotion, the details of promotion has been sent to area office. In this regards, this is to inform you that the delay in promotion from Dumper operator Gr. D to Gr. C due to your poor performance and you have not obtained qualifying marks in trade test. So your above case can not be considered at present.

This is for your kind information."

He then draws attention to note sheet of the DPC, appearing to have been signed on 25th April, 1993. He points out, at sl. no.5 is name of the workman, being one of those employees having obtained less than qualifying marks having attendance less than 240 days, including authorized leave, as were not considered for promotion to the posts indicated against the name(s). He submits, this was good evidence but his client was prevented from adducing the same before the labour Court. On query from Court he is unable to demonstrate compliance with rule 10-B(2) in Industrial Disputes (Central) Rules, 1957 on part of his client.

3. He also draws attention to order sheet from the Lower Court Record (LCR), in particular to order nos.53 to 57. He submits, absence of his client on one day brought closure of evidence against it. The next day parties were not present because Presiding Officer (PO) was on leave. His client was thereafter not represented on the next date and on following date, impugned award was made. In the circumstances he seeks interference in judicial review to enable his client to adduce evidence that was introduced by pleadings but could

not be brought on record by aforesaid omission. He submits, there is demonstration that the presumption could not have been made in the facts and circumstances.

4. Mr. Mishra, learned advocate appears on behalf of the workman. He submits, the order sheet will reveal that more than reasonable opportunity was given to the parties. On two occasions costs were imposed on the management for not having appeared. The costs were nominal yet the management did not pay same to his client.

5. He draws attention to his client's rejoinder paragraph-3. The paragraph is reproduced below.

*"3. That, we do not agree fully with the contentions of the Management as per his para no.5 of his written statement. His promotion is a time bound promotion as per the scheme framed by the Management as in vogue then as agreed in the note sheet of 1993 of the Management submitted by him in his statement. **Promotion to the post of Dumper Operator Gr.C was held in 1993 not as per the scheme, but instead of 1991 and thereafter.** The cause of not promoting to post was never intimated to the workman. When he raised complaints in the year 2/2004 about his promotion of not being held, he was then in the year 9/2004 informed by the Management that "due to poor performances and not obtaining qualifying marks in trade test, his case could not be considered from Gr.D to Gr.C." **Actually no such trade test had ever taken place nor any DPC was held in between 1990 to 1997 except the year of 1993 as told earlier.** Hence the promotion was delaying and also thereby the promotion as delayed amounts to be denied illegally."*

(emphasis supplied)

6. He submits, presumption is possible in law and no illegality nor material irregularity appears on face of the award, for interference.

7. We have perused impugned award and, inter alia, the order sheet. We are satisfied every opportunity was given to the management.

8. The labour Court had before it pleading by paragraph-5 in the written statement and denial by paragraph-3 in the rejoinder. It appears that the workman's case was, there was no DPC held in year 1993. The management did not adduce evidence to show that in fact, there was DPC. Text of letter dated 8th September, 2004, introduced by paragraph-5 in the written statement of the management, is reproduced below.

"In reference to your application in regards to review of promotion, the details of promotion has been sent to Area Office. In this regards, this is to inform you that the delay in promotion from Dumper Operator Gr.D to Gr.C due to your poor performance and you have not obtained qualifying marks in trade test. So your above case cannot be consider at present.

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It will appear from above extract, there was no mention in it of DPC having been held. The management then omitted to adduce its evidence before the Court below. Thus there was, inter alia, assertion of no DPC having been held and nothing in the materials on record to show otherwise. In such circumstances, law allows for presumption of the fact that no DPC was held and we cannot fault the labour Court for having so presumed against the management and in favour of the workman.

9. The Supreme Court in **Syed Yakoob v. Radhakrishnan** reported in **AIR 1964 SC 477** said in regard to a finding of fact recorded by the Tribunal, a writ of Certiorari can be issued

if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law, which can be corrected by a writ of Certiorari. The Court went on to say further that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of Certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The management in contending that the presumption could not have been drawn since, relevant evidence was there though not adduced by omission, is seeking to draw the writ Court within the exclusive jurisdiction of the Tribunal. Such contention cannot be agitated before the writ Court. Here, we extract a passage from paragraph-7 in **Syed Yakoob** (supra), reproduced below.

“xxx xxx xxx The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. xxx xxx xxx”

10. In view of aforesaid, we do not find merit in the writ petition. It is dismissed.

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