REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A No. 2 OF 2016

IN

CIVIL APPEAL No. 13953 OF 2015

WORKMEN RASTRIYA COLLIERY MAZDOOR SANGH **.....APPELLANT**

Versus

BHARAT COKING COAL LTD. & ANR. **.....RESPONDENTS**

J U D G M E N T

Dr D Y CHANDRACHUD, J

1 The Appellant, which is a registered trade union, espoused the cause of the workmen engaged at Balihari Colliery under Bharat Coking Coal Limited (BCCL). Of the 20 original workmen, 14 are left in the fray. In 1993, a reference was made by the appropriate government under Section 10(1)(d) of

the Industrial Disputes Act, 1947 to the Central Government Industrial Tribunal at Dhanbad on the demand raised by the workmen for regularisation. The reference was as follows:-

> "Whether the demand of Rashtriya Colliery Mazdoor Sangh for regularization of the workmen on the role of Balihari Colliery of M/s BCCL Ltd., and payments to them of wages as per N.C.W.A. is justified? If so, to what relief the workmen are entitled?"

The Industrial Tribunal delivered an Award on 9 September 1996 in the above mentioned reference, Reference 26 of 1993. By its Award, the Industrial Tribunal allowed the reference in the following terms:-

> "The management of BCCL is directed to regularise the concerned workmen as per annexure of the reference as permanent employee as per NCWA in Cat. I within three months from the date of publication of this Award with the wages and other amenities to which they are entitled to. But no back wages is given nor is it claimed. No cost is awarded also to either of the parties. Thus the reference is disposed of and this is my Award".

2 Separately, the appropriate government made another reference on 11 August 1994, being Reference 204 of 1994, under Section 10(1)(d) of the Industrial Disputes Act, 1947 in respect of 76 workmen who had been denied regularisation in Balihari Colliery. In that reference, an Award was rendered by the Industrial Tribunal on 14 August 2000 directing BCCL to regularise 73 out of 76 workmen. The management challenged the Award in writ proceedings before the High Court (CWJC 3824 of 2000). The High Court by a judgment

dated 26 July 2001 dismissed the writ petition. In a Letters Patent Appeal (LPA 543 of 2001), a Division Bench of the High Court by a judgment dated 10 March 2003 modified the Award by directing that as and when the management intended to appoint regular workmen, it shall give preference to the workmen in question, if necessary by relaxing conditions of age and eligibility. The judgment of the High Court was challenged before this Court in Civil Appeal No. 3962 of 2006 by the Union. By a judgment and order dated 18 November 2009 the Civil Appeal was allowed and the Award of the Industrial Tribunal was restored. In consequence the workmen were directed to be reinstated though without any backwages.

3 In the present case, the Award of the Industrial Tribunal dated 9 September 1996 was modified by a judgment dated 18 May 2004 of the High Court in CWJC 1654 of 1997. The Award was modified in the following terms:-

> "…the impugned awards are modified to the extent that as and when M/s. B.C.C.L. intends to employ regular workmen, it shall give preference to these 88 plus 20 persons, if they are otherwise found suitable by relaxing the conditions as to the works age appropriately taking into consideration their age at the time of their initial appointment and also by relaxing the condition regarding academic/technical qualification".

No appeal was filed against the impugned judgment of the High Court dated 18 May 2004 by the Union. However, on 22 August 2011 a

representation was submitted on behalf of the workmen to the management seeking employment for those governed by the Award dated 9 September 1996, as modified by the High Court on 18 May 2004. Eventually, a writ petition was filed before the High Court under Article 226 seeking a direction to the employer to furnish employment to 20 workmen in terms of the order of the High Court dated 18 May 2004. The writ petition was dismissed by learned Single Judge on 21 March 2012 on the ground that execution of the Award of the Industrial Tribunal could not be sought by invoking the jurisdiction under Article 226. In a Letters Patent Appeal, the Division Bench by a judgment dated 16 July 2012 affirmed the view of the learned Single Judge. The present proceedings have been instituted to challenge the judgment of the Division Bench dated 16 July 2012.

4 During the pendency of these proceedings an effort was made to secure an amicable resolution of the dispute, which was unsuccessful. By an order dated 28 August 2015 the management was directed to dispose of the representation submitted on behalf of the workmen on 22 August 2011. Accordingly, a reasoned order was issued on 16 September 2015 by the Project Officer. The order notes that after the Award of the Industrial Tribunal was modified by the learned Single Judge on 18 May 2004, the workmen initiated a second round of litigation only in 2011 by filing a

representation on 22 August 2011 and thereafter instituting writ proceedings. The order rejecting the representation notes that the workmen had worked in 1987-1989 with a dummy contractor and nearly 26 years had elapsed since then. BCCL, it has been stated, was until recently a sick company under the BIFR and had not initiated any regular process of recruitment after the order of the learned Single Judge dated 18 May 2004. However, it has been noted that the management would make a sincere endeavour to grant preference to the 14 workmen in case any fresh recruitment is made subject to age and physical requirements being met.

5 Leave was granted in these proceedings on 27 November 2015.

6 The narration of facts indicates that the Award of the Industrial Tribunal dated 9 September 1996 directed the management of BCCL to regularise the workmen, but without backwages. The Award was, however, modified by the High Court on 18 May 2004. As a result, the management was only required in case it intended to employ regular workmen, to give preference to the workmen in question by relaxing conditions as to age and eligibility. The order of the High Court was not challenged by the Union representing the workmen. Evidently, no challenge was raised to the modification of the Award by the High Court unlike in the case of Reference 204 of 1994. In that case, the Award of the

Industrial Tribunal was modified by a Division Bench of the High Court in a Letters Patent Appeal on 10 March 2003. The judgment of the Division Bench was challenged before this Court by the Union as a result of which, by a final judgment and order dated 18 November 2009, the Award of the Industrial Tribunal was restored and reinstatement was ordered without backwages. In the present case, however, the fact remains that the order of the High Court dated 18 May 2004 was never challenged.

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.

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.

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

.....CJI
[T S THAKUR]

.....J
[A M KHANWILKAR]

.....J
[Dr D Y CHANDRACHUD]

New Delhi
October 03, 2016