

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 179/2021

J&K Minerals Limited

...Petitioner(s)/Appellant(s)

Through: Mr. Furqan Yaqub, GA.

Vs.

Habibullah Ahanger & Ors

...Respondent(s)

Through: Mr. N. A. Beigh, Sr. Adv. with Mr. Sofi Manzoor, Adv.

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER

14.07.2023

The present LPA has been filed by the appellant J&K Minerals Limited which is an Undertaking of the State against the respondents who are since deceased.

2. The appellant is aggrieved by the order passed by the learned Single Judge dated 6th October 2021 passed in OWP No. 2179/2017 by which the petition filed by the appellant herein against the order of the Industrial Tribunal dealing with the reference against the respondents held in favour of the respondents. The learned Single Judge by the aforesaid order dismissed the writ petition by a speaking and reasoned order.
3. The facts of the case are not being reiterated extensively as the same have been reproduced and systematically dealt with by the learned Single Judge. Suffice it to say that the respondents were in the employment of the appellant and the matter related to fraudulent correction in their service records with regard to Date of Birth. The Department after internal enquiry was convinced that the respondents in connivance with another officer of the department fraudulently

amended their date of birth to 25.10.1946 and 01.01.1955 respectively. On the finding of the internal enquiry, they were demoted and their services were terminated with immediate effect. The respondents approached this Court in a writ petition challenging the order of termination before this Court in a petition which was disposed of on 3rd July 2006, by which the appellants were directed to consider the prayer of the respondents within a period of one month. Side by side, it appears that the respondents approached the Conciliation Officer under the Industrial Disputes Act, 1947, who summoned the parties, perused the records and prepared a detailed report in the matter holding that they did not find any merit in the case for sending it to Industrial Tribunal-cum-Labour Court, J&K.

4. Aggrieved by the report of Conciliation Officer, the respondents once again approached this Court in OWP No. 482/2008 which set-aside the orders passed by the Conciliation Officer and directed the appellant-Corporation to conduct a proper enquiry into the case after associating the respondents. Thereafter, the matter was referred to the Conciliation Officer yet again by this Court vide order dated 07.09.2009 in OWP No. 482/2008 and the Conciliation Officer while undertaking the proceedings allegedly did not summon the appellant herein and submitted his recommendations to the Labour Commissioner, Kashmir requesting a reference of the dispute to the Labour Court.
5. Accepting the said recommendation, the matter was referred to the Tribunal allegedly without providing an opportunity to the appellant of being heard.
6. The Tribunal in the reference summoned the appellants herein, who appeared and prepared their objections, but allegedly could not file the same on account of floods of September 2014 in the Valley. Thereafter, in April 2017, the appellant herein received a photo-copy of the award passed by the Labour Court dated 27th June 2016 and realized that the appellants had been proceeded ex-parte and the award was passed without according them an opportunity of hearing.

7. Learned counsel for the appellant submits that the learned Single Judge failed to appreciate that the first conciliation order was in favour of the appellant which was set-aside by this Court in OWP No. 482/2008. It is relevant to mention here that the order passed by this Court in OWP No. 482/2008 was never challenged and, therefore, the said order setting aside the first conciliation proceedings became final against the appellant and they were not aggrieved by the same. Therefore, the contention of the learned counsel for the appellant that they were the recipients of the favourable order of the first conciliation proceeding is to no avail.
8. In the second conciliation proceedings, the matter was referred to the administration with a request to make a reference to the Labour Court to decide two questions.
9. Learned counsel for the appellant further states that there has been violation of the principles of natural justice as the appellant was never heard by the Labour Court and also the learned Single Judge failed to appreciate that the allegation of fraud against the respondent is grave and that fraud vitiates everything and that the learned Single Judge did not appreciate the said point.
10. As regards the question of the appellants not being heard, the learned Single Judge has referred to the same in Paragraph 20 of his order, where-after perusing the record, the learned Single Judge has held that the Tribunal after entertaining the reference, summoned the parties on 20.11.2013 and on 12.12.2013. One Nazir Ahmad, Junior Assistant appeared for the appellant before the Tribunal on 23.01.2014 and 24.02.2014 as well. The sub-para of para 20 of impugned order further held that the record revealed that one Mr. B.A. Misri who was a standing counsel for the appellant appeared before the Tribunal on 24.03.2014 and received a copy of the claim petition filed by the deceased-respondents. On the basis of the same, the learned Single Judge arrived at a finding that the contention of the appellant herein that they were not heard before the Tribunal was incorrect as on multiple occasions, either a representative or a counsel for the appellant himself was present before the Tribunal.

11. In this backdrop, learned counsel for the appellant has argued that Nazir Ahmad who was a Junior Assistant was never authorized by the appellant to appear before the Tribunal and, therefore, his representation before the Tribunal cannot be deemed to be just and proper. The said argument is rejected by us as Nazir Ahmad was a representative of the Corporation and his presence before the Tribunal could have been at the behest of the appellant. The same notwithstanding Nazir Ahmad appeared before the Tribunal on 12.12.2013, 23.01.2014 and 24.02.2014 as is reflected in the impugned order in paragraph 20 which means that the appellant had sufficient occasions to correct the error if Nazir Ahmad was not the person authorized by the appellant to appear and represent the appellant before the Tribunal. It is also relevant to mention here that Mr. B.A. Misri who was the standing counsel for the Corporation when appeared on 24.03.2014 never took up the plea before the Tribunal that the appellant was not properly represented as Nazir Ahmad was not the appropriate person authorized by the appellant to represent it before the Tribunal. Therefore, the said submission is rejected.
12. As regards the argument of the learned counsel for the appellant that fraud vitiates everything, it is relevant to mention here that the Tribunal being a fact finding body went into the allegations, examined the records, recorded the evidence of the respondents and thereafter came to the finding of fact in favour of the respondents. The learned Single Judge did not find any occasion to interfere with the order passed by the learned Tribunal and rightly so as the scope of interference under Article 226 against the order of Tribunal is extremely limited where the Court is not sitting as an appellate authority over the decision of the tribunal and is required to interfere only when there is a violation of the principles of natural justice or an absurdity which militates against established principles of law or a downright perversity in the impugned order.
13. In this appeal also, similar consideration would come in the mind of this Court and the order passed by the learned Single Judge cannot be interfered with merely because an another probable view is possible.

Learned counsel for the appellant has failed to disclose any perversity or non adherence to procedure by the learned Single Judge.

14. Under the circumstances, the LPA fails and is dismissed.

(RAJESH SEKHRI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR:

14.07.2023

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Whether approved for reporting? Yes/No

