

Employers In Relation To Manoharbahal Colliery, Calcutta

Vs

K. N. Mishra and Others

Civil Miscellaneous Petition No. 9193 Of 1974 In Civil Appeal No. 1029 (NI) of 1967

(A. Alagiriswami, V. R. Krishna Iyer, R. S. Sarkaria JJ)

19.02.1975

ORDER

ALAGIRISWAMI, J. –

1. This is an application by the first respondent in the appeal to set aside the compromise decree dated February 7, 1972. The Memorandum of Compromise on the basis of which the appeal was disposed of was signed by the Counsel for the appellants as well as Mr. P. K. Mukherjee, Advocate purporting to appear on behalf of the petitioner/respondent. The writ petition out of which this appeal arises was disposed of as early as January 13, 1966. The petitioner alleges that the appeal has been disposed of without even service of any notice on him and of any intimation of the lodgment of the appeal. He also alleges that he had not empowered any lawyer to act in this case.

2. It is obvious that his contention that no notice was even served on him cannot be accepted and it is also clear that Mr. Mukherjee had been engaged to appear on behalf of the petitioner. The High Court of Patna has sent a certificate that the notice of lodgment of petition of appeal was given to the Advocate for the petitioner/respondent on September 25, 1967 and also to the General Secretary, Colliery Mazdoor Union of which the petitioner is a member, on September 26, 1967. Mr. Mukherjee entered appearance on behalf of both of them on October 25, 1967. Ext. P-1, the copy of the telegram dated February 5, 1972 sent to Mr. Mukherjee reading "Not agreed for four thousand : Kindly do not proceed with settlement" itself shows that the petitioner was not unaware of the proposal for settlement and that his present case that he had not authorised Mr. Mukherjee to appear on his behalf is not correct. Ext. P-2 referring to an earlier telegram dated January 27, 1972 reading "Proposal for settlement acceptable in principle : Kindly attempt to raise the amount and inform" future reinforces this fact. The Secretary of the Colliery Mazdoor Union had executed a Vakalatnama purports to bear the petitioner's thumb mark. Ext. D-25 dated March 7, 1969 addressed to Mr. Mukherjee also shows that Mr. Mukherjee was duly authorised to appear on behalf of the petitioner. To this letter Mr. Mukherjee had was duly authorised to appear on behalf of the petitioner and the petitioner knew that Mr. Mukherjee was his Advocate. His present averment to the contrary shows the length to which he is prepared to go.

3. The next question is whether the compromise is binding on the petitioner. From what has been stated above it would be clear that the petitioner was not averse to idea of compromise. He only wanted the amount to be paid to him to be raised above four thousand rupees which was originally suggested. It also appears that in pursuance of a stay order passed in this case the petitioner has been receiving half of his wages throughout. He does not specifically deny the receipt of a cheque for Rs. 4,000 sent by Mr. Mukherjee. It cannot therefore be accepted that he was under the impression, as he now tries to make out, that what he was receiving was arrears of past wages deposited in the

Court in compliance with the Court's order. The Advocate for the appellant had filed the statement of the case on November 13, 1969.

The petitioner/respondent had to file it by December 17, 1969 but that was not filed and the appeal was therefore set down ex parte against the petitioner/respondent. In the circumstances and the idea of the compromise not being unacceptable to the petitioner it was the right and indeed the duty of his Advocate Mr. Mukherjee to do the best for his client. We are not able to see any lack of authority in the action taken by Mr. Mukherjee. We are of opinion that there are absolutely no merits in this application and it is dismissed.

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