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(2015) 04 PAT CK 0074

In the Patna High Court

Case No : CWJC No. 21033 of 2014

Amrendra Kumar Singh and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Citation : (2015) 4 PLJR 21

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Ashutosh Ranjan Pandey, Ramanuj Tiwary, Rakesh Narayan Singh and Rajesh Kumar Choubey, for the Appellant

Final Decision : Disposed Off

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. The prayer of the petitioner in this writ application reads as follows:--

"2(i) That the order bearing memo No. 3910 dated 28.11.2014 contained in Annexure-1 may be quashed.

(ii) That the consequential order bearing memo No. 3914 dated 28.11.2014 contained in Annexure-2 may also be quashed.

(iii) That any other relief or reliefs may be allowed which may be just proper and equitable in the opinion of this Hon''ble Court."

2. Learned counsel for the petitioner had initially sought to assail the impugned order dated 28.11.2014 on the ground that the same is based on non-est and non-existing fact. He had tried to make out a case that the decision of dissolution of the Bihar State Sugar Corporation will not affect the person like the petitioners because the petitioners were not working in the Headquarter of the Bihar State Sugar Corporation. He had, therefore, proceeded to sum up his submission that the very reason or the foundation for canceling the deputation of the petitioners in Bihar State Beverages Corporation (hereinafter to be referred to as ''the

Corporation'') as stated the impugned order is bad and unsustainable.

3. Mr. Lalit Kishore, learned senior counsel followed by Mr. Vikash Kumar, learned counsel for the Corporation, on the other hand, having filed counter affidavit, had sought to explain that first of all the Corporation does not employ any person on permanent basis and its entire strength is functioning only on the basis of an order of deputation made from different services and in fact the petitioners also came to be in the services of the Corporation by way of deputation from the Bihar State Sugar Corporation. He has further submitted that after it was brought to the notice of the Corporation that the Bihar State Sugar Corporation, on account of financial crunch, had come out with an exit plan, the Corporation did not also take any risk by continuing the petitioners on deputation which in turn could have made the Corporation liable to pay any amount that the petitioners could have got from the Bihar State Sugar Corporation. He has also in this regard clarified that the Corporation''s liability towards an employee on deputation remains strictly confined to payment of salary and emoluments for the work done and for the rest of the service benefit including terminal benefit, the deputed employee has to also look to its employer. According to him, since the exit plan of Bihar State Sugar Corporation itself seeks to terminate the relationship of employee and employer with the petitioners, the Corporation, where the petitioners are working on deputation basis, were not found fit to be continued.

4. Mr. Ashutosh Ranjan Pandey, learned counsel for the petitioners, in reply, has submitted that the petitioners are aware of the consequences of the exit plan of Bihar State Sugar Corporation and they also are aware of their limited rights which they have got by way of initial deputation from Bihar State Sugar Corporation to the Beverage Corporation. He, however, has submitted that when the petitioners'' working in the beverage Corporation was satisfactory, and they were allowed to continue for a period of more than sixteen years on deputation, they should not have been thrown out of the service only because of exit plan was brought into force by the Bihar State Sugar Corporation.

5. This matter was heard on a number of days and ultimately Mr. Vikash Kumar, having instruction from the competent authority of the Beverage Corporation, has come out to say that the Beverage Corporation will have no difficulty in retaining the services of the petitioners till they reach the age of superannuation i.e. 60 years provided that the Beverage Corporation is not made liable to pay any of the past dues of the petitioners with the Bihar State Sugar Corporation. He has also submitted that as the entire strength of Beverage Corporation is only on the basis of deputation from different places and/or employers, the dispensation of service of the petitioners can also become possible if there is paucity of work as a result where the Corporation may no longer require services of the petitioners and other deputed employees.

6. Mr. Vikash Kumar in addition to the aforesaid submission had also cited two more problems which the Beverage Corporation was apprehending in case the

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petitioners were allowed to continue in service of the Corporation even after the termination of the lien of services of the petitioners from Bihar State Sugar Corporation on account of the exit plan. Firstly, he has submitted that the account of amount of deduction under the provident fund in PPF Scheme may get complicated because petitioners'' such amount of P.F. contribution was being sent to the Bihar State Sugar Corporation which, as noted above, having made out exit plan, is no longer likely to entertain the deposit of Provident Fund Contribution of the petitioners. He has also submitted that there may be a problem with regard to payment of leave encashment to the petitioners if they stake a claim for the earlier period of service in Bihar State Sugar Corporation.

7. Mr. Pandey in reply has submitted that so far as the leave encashment is concerned, that becomes encashable only at the time of retirement which is being paid in cash by the Beverage Corporation to all its other deputed employees only for the period they have served the Beverage Corporation.

8. Having thus regard to the broad feature of this case, this Court must take into consideration that in this State of Bihar when the functioning of the State undertakings had collapsed, its employees were sought to be rehabilitated either in the service of the State Government or in the different Corporations. The concept of deputation from one Corporation to another Corporation otherwise is not recognized by the service jurisprudence. The Beverage Corporation, therefore, had accepted the services of the petitioners, the employees of the Bihar State Sugar Corporation by way of deputation which has to be understood in the sense that the petitioners were sought to be rehabilitated because for them there was no work available in the Sugar Corporation nor their salary could be paid by the Sugar Corporation. Thus, for all practical purpose, they were working under the Beverage Corporation for last several years and were drawing their salary for the work done under the specified terms and conditions.

9. True it is that the petitioners have all along been treated as a deputed employees by the Corporation and their deduction of Provident Fund was remitted to their employer namely Bihar State Sugar Corporation but, then, now when the Sugar Corporation itself has made an exit plan for its all employees including the petitioners, if the petitioners voluntarily want to continue in the services of the Sugar Corporation, they will have to forgo and forget their any claim that was subsisting between them and Sugar Corporation. It is not that the petitioners will have no right to enforce such claim against Sugar Corporation but, then, the Beverage Corporation will have to be kept out of picture for a simple reason that it is the Beverage Corporation which is providing them at least bread and butter for the rest of their career in which they could have continued in the Sugar Corporation had there been no exit plan enforced by the Sugar Corporation.

10. Based on the aforesaid clear understanding and with the consent of the parties, this writ application is disposed of with the following directions:--

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(i) The petitioners shall, alike any other contractual employee of the Beverage Corporation, continue on the same or equivalent post and on the same pay till they reach their age of superannuation. This of course will be subject to a rider that if the Beverage Corporation itself does not need the service of the petitioners for want of work, the services of the petitioners could also been (sic--be?) terminated but only after following the principle of "last come first go" basis on the date of arrival of the employees from different organizations in the Beverage Corporation.

(ii) The Provident Fund contribution of the petitioners henceforth shall be directly deposited in the account of the competent authority of the E.P.F. and for that purpose, the previous balance of the P.F. Account of the petitioners with the Sugar Corporation shall stand transferred in the name of the E.P.F. authorities. If the amount of the deducted amount of Provident Fund of the petitioner is already being deposited directly by the authorities of the Beverage Corporation in the account of E.P.F. authorities, the same system will continue till the petitioners continue to remain in service in Beverage Corporation.

(iii) The amount of leave encashment for the period they had and/or would render service to the Corporation shall be paid to them alike any other employee of the Corporation but, then, the Beverage Corporation will not be in any manner become liable to pay any amount of leave encashment for the earlier period till they had worked in the Sugar Corporation.

(iv) The Beverage Corporation will not be liable for any sort of claim of the petitioners that they may have in relation to their service conditions against the Bihar State Sugar Corporation.

(v) It goes without saying that now when the petitioners are to become contractual employees alike others working on deputation in the Beverage Corporation on the aforesaid stipulated terms and conditions, their disciplinary control shall also lie with the competent authority of the Beverage Corporation.

11. It is, however, made clear that this order, however, will not be applicable in case of any of the petitioners who had already retired from service as on today including the petitioner No. 7 Madan Kishore Pandey who has already reached the age of superannuation of sixty years on 31.1.2015. With the aforesaid observations and directions this writ application is disposed of.

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