
(2016) 09 PAT CK 0093

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 22984 of 2011.

**Anil Kumar, S/O Late Lok Nath Singh, R/O Village-Bhusala Danapur,
Post Office - Mubarakpur, P.S.-Phulwarisharif, District-Patna - Petitioner
@HASH The Union of India through the Secretary, Information and
Broadcasting, New Delhi**

Date of Decision : 09-09-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(d), Section 25B, Section 25F

Citation : (2017) 152 FLR 391 : (2016) 4 LLJ 506

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Sunil Kumar Singh, Advocates, for the Petitioners; Mr. Rakesh Kumar Sinha, CGC, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Jyoti Saran, J.(Oral) - Heard Mr. Sunil Kumar Singh, learned counsel appearing for the petitioners and Mr. Rakesh Kumar Sinha, learned Central Government Counsel for the Union of India.

2. This writ petition has been filed questioning the award dated 9.8.2010 passed by the Presiding Officer, Central Government, Industrial Tribunal No. 1, Dhanbad (hereinafter referred to as the "Tribunal") in Reference Case Nos. 77 of 2002, 80 of 2002 and 81 of 2002, whereby the reference has been answered in favour of the respondents and the disengagement of the petitioners has been confirmed.

3. Facts of the case lie in a very narrow compass and these three writ petitioners were engaged by the respondent-Akashvani on a casual basis in between the period 15.10.1985 up to 15.6.1999. The petitioners raised an industrial dispute under section 10(1) (d) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and reference was made to the Industrial Tribunal for adjudicating on the issue which reference being common to all the petitioners, as reproduced in the award placed at Annexure-1 runs as follows.

"Whether the action of the management of Akashvani, Patna in terminating the

services of Shri Anil Kumar, workman, is legal and justified? If not, to what relief the workman is entitled to?"

4. I have consciously reproduced the reference as occurring in Reference Case No. 77 of 2002 which relates to petitioner No. 1 because except for the name, the other terms of reference in favour of the deceased petitioner No. 2 arising from Reference Case No. 80 of 2002 and in relation to petitioner No. 3 arising from Reference Case No. 81 of 2002 are identical word to word.

5. It is the grievance of the petitioners that they worked under the management for long 14 years from 15.10.1985 to 15.6.1999 and thus have acquired a status of permanent workman having rendered service of 240 days in a calendar year on a 6 days week and 206 days in a calendar year, in 5 days week. It is the case of the petitioners that they were terminated on oral order on 15.6.1999 without adherence to the statutory procedure provided under section 25F of "the Act" and without any notice.

6. The matter on reference was considered by the Industrial Tribunal and it is not in dispute that the petitioner could not produce any document to support their contentions of having worked for the statutory period, in a calendar year.

7. Section 25F of "the Act" inter alia mandates that no workman employed in any industry who has been in continuous service for not less than one year under an employer, shall be retrenched by the employer until the workman concerned has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice.

8. The second stipulation present in the provision is in relation to payment of compensation. The other stipulation present is the requirement of service of notice on the appropriate Government. The term "continuous service" is defined under section 25B of "the Act" and inter alia means a continuous service preceding the date of retrenchment.

9. Under the orders of this Court the records of the proceedings before the Tribunal has been produced and which also contains a detailed chart in respect of each of the workman showing the period of continuous service. The duty chart relatable to Anil Kumar, petitioner No. 1 shows that he has not completed 240 or 206 days in any of the year of service beginning from 1985 until his retrenchment. The file relating to the petitioner No. 2 who has since deceased namely Late Akhileshwar Prasad although shows that he worked for 224 days in the year 1985 and for 222 days in 1986 but thereafter in none of the years of service has he completed even 206 days. Similar is the situation in respect of the petitioner No. 3, Babu Nand Tiwary whose duty chart shows that he has not completed even 206 days in any of the years during which he was in the engagement of the Akashvani. It is also the opinion of the Industrial Tribunal that no evidence was led by the workmen to contest this position and which fact is supported by the documents on records of the proceedings.

10. It is in such view of the matter and in absence of the petitioners to prove that they have rendered continuous service of 240 days in six days week or 206 days in five days week that the award was pronounced upholding the termination of service of the petitioners and which opinion of the Tribunal in view of the uncontested circumstances discussed above and the materials on record would not require any interference.

11. The writ petition is dismissed accordingly.

12. Let the records in Reference Case Nos. 77 of 2002, 80 of 2002 and 81 of 2002 received in the present proceeding from the Central Government Industrial Tribunal, Dhanbad be returned in the sealed cover forthwith.