
(1999) 05 PAT CK 0048
In the Patna High Court
Case No : C.W.J.C. No. 1996 of 1992 (R)

Ardeshir Dalal Memorial Hospital	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 19-05-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 48 BLJR 436 : (2000) 85 FLR 572 : (2000) 3 LLJ 1466

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has challenged the award passed by the Presiding Officer, Labour Court, Jamshedpur in Reference Case No. 25/89, whereby Labour Court held that the termination of the services of respondent No. 3, Dr. A.P. Rao is illegal and unjustified and, therefore, he is entitled to be reinstated with full back wages and other benefits and continuity of his service.

2. The reference case arose out of Notification dated July 3, 1989 issued by the Government of Bihar, whereby after conciliation the Government referred the purported dispute for adjudication as to whether the termination of the respondent No. 3 was legal and justified.

3. Brief facts of the case of respondent No. 3, (hereinafter referred to as "the workman concerned") is that he joined Ardeshir Dalai Memorial Hospital (hereinafter referred to as "the hospital") as Medical Officer on September 1, 1970 and was placed on probation for a period of six months. His further case is that he was confirmed as a permanent workman with effect from March 1, 1971. The further case of the workman is that he worked as medical officer and performed his duties to the full satisfaction of the ailing patients who came for treatment in the said hospital and there was not any complaint or grievance by

the patients against the workman. However, to his utter surprise a letter dated August 25, 1981 was issued by the Chairman of the Board or Governors of the hospital whereby services of the petitioner were terminated with immediate effect. The workman then filed an application u/s 26 of the Bihar Shops and Establishment Act against the petitioner in the Labour Court, Jamshedpur being B.S. Case No. 6/81. The petitioner appeared in the said case and raised preliminary objection that the petitioner's hospital is a charitable and philanthropic Organisation established for the treatment of T.B. patients and infirm persons and not for the purpose of gain and, therefore, it is exempted from the provisions of Bihar Shops and Establishments Act. The Labour Court, after hearing both the parties, dismissed the said petition filed u/s 26 of the Act holding that the petitioner-hospital is exempted from the provisions of the said Act. The workman concerned then raised industrial dispute which was ultimately referred to the Labour Court for adjudication.

4. The Management contested the reference case on various grounds, inter alia, that the petitioner-hospital is not an industry as it is not engaged in any business, trade, undertaking, or manufacturing process. It is stated that since the petitioner-hospital is not an industry, respondent No. 3 is not a workman as defined under the Industrial Disputes Act. Further case of the management was that the workman concerned was working as residential Medical Officer and his condition of the service was governed as per the Standing Order. The job entrusted to the concerned workman was supervisory in nature and he used to perform the duty of the Superintendent of the hospital in the absence of the Superintendent. The workman concerned was to supervise the duty of the staff of the hospital and he was incharge of Medical Stores, issue requisition for Ambulance, etc. Further case of the Management was that the workman was getting non-practising allowance every month with a clear understanding that he would not be allowed to do any private practice, but management came to know that he in violation of contract of service, was carrying with his private practices. Consequently, his services were terminated.

5. The Labour Court allowed both the parties to lead evidence and accordingly both the parties led evidence both oral and documentary. The Labour Court formulated the following issues for adjudication:

"(1) Whether the reference is maintainable?

(2) Whether the A.D.M. Hospital is an industry or not?

(3) Whether Doctor A. P. Rao is workman or not?

(4) Whether termination of services of Dr. A.P. Rao, workman of A.D.M. Hospital is justified? If not, whether he is entitled to reinstatement/or any other relief?"

6. Taking Issue Nos. 1 and 3 together, Labour Court, after considering the facts, evidence and relevant provisions of law, held that the petitioner-hospital is an industry and respondent No. 3 is a workman within the meaning of Section 2(s)

of the Act as he was not doing managerial and administrative work in the said hospital but he was performing the technical, clerical and manual work. Accordingly, Labour Court held that the reference was maintainable. The Labour Court also decided issue No. 4 in favour of the workman holding that termination of services of the workman were not justified and legal. Accordingly, the Labour Court held that the workman concerned was entitled to be reinstated with back wages and other benefits and also continuity of service.

7. Mr. K.B. Sinha, learned senior counsel appearing for the petitioner-management, assailed the impugned award as being illegal and contrary to facts and evidence on record. Learned counsel submitted that the impugned award passed by the Labour Court is perverse in law inasmuch as it failed to appreciate the settled proposition of law laid down by the Supreme Court and various High Courts. According to the learned counsel, Labour Court has committed serious illegality insofar as it held that the respondent No. 3 is a workman within the meaning of the I.D. Act and the finding arrived at by the Labour Court is contrary to the evidence particularly the evidence that the nature of work of the doctor was supervisory in nature. In this connection, learned counsel relied upon the decision of the Apex Court in the case of Heavy Engineering Corporation Ltd. Vs. Presiding Officer, Labour Court and Others, . However, Mr. Sinha very fairly submitted that in view of Government Notification time to time issued, the petitioner-hospital is an industry. The learned counsel then contended that the reference itself was illegal and belated one inasmuch as the services of the workman were terminated in 1981 and the reference was made in 1989 i.e. after about 8 years. According to the learned counsel, the Labour Court, therefore, ought to have rejected the reference on this ground alone, In this connection, learned counsel relied upon a decision of Rajasthan High Court in the case of Mohan Lal v. State of Rajasthan 1998 (2) CLR 533 and a decision of Allahabad High Court in the case of U.P. State Electricity Board and Others Vs. Presiding Officer, Labour Court and Others, . Mr. Sinha lastly contended that in any view of the matter, when the management lost confidence on the workman and terminated his services, the Labour Court ought not to have passed an award for reinstatement instead of allowing compensation. In this connection, learned counsel relied upon a decision of the Supreme Court in the case of Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, and State of U.P. and Anr. v. Ved Pal Singh and Anr. AIR 1987 SC 608. Mr. K.B. Sinha, also took a point that the present reference before the Labour Court must be barred by principle of resjudicata inasmuch as the same Labour Court held in a proceeding u/s 26 of the Bihar Shops and Establishments Act, that the petitioner hospital is charitable and philanthropic institution which is an establishment for treatment and care of T.B. patients and not run for the purpose of gain. The maintainability of the aforesaid proceeding u/s 26 of the Act was decided in favour of the petitioner. The Labour Court, therefore, ought to have held in the award that reference was barred by principle of res judicata. Learned counsel further contended that in the facts and circumstances of the case, the Labour

Court has committed an error of law in passing the award for reinstatement with back wages. Learned counsel relied upon a decision of this Court in the case of Management of West Bokaro Colliery of TISCO Ltd. Vs. Presiding Officer, Central Government Industrial Tribunal and Another, .

8. On the other hand, Mr. Anil Kumar Sinha, learned senior counsel appearing on behalf of the workman concerned, firstly submitted that the Labour Court after considering the evidence both oral and documentary and after hearing the parties came to a specific finding that the petitioner-hospital is an industry and the respondent No. 3 is a workman. The findings arrived at by the Labour Court are finding of fact and therefore, this Court is not supposed to interfere with the said finding. In this connection, learned counsel relied upon a decision in the case of D.P. Maheshwari Vs. Delhi Administration and Others, , and in the case of Employers in relation to the Employers in relation to the Management of Bhurangiya Project of Bharat Coking Coal Ltd. Vs. Presiding Officer, Central Government Industrial Tribunal No. 1 and Others, . Learned counsel then answering the submission of Mr. K.B. Sinha submitted that there is no limitation prescribed for the reference of dispute to the Labour Court or the Tribunal and once dispute is referred, the Labour Court or the Tribunal has no option but to decide the reference. Mr. Sinha, then submitted that the Labour Court has come to a finding that the respondent No. 3 comes within the definition of workman and the supervisory work entrusted to him was incidental to his duty. According to the learned counsel, the nature of job performed by the respondent No. 3 was not supervisory and, therefore, the Labour Court rightly held that the respondent No. 3 is a workman. Learned counsel relied upon a decision of the Supreme Court in the case of S.K. Verma Vs. Mahesh Chandra and Another, , Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, , and Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others, . Mr. Sinha lastly submitted that there is no charge of fraud or defalcation against the workman and no plea was taken before the Labour Court or before this Court in the writ petition that the workman concerned was practising after the termination of services. Even no plea has been taken that the workman was not entitled to back wages. In that view of the matter, the question of losing confidence and non-entitlement of service and back wages cannot and does not arise.

9. I will first deal with the main question involved in this application as to whether the respondent-doctor concerned is a workman. In this connection, before analysing the evidence, I will discuss the findings arrived at by the Labour Court on this point. The Labour Court took notice of Ext. W/5 which is a copy of the Standing Order of the hospital and held that the administration and control of the Hospital was vested in the House Committee and the Resident Medical Officer, admittedly is not a member of the Committee. The Labour Court referred to Clause (iv) of the Standing Orders, which deal with the duties of the personnel. Clause (iv) reads as under:

"Duties of the Personnel: Resident Medical Officer: The Resident Medical Officer will be incharge of the Hospital in the absence of the Superintendent and will carry on all the routine duties pertaining to the hospital as allotted to him. He will be responsible for the care and treatment, of all the patients and will be required to maintain proper, statistical records. He will be on duty as follows: (a) For administrative and professional work - 8.00 a.m. to 12.30 p.m. and 3.30 p.m. to 5.30 p.m. (b) his services will also be available for professional work at other hours when necessary. (2) The R.M.O. will attend to the admission and discharge of patients for proper recording of such admission and discharges. (3) He will be responsible for the payment of all patients' dues if any, and ensure that all patients' accounts are properly and adequately settled before the patients leave the hospital. (4) He will be responsible for the proper maintenance, completion, collection and filling of patients' records. (5) He will maintain the day-to-day bed state of the hospital and submit it to the Superintendent. (6) He will maintain a record of all seriously ill cases and inform their relations immediately a patient is put or or taken off the seriously ill list. In case of death, he will inform the relations immediately and he will personally see to the proper disposal of the dead body. (7) He will be responsible for the cleanliness of the hospital and inspect the kitchens and the rations every day. (8) In the absence of the Superintendent he will be responsible for calling up any of the senior honorary staff from the Tata Main Hospital whom he may consider necessary to deal with a particular patient. (9) The sanitation of the hospital will be under his supervision and control through the hospital steward. (10) He will be incharge of medical stores and issue them on requisition."

10. From the aforesaid Clause which deals with the duties of the Resident Medical Officer, it is clear that besides the other duties the Resident Medical Officer will be incharge of the hospital in the absence of the Superintendent and will carry on all routine duties pertaining to the hospital. Not only he will be responsible for the care and treatment of all patients but also will be responsible for the proper maintenance of the hospital and the financial matters of the hospital. The Resident Medical Officer will also be responsible for the cleanliness of the hospital and supervision and inspection of kitchen and ration. Sanitation of the hospital will be under his supervision and control and he will also be incharge of medical stores and supply the articles on requisition. Despite the aforementioned duties assigned to a Resident Medical Officer, the Labour Court, has come to the conclusion that the Resident Medical Officer has no power of supervision in the hospital but he has to discharge the routine duties and treatment of patients and to maintain the statistical register. The Labour Court further came to the conclusion that a Resident Medical Officer is incidentally incharge of superintendence and is responsible for other works. The Labour Court discarded the entire oral evidence merely on the ground of Ext. W/5 i.e. the documentary evidence. In my opinion, the Labour Court has committed serious errors of law in discarding the oral evidence adduced by the management to show that the duty of the Resident Medical Officer is supervisory in nature. The

Labour Court further completely misconstrued and misinterpreted the nature of duty assigned to the Resident Medical Office.

11. From appraisal of the entire evidence, it appears that the workman concerned discharged his duty in a supervisory capacity. It is clear that during the time when he was on duty in the hospital, he had to look after the nursing attendants, sweepers, ambulances, stores and kitchen and under his order or instruction the articles were used for the purpose of the hospital. The duty of a doctor in the hospital as evident from the Standing Orders quoted above and the evidence adduced by the management required him to perform supervisory function in addition to his duty of treating the patients which means that his employment is in a supervisory capacity.

12. Recently the Supreme Court in the case of Management of Heavy Engineering Corporation Ltd. v. Presiding Officer, Labour Court and Ors. (supra), was considering a similar question. The facts of that case was that the appellant-Corporation appointed respondent No. 2 as a doctor in the general duty Medical Officer Grade-II. The respondent No. 2 along with other doctors are posted at First Aid Post maintained by the appellant-Corporation for providing emergency medical services in a case of accident, etc. The ad hoc appointment to the temporary post was first extended and continued for some period and, thereafter they were relieved from their duties. Ultimately, respondent No. 2 raised an industrial dispute regarding illegal termination of services and the matter was referred to the Labour Court for adjudication as to whether the termination of services of respondent No. 2 by the management was justified or not. Before the Labour Court the management raised an objection that respondent No. 2 was not a workman within the meaning of the expression as defined in Section 2(s) of the Industrial Disputes Act. The matter ultimately went to the Apex Court, and the Apex Court after considering its earlier decision, held as under:

"The aforesaid facts, in our opinion, clearly go to show that respondent No. 2 could not be regarded as a workman u/s 2(s) of the Act as he was working in a supervisory capacity. While it is no doubt true that respondent No. 2, along with the other doctors used to work in shifts nevertheless during the time when he was in the shift he was the sole person in charge of the first aid post. He had, under him male nurse, nursing attendant, sweeper and ambulance driver who would naturally be taking directions and orders from the incharge of the first aid post. These persons "obviously could not act on their own and had to" function in the manner as directed by respondent No. 2. Whenever he was on duty. They were, in other words, under the control and supervision, of the respondent. When a doctor like the respondent, discharges his duties of attending to the patients and, in addition thereto supervises the work of the persons subordinate to him, the only possible conclusion which can be arrived at is that the respondent cannot be held to be regarded as a workman u/s 2(s) of the Act."

13. Admittedly, in the instant case, the workman concerned, Dr. A.P. Rao was originally appointed as Medical Officer by the Board of Governors in the year,

1970 and, thereafter he was promoted as Resident Medical Officer for the hospital and his service condition was governed by the Standing Orders quoted hereinabove. The management led evidence to show that the duty assigned to the said doctor was supervisory in nature and he was not only to look after the patients but also to look after the entire management of the hospital.

14. On considering the entire evidence, I am, therefore, of the opinion that the conclusion arrived at by the Labour Court is perverse in law and is not correct. On this sole ground alone, the impugned award passed by the Labour Court is liable to be set aside.

15. For the reasons aforesaid, this writ application is allowed and the impugned award passed by the Labour Court is set aside.