

(1993) 12 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2197 of 1993

Arjun Prasad Sharma and Others

APPELLANT

Vs

Bihar State Small Industries Corporation Ltd. and Another

RESPONDENT

Date of Decision : 09-12-1993

Acts Referred:

Citation : (1993) 12 PAT CK 0010

Final Decision : Dismissed

Judgement

S.B. Sinha and G.S. Sharma, JJ.—In this writ application the petitioners have sought for issuance of a writ of or in the nature of mandamus directing the respondents to regularise the services of the petitioners as also for giving equal pay for equal work and other incidental reliefs.

2. The petitioners are said to be the workmen of the respondent-Corporation. According to the petitioners the workmen of the respondent-Corporation are in three categories first category is of those who are appointed on substantive and permanent post, the second category of the workmen are employees on daily wages basis and third category workmen are piece rated workmen. According to the petitioners they are not treated at par with the employees who are employed on a substantive and permanent post in the matter of grant of various allowances including house rent allowance, city allowance etc.

3. Admittedly, an Industrial Dispute was raised which gave rise to a reference made by State of Bihar being Reference case No. 4/15 of 1973/76, wherein allegedly the piece rated workmen were directed to be made permanent after three to four years. It is stated that those persons who were piece rated workmen before the reference, were made permanent. The petitioners have contended that no other person was made permanent nor was placed on a regular scale of pay although allegedly the nature of duties performed by them is same and similar to those of the workmen employed on permanent post.

4. The petitioners admittedly moved this Court in writ jurisdiction being CWJC

No. 5585 of 1991 and the said writ application was disposed of by an order dated 22-1-1992 holding as follows:

"After hearing the learned Counsel for the petitioners and the respondent, we think in the facts and circumstances of the case, the petitioners should raise their grievance before the competent authority of the respondent No. 1 and/or raise an industrial dispute.

However, if the petitioners make a representation before the competent authority of the respondent No. 1 for payment of wages paid to the other employees who are similarly situated on the basis of doctrine of equal pay for equal work and/or payment of other allowances and conferment of other benefits also which are available to the other employees, the same may be considered and disposed of on their own merits by respondent No. 1 with utmost expedition and preferably within a period of three months from the date of the receipt of a copy of this order.

We hope that while disposing of the representation the competent authority of the respondent No. 1 shall deal with each of the grievances of the petitioners separately.

In the event, the petitioners are aggrieved by any order passed by the respondent No. 1, it goes without saying that they can question the same before an appropriate forum.

(Italicising mine)

From a perusal of the said order, therefore, it is evident that at that time this Court not interfere and inter alia, observed that the remedy of the petitioners thereof was to raise an industrial dispute. However, allegedly the petitioners filed a representation which was rejected by respondents by an order dated 29-8-1992.

5. Mr. A. B. Ojha, learned Counsel appearing on behalf of the petitioners, submitted that in view of the award made by the Industrial Tribunal the same has become part and parcel of condition of service and thus, the respondents are bound to implement the same. Learned Counsel in support of his contention relied upon a decision of the Supreme Court in the cases of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, and Burn and Co., Calcutta Vs. Their Employees, .

6. In Life Insurance Corporation's case (supra) the question which arose before the Supreme Court of India was as to whether a settlement shall lose its force only because stands repudiated. In the facts of that case it was held that a settlement does not lose its force unless the same is replaced by another settlement. The aforementioned decision, therefore, has no application in the facts and circumstances of this case.

7. The petitioners were not parties in the aforementioned reference and the

award was made in relation to only a category of workmen who had been working for a long time as piece rated workmen. The said award thus only binds the parties to reference to the award and not all the employees, who were appointed in a different category much after the said award was made and thus they cannot claim any benefit thereunder.

8. The effect and purport of an award can only be judged upon perusing the same in its entirety and also the reference made by the Central Government.

If in the opinion of the petitioners, the said award applied to their cases also, the same can be enforced in terms of the provisions of the Industrial Disputes Act and/or they can raise a fresh industrial dispute.

9. In *Burn and Co. case* (supra) the Supreme Court was considering a case to when an award can be re-opened. It was held that the principle of *res judicata* would apply to an industrial adjudication also.

10. The petitioners are aggrieved by some action on the part of the respondents. In this situation, in our opinion, the remedy of the petitioners lies in raising a fresh industrial dispute. It has been held by this Court times without number upon consideration of various Supreme Court decisions that there cannot be any automatic absorption in the State service by way of regularisation which would negate the provisions of Article 16 of the Constitution of India and/or violative of Recruitment Rules. Reference in this connection may be made to the decisions of this Court reported in 1993 (1) PLR 99, *Vijay Kumar v. The State of Bihar* 1993 (1) BLJR 449, *Smt. Madhuri "Kumari v. The State of Bihar and Ors. Jayant R. Taunk Vs. Mrs. Hemani H. Patel and Others* . and 1993 (1) PLR 221 *Deobansh Pandey v. State of Bihar and Ors.*

11. We, however, may hasten to add that in an appropriate case, the Labour Court or the Industrial Tribunal, if a reference is made in this regard in terms of the provisions of Industrial Dispute Act, 1947, can direct that as the casual or daily rated workmen have been working for a long time, their services may be regularised keeping in view the vacancies, nature of job and other relevant factors.

12. It is evident that only on such consideration this Court in CWJC No. 5585 of 1991, *inter alia*, held that the petitioners should raise their grievances by raising an industrial dispute.

13. In *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, the Supreme Court held as follows:

The High Court has held that the question as to whether the notices and circulars issued by respondent No. 1 were invalid, could not be considered under Article 226 of the Constitution that is a matter which can be appropriately raised in the form of a dispute, by the appellants u/s 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Courts under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take

in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act, or seek relief, if possible under Sections 74 and 75 of the Act.

14. We have arrived at the aforementioned finding keeping in view the fact that from the impugned order as contained in Annexure-5 to the writ application vis-a-vis the fact that a dispute has been raised with regard to the number of permanent workmen employed in the factory, nature of work done by them etc. Such a disputed question of fact cannot be determined by us in exercise of our writ jurisdiction under Article 226 of the Constitution of India.

15. This application is, therefore, dismissed but there will be no order as to costs.