(2006) 10 PAT CK 0021

In the Patna High Court

Case No : LPA No. 1457 of 1995

Baidyanath Singh — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Constitution of India, 1950 — Article 12
State Financial Corporations Act, 1951 — Section 29, 30

Citation : (2007) 1 PLJR 78

Hon'ble Judges : Barin Ghosh, J;Ajay Kr. Tripathi, J

Bench : Division Bench

Advocate : Krishna Kant Singh, Umesh Pd. Singh, Rajeev Ranjan Prasad and Amod Kumar, for the Appellant; Ram Subhas Singh For the State, for the Respondent

Judgement

Barin Ghosh and Ajay Kr. Tripathi, JJ.—Katihar Jute Mills Limited was the owner of an Industrial Unit. The assets and properties of the said Industrial Unit were mortgaged in favour of Bihar State Financial Corporation. The mortgagor failed to discharge the mortgage debts, in consequence thereof, the mortgagee in exercise of powers under Sections 29 & 30 of the State Financial Corporations Act took over the mortgaged assets and properties. Those were thereupon leased in favour of Bihar State Industrial Development Corporation (in short "BSIDC"). The said Corporation then put up an advertisement in the newspaper inviting applications from eligible candidates for filling up the post in which the petitioner was ultimately appointed. In the advertisement, it was mentioned that the applications are being invited for the leased unit of BSIDC. The lessee BSIDC wanted the person to be appointed to serve in the leased unit. Appointment accordingly was granted upon selecting the petitioner which specifically recorded that the appointment is of temporary nature and may be terminated without notice to the petitioner. The petitioner served in the said unit of BSIDC and was paid his remuneration upto September, 1988. He was not paid his remuneration from October, 1988. According to the Respondent-BSIDC, the lease was surrendered in October, 1988. Despite surrender of the lease, the services of the petitioner had not been terminated. At this juncture it must be kept in mind that the appointment letter was issued by the Managing Committee of the said leased unit. The lessee being admittedly BSIDC, the Managing Committee must be deemed to have been appointed by BSIDC and accordingly it was under the direct control and supervision of BSIDC. The learned counsel for the Respondent-BSIDC points out that the Managing Committee was appointed by the State Government, but having regard to the fact that BSIDC was the lessee, the persons to be appointed as the Members of the Managing Committee may have been selected by the State Government but, in law, the jural relationship between the Managing Committee and BSIDC would be that the Managing Committee is subservient to BSIDC as Manager to the Principal. In those circumstances, there cannot be any dispute that the appointment as was given to the petitioner was given by BSIDC.

2. Subsequent thereto, petitioner was deputed to Bihar State Textile Corporation. From the month of October, 1988 until he was so deputed, the petitioner had not been paid his salaries. When the petitioner was deputed to Bihar State Textile Corporation and worked there, he had been paid his salaries. Subsequently in terms of a decision of the Government, Bihar State Textile Corporation returned the petitioner to its parent organization, namely, Bihar State Industrial Development Corporation (BSIDC). At this stage, the BSIDC held out that the petitioner is an appointee of the leased unit of BSIDC. It is, however, surprising that in 1990, despite having had surrendered the lease in 1988, BSIDC directed the petitioner to serve at the leased unit. The fact, however, remains that although the petitioner was treated to be an employee of the leased unit of BSIDC and although, according to BSIDC, the lease was surrendered in 1988, the petitioner was not declared as surplus, nor he was told that his services are no longer necessary, on the contrary, treating him as an employee of the leased unit of BSIDC, the petitioner was asked to discharge the then various duties of BSIDC including duties at the Head Office of BSIDC, as would be evidenced from a letter of 1992. However, from the date the petitioner was returned back to BSIDC, despite having had made the petitioner to work at different offices of the BSIDC, the petitioner had not been paid his remunerations except certain advances, as mentioned in the writ petition.

3. It appears that the petitioner reached the age of superannuation while working at the Offices of BSIDC and had been paid certain advances, as mentioned above, as well as certain salaries after 1992 by BSIDC. Inasmuch as full salary to which the petitioner was entitled to was not paid to the petitioner by BSIDC for the period, as mentioned above, the petitioner approached this Court by filing the writ petition which has been dismissed.

4. While dismissing the writ petition, the learned Single Judge held that the employee-employer relationship has not been established. Having regard to the fact that the advertisement itself mentioned that the petitioner was required to

serve at the leased unit of BSIDC, the petitioner had been recruited by BSIDC. Mere appointment letter issued by a Manager of BSIDC though selected by the State Government does not change the situation. The learned Judge held that since the lease was surrendered, the petitioner''s right to serve came to an end. Neither the appointment letter said so, nor any correspondence inter se the petitioner and BSIDC held out the same. It is true that the petitioner was recruited to serve at the leased unit and it is also true that after the lease was surrendered, the services of the petitioner could be put to an end provided his requirement was no longer necessary for BSIDC, but the fact remains that the services of the petitioner was not put to an end after the lease was surrendered, and on the contrary, the petitioner was made to serve at different other offices of BSIDC. In those circumstances, BSIDC could not avoid its obligation to pay salary to which it had agreed to pay by virtue of the appointment letter issued by it in favour of the petitioner through its Manager, namely, the Managing Committee.

5. The learned Single Judge held that since the representation of the petitioner for payment of salary had been rejected and since the order rejecting the representation had not been challenged in the writ petition, the petitioner was not entitled to salary to which he is otherwise entitled to. It must be kept in mind that BSIDC being an other authority within the meaning of Article 12 of the Constitution of India stands in a different footing than an ordinary citizen. It is bound to reach to the petitioner all his rights enshrined in the Constitution as that of the State Government. An other authority cannot avoid its obligation to pay salary to its employees either on the ground of delay or on any other technical ground. Mere non-challenge of the order rejecting the representation is such a small technical ground that the learned Judge should not have been swayed away by the same.

6. In those circumstances, we hold in favour of the appellant-writ petitioner and set aside the order impugned and, at the same time, allow the writ petition. We direct BSIDC to calculate the remuneration payable to the petitioner on the basis of the pronouncement as above and to pay the same less the monies paid to the petitioner by way of advance or salary as stated above and to reach to the petitioner the balance within a period of four months from today. In the event the petitioner is covered by the Payment of Gratuity Act by reason of the length of service, the claim on that account be considered and paid to the petitioner. It is made clear that we are directing payment of the lawful dues of the petitioner and if any part thereof has been paid, we have already directed deductions thereof.

