
(2010) 07 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 12448/1992

Bihar Rajya Pul Nirman Nigam Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0045

Judgement

Jayanandan Sisgh, J.—Heard Sri P.K. Shahi, learned senior counsel for the Petitioner and learned Counsel for the State of Bihar. No one appears for Respondent No. 2.

2. The order-sheet shows that the Respondent No. 2 had appeared in the case at the very beginning through his counsel. The matter was thereafter admitted for final hearing and interim order was passed protecting the Petitioner from any coercive step which may be taken against it pursuant to the award as contained in Annexure-1. Notices were again issued to Respondent No. 2 which was deemed to have been validly served and, in fact, when the case was taken up on December 2, 2008, learned Counsel for Respondent No. 2 appeared.

The Court required that Respondent No. 2 should file a categorical affidavit that he was not engaged after his termination and as to whether he was still interested in employment in question after so many years. Learned Counsel for the Respondent No. 2 submitted that he was not in touch with his client for some time. But he prayed for two weeks time to make effort to contact Respondent No. 2 and seek instructions in the matter and file a categorical affidavit as per the order of the Court. Thereafter, on December 17, 2008, learned Counsel for the Respondent No. 2 prayed for and was granted further time to file affidavit. The affidavit has not been filed till now.

3. Learned senior counsel for the Petitioner, in all fairness, submits that he is not praying for setting aside the impugned award for reinstatement of service of the workman (Respondent No. 2) as his termination was rightly found by the Labour Court as in violation of Section 25F of the Industrial Disputes Act. However, he

submits that so far as award of payment of full back wages to the workman is concerned, the same is bad in law as the factors required to be considered for such award as laid down by the Apex Court in the case of Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, have not been followed by the learned Labour Court. He drew the attention of this Court to paragraph 11 and 15 of the judgment of the Apex Court.

4. The Apex Court, in the said judgment, has referred to its earlier judgment in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, and the observations made in the said earlier judgment were reproduced there. The said observations of the Court made in General Manager, Haryana Roadways Vs. Rudhan Singh,

8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

5. Learned senior counsel for the Petitioner drew the attention to the findings of learned Labour Court in respect of point No. 4 and showed that, only on the basis of statement of the workman in his deposition that he was unemployed, full back wages have been awarded to him. He submits that besides absence of an affidavit by the workman, that he was not gainfully employed anywhere else, other factors also, as laid down by the Apex Court, were not considered by the learned Labour Court. He also submitted that the learned Labour Court also did not consider that admittedly the workman had worked in the organization only for 4 years 9 months and, as per the case of the management, he was employed in a work charge establishment and his appointment was purely temporary in nature and that on completion of work of construction of certain buildings of the

Corporation, his services were no longer required by the Corporation. He submits that as per the observations of the Apex Court in the case of *G.M., Haryana Roadways v. Rudhan Singh* (supra), as quoted above, and approved by its subsequent judgment in *Talwara Cooperative Credit Service Society Ltd. v. Sushil Kumar* (supra) these factors were also required to be considered by the learned Labour Court before award of full back wages could be passed.

6. The award of the learned Labour Court, indeed, shows that only on the basis of statement of the workman in his deposition that he was unemployed the Court has awarded full back wages to him. This is also clear that the factors, which were laid down as essential for consideration for award of back wages in the above judgments of the Apex Court, have not been considered and taken into account by the Labour Court. Therefore, this Court finds substance in the submission of learned senior counsel for the Petitioner.

7. Today no one appears for Respondent No. 2, though learned Counsel had filed power on his behalf and appeared in this Court twice earlier and had sought and was granted adjournment for instructions for filing affidavit as required by this Court.

8. In the circumstances, this Court sets aside the impugned award to the extent it has ordered for payment of full back wages to the workman along with his reinstatement. So far as award of reinstatement is concerned, learned senior counsel for the Petitioner has fairly accepted that the Corporation is ready to reinstate the workman in case he is ready for the same. Therefore, the workman (Respondent No. 2) is given liberty to produce himself before the Managing Director of the Corporation within three months, if he is still interested to join service under the Corporation. If he does so, the Corporation shall be obliged to take him into service in the scale and rank he last worked with the Corporation and shall give him continuity of service so far as seniority and fixation of pay scale etc. are concerned. In case, the workman (Respondent No. 2) is not interested in his reinstatement he may submit an application before the Managing Director of the Corporation within the same time praying for compensation in lieu of reinstatement, in which event, the Corporation shall be obliged to pay him a sum of ` 1,50,000/- by way of compensation in lieu of reinstatement.

With the above modification in the award, the writ application is disposed of.