

(1992) 03 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 76 of 1992

Bihar State Co-operative Milk Producer's Federation Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 2 BLJR 1096 : (1992) 2 PLJR 524

Hon'ble Judges : B.C. Basak, C.J;S.K. Singh, J

Bench : Division Bench

Judgement

B.C. Basak, C.J. and S.K. Singh, J.—This writ petition is directed against an Award dated 25th July, 1991, passed by the Presiding Officer, Labour Court, Patna in Reference Case No. 24 of 1987 between the Management of Bihar State Co-operative Milk Producer's Federation Ltd., Bihar, Patna and their workmen represented by Composite Milk Plant Karamchari Union. Barauni.

2. This case is an example how in spite of the provisions of the Industrial Disputes Act (hereinafter referred to as "the Act") the workmen engaged in Industrial establishments are still being harassed. The purpose of this Act was to provide machinery and procedure for the investigation and settlement of the Industrial Dispute expeditiously. The object was mainly to ensure and expedite resolution of Industrial Dispute by removing procedural hurdles. Unfortunately, we have come across various instances, which shows that such purpose has been sought to be frustrated. The present case is one of those.

3. The order of reference stated as follows:

Whether the transfer and removal from service of Sarvashri Monazir Ahsan, Ramapati Jha and Ram Kishan Prasad by Bihar State Co-operative Milk Producer's Federation Ltd., is justified ? If not, what relief they are entitled to ?

4. Before we deal with the facts of this case, we may point out certain elementary principles relating to the jurisdiction of the High Court under Articles

226 of the Constitution of India. The Writ Court is not a court of law. The court cannot appraise evidence. The writ Court cannot correct any error of fact. It can set aside an Award when it is perverse or there is any error of law apparent or violation of the principle of natural justice. Keeping the same in mind, we shall set out certain salient features of this case. We may point out that we are setting out only those facts as recorded in the Award itself as the finding of facts of the labour Court cannot be challenged in this proceeding.

5. The Government of Bihar established Bihar State Dairy Corporation (hereinafter referred to as the Corporation) in the year 1972 for carrying out the business of production, distribution and sale of Milk under operation Flood-I Scheme. Three workmen referred to in the order of Reference case, were appointed by the Corporation on casual basis and thereafter their services were regularised. These workmen were initially posted at Barauni composite Milk Plant being one of the entries of the Corporation. Thereafter, one of them was transferred from the plant to Munger Milk Chilling Centre by the order of the Managing Director of the Corporation. Thereafter, certain change of policy took place in the year 1980 on the basis of the launching of the operation Flood-II Scheme by the Government of Bihar, the details of which would appear from the Award itself and we need not go into the same.

6. Thereafter there were certain agreements and arrangements between the Government of India and Government of Bihar. There was an agreement also signed between the State of Bihar and Indian Dairy Corporation and in view of said agreement, Government of Bihar established Bihar State Cooperative Milk Producer's Federation Ltd. (hereinafter referred to as "the Federation"). This Federation is the writ petitioner before us. On 18th March, 1983, certain meetings were held between the representatives of the Government of Bihar, the Corporation and the Federation wherein it was resolved that all the employees working in the Corporation would stand transferred or absorbed in the Federation after handing over all the Units with assets and liabilities. Thereafter, there was a meeting pursuant to the resolution held on 11th January, 1984 where a decision was taken that all the Units of the Corporation would be handed over in instalments of the Federation latest by 30th June, 1984. It was further resolved that after complete handing over, the Corporation would be liquidated. So far as the absorption would be liquidated. So far as the absorption of the employees working under the Corporation is concerned, it was decided that these employees would be divided into three categories as specified in the Award. The Government of Bihar and the Corporation confirmed the resolution dated 11th January, 1984. In accordance with the resolution, various units of the Corporation were transferred and handed over to the Federation by 30th June, 1984. There was an absorption of 52 employees of the Corporation including workmen Rampati Jha and Ram Krishan Prasad. The third workman Monazir Ahsan was posted at Munger Chilling Plant and consequent upon transfer under the management of the Federation with effect from 30th June, 1984, this workman, besides some other employees, was absorbed in the service of the

Federation. The service of Sri Monazir Ahsan in due course was placed to the Barauni Plant under the orders of the competent authority of the Federation. A High level Committee constituted by the State of Bihar on 9th July, 1984, examined the cases of these employees and decided that they would be deemed to be the employees of the Federation and would retain their benefit of past continuous service and their pay and emoluments would not be affected in any way. Admitted position is that the workmen concerned have been working under and receiving payment of salary from the Federation. In August, 1986 these workmen of the Federation constituted a Union of which the three were appointed as office bearers. The union presented some charter of demands before the Manager of the Barauni Dairy. It is alleged that as a measure of retaliation and oppression the Managing Director of the Federation issued an order on 27th August, 1986 to the effect that these three persons have been relieved from the Federation with immediate effect and with a direction to report at headquarter of the Corporation. This is what led to the industrial dispute and the Reference under the Act.

7. Various were raised before the Labour Court. The Labour Court, rejected all the same. It held that the services of three employees were placed with the Federation and they were absorbed with the Federation. The Tribunal held that their having been transferred to the Federation they could not be transferred to the Corporation. Consequent upon the transfer of all the units of Dairy Corporation to the Federation, the employees of the former were taken in the services of the Federation. It was also held that these employees were given continuity of their services and protection in respect of their wages. Accordingly, the Tribunal came to the conclusion that from the various decisions of the Government, in concurrence with the Corporation and the Federation, it is clear that the employees of the Corporation, who were found fit by the Federation, were to be absorbed in the services of the latter with the continuity of their services. Reliance was made to the subsequent order of the Federation and it was held that three employees were absorbed with the Federation. It was found by the Labour Court that these employees were initially appointed by the Corporation and in due course they were absorbed in the services of the Federation under the Scheme of taking over the undertaking of the former by the latter. They had undergone more than two years of their service under the Federation. It was further held that the question of giving any option does not arise. The Tribunal pointed out that had the Federation at the time of transfer of the undertaking and absorption of the employees asked the employees to exercise their option, there could have been some sense and logic behind it but it is quite unjustified on the part of the management to ask for option after a lapse of about two years of the services rendered by the employees under it. They also found that it was not correct to say that they have not exercised their option. They have dissented to give their option to be sent back to the Corporation which was not in existence at the relevant time. It was also held that they could not be relieved and directed to report at the headquarter of the Corporation. It was

further held that this order of transfer was bad and that this was a case of an oppressive measure against the three workmen. It was also held that this was a case of victimisation because these three persons were office bearers of the Union. It was also pointed out that the sole witness of the management had himself admitted that the Corporation had been liquidated. It was further held that from the documentary evidence it was quite clear that the workmen had been transferred to an undertakings which was non-existent. The Labour Court further pointed out that even if the Corporation exists, it was for the purpose of finalisation of account and preparation of final balance sheet. The Labour Court held that under such situation, relieving the workmen with a direction to join in the Corporation was quite nonsensical. They also pointed out that when the Corporation is not a subordinate body to the Federation, the latter was not empowered to transfer its employees to a parent body. It was further held that in view of the Standing orders also, the management was not at all justified to make the impugned transfer transgressing its power. The transfer was quite illegal, unjustified and inoperative in the eye of law." The Labour Court held the impugned order to be an illegal order which the workmen are not obliged to obey. It was held that the services of the workmen had been terminated due to arbitrary and feudalistic act of the authorities of the management. It was also an act of victimisation on the management. It was also an act of victimisation on the part of the management and that such an order should not be allowed to be sustained. All the issues were accordingly answered against the Management. Finally the Labour Court passed the following orders:

Since the impugned order of transfer has been held to be unjustified and illegal as also mala fide, the three workmen under reference are entitled for taking back in the service of the Federation with continuity of their service from the time of the Corporation. The workmen are further held to be entitled for their entire back salary with other admissible allowance with effect from 1st of October, 1986 onward.

8. We have summarised the findings of the Labour Court not with the intention to appraise the evidence or to find any error of fact, but only to show that all the findings are findings of fact and there is no question of law involved.

9. It was sought to be argued before us that the Corporation was not made a party and accordingly, the Reference, the adjudication and the Award was bad. This is a totally mala fide and mischievous stand taken. Reference was as to whether the order passed by the Federation was bad or illegal. Corporation was not a necessary or proper party. Moreover, it does not appear that any such point was agitated before the Labour Court. As such, we reject this contention.

10. It was next sought to be contended that the three employees concerned were on deputation to the Federation and accordingly, they were reverted back to the Corporation. It was contended these persons could not be absorbed in the Federation in view of the Rules of the Federation. No such point was taken before the Labour Court and this is purely an afterthought. Moreover, the finding of fact

belies this contention.

11. In this case though the Reference was made in September, 1987, the Award was passed about four years later in July, 1991. The purpose of the expeditious disposal under the machinery set up in the Act itself, would be frustrated if the Labour Courts, the Industrial Tribunals and other agencies set up under the Act behave in such a fashion. This Act was meant to avoid the procedure provided under the ordinary law but it took from years for the Labour Court to dispose of the reference. We call upon the Labour Courts and the Industrial Tribunals within this State to see that such kind of delay which would frustrate the object of the Act, do not take place in respect of proceedings pending before them. Otherwise, the employees concerned may not live to enjoy the fruits of their labour.

12. In our opinion, the appropriate authority being the State Government should also take appropriate steps in the matter so that such adjudication is not delayed in such a fashion. They should give instruction to the Labour Court and the Tribunal that there should not be any inordinate delay. It is no use blaming the ordinary Courts for delay, if the special machinery set up by the Legislature for industrial adjudication is itself defective.