

(2012) 10 PAT CK 0082

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2879 of 2002

Bihar State Khadi and Village Industries Board

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2(j), 25F, 30

Citation : (2013) 136 FLR 652 : (2013) LabIC 193 : (2013) 1 LLJ 584

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Amitesh Kumar, for the Appellant; Viveka Nand Vivek, for the Respondent

Judgement

Chakradhari Sharan Singh, J.—The Bihar State Khadi and Village Industries Board, established under Bihar Khadi and Village Industries Act, 1956 (Bihar Act No. 14, 1956), has preferred the present application under Article 226 of the Constitution of India seeking quashing of the award dated 27.2.2001 (Annexure-8) passed by the Presiding Officer, Labour Court, Muzaffarpur, in Reference Case No. 15 of 1990 by which termination of respondent No. 5 herein (wrongly typed as respondent No. 4 in the writ petition at several places) has been declared to be illegal being in violation of Section 25-F of the Industrial Disputes Act, 1947 and has directed for his reinstatement with back wages. A reference was made vide Notification No. 4/D2-19011/90 L and E 777 dated 18-7-1990 by the Appropriate Government (State Government of Bihar in the present case) to the Labour Court to adjudicate upon the dispute between the workman (respondent No. 5 herein), the following being the terms of reference:--

Whether to remove Sri Nityanand Pd. Verma Clerk from service from Hajipur District Office of Bihar Rajya Khadi Gramodyog Board from 1.4.1988 is justified, if not whether he is entitled to reappointment or any other relief.

2. A show-cause was filed on behalf of the Board on the basis of the material and

evidence available on record. The Presiding Officer, Labour Court, held that termination of respondent No. 5 was without complying with the provisions of Section 25-F of the Act and accordingly directed for his reinstatement along with back wages vide the impugned award dated 27.2.2001.

3. As recorded in the impugned order, the case of respondent No. 5 before the Labour Court was that he was firstly appointed as Night-guard in Resha Training Centre, Partaptand, under the control of the Khadi Board, Hajipur. The training programme came to an end, whereafter the service of respondent No. 5 on daily basis came to be terminated. He was however, again appointed as a Clerk on daily wage basis from 27.9.1985 in Hajipur Branch of the Khadi Board. According to his own case Bihar State Khadi Industries Board approved his appointment only up to November, 1985. Period of his service was, however, extended from time to time upto July, 1986. He completed 240 days of work on daily wage basis in one calendar year when his service came to be terminated from 31.7.1986. Further case of respondent No. 5 is that he was again appointed as a Clerk on daily wages basis in the same branch after nearly seven months on 25.2.1987 and he remained in service till 31.3.1988. His service was finally terminated with effect from 01.04.1988. The case of respondent No. 5 before the Labour Court was that he was being paid Rs. 12 per day from 26.9.1985 to 31.3.1986 and after 31.3.1986 he was paid Rs. 10 per day whereas he was entitled to get Rs. 19 per day.

4. The specific case of the respondent No. 5 before the Labour Court was that no notice was served upon him u/s 25-F of the Industrial Disputes Act, 1947, nor any retrenchment compensation was paid to him. He, accordingly, pleaded that action of his termination was illegal, being in violation of Section 25-F of the Industrial Disputes Act, 1947.

5. On behalf of the Board, on the other hand, plea was taken before the Labour Court in its written statement (Annexure-2) that the Board was not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The Board did not specifically deny the plea of respondent No. 5 that he in fact served the Board for 240 days in one calendar year, though it denied in Paragraph-4 of the written statement that there was no provision of regularization after having completed 240 days of work in one calendar year.

Oral evidence was also adduced before the Labour Court both on behalf of the Board and respondent No. 5.

6. On the basis of the written statement filed before the Labour Court by the respondent No. 5 and the Board, there cannot be dispute about the two basic facts; a) that respondent No. 5 worked on daily basis for 240 days in one calendar year. b) while terminating him from service no notice was served upon him.

7. The Board has pleaded in the writ application that it has been constituted by the State of Bihar under the provisions of Bihar Khadi and Village Industries Act,

1956. The Board has got no fund of its own and all the expenditure and establishment of the Board is approved by the Industry Department of the State Government of Bihar and in accordance with Section 30 of the Act.

8. The State Government has supervision and control over the working of the Board. The Board has further contended that it is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, as according to the Board, the said definition does not include Khadi and Village Industries. It has been contended on behalf of the Board, therefore, that the reference by the appropriate Government as well as the award made by the Labour Court is without jurisdiction. It has, further, been pleaded that service of respondent No. 5 was not required any more with the Fibre Training Scheme coming to an end and further, because Hajipur office of the Board had been closed as there was no fund under the Scheme, respondent No. 5 was rightly removed from service. The appointment letter dated 30.7.1984 has been brought on record as Annexure-5 in the writ application to contend that respondent No. 5 was appointed only for a temporary period with stipulation in the appointment letter that his service will come to an end after this training programme was over. It has been also pleaded that the State Government had imposed ban on appointments in the Board and therefore, there was no question of regularizing the service of respondent No. 5.

9. It has, thus, been contended that the order of the Labour Court is illegal and a result of non-consideration of the material facts and evidence available before him.

10. A counter-affidavit has been filed on behalf of respondent No. 5 in which it has been specifically contended in Paragraph-10 that Khadi and Village Industries come within the purview of the Industrial Disputes Act and the Board's plea that it has been excluded in view of subsequent amendment in the Act is incorrect inasmuch as the amending provision i.e., Act 46 of 1982 has not been so far given effect to. This plea has not been denied in the reply filed on behalf of the Board.

11. Learned counsel appearing on behalf of the respondent No. 5, justifying the award has contended that the Board acted in contravention of Section 25-F of the Industrial Disputes Act, 1947 while terminating the service of respondent No. 5 and, therefore, the Labour Court rightly passed the award for his reinstatement with all the back wages.

12. I have perused the material available on record in the present writ proceeding and I am of the considered opinion that the Board is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The fact that the respondent No. 5 worked as daily wage employee for 240 days in one calendar year is a fact which is not in dispute. This is also an admitted fact that respondent No. 5 was neither given one month notice in writing indicating the reasons for discontinuing his service nor was paid wages for the period of the notice in lieu of such notice as required u/s 25-F of the Industrial Disputes Act,

1947. In such view of the matter, I do not find any illegality in the award to the extent it has held that the termination of respondent No. 5 was in violation of Section 25-F of the Industrial Disputes Act.

13. Now, the question arises as to whether, in the facts and circumstances of the present case, respondent No. 5 should be reinstated and paid back wages. From perusal of the written statement filed by the respondent No. 5 before the Labour Court (Annexure-1) as well as from other material brought on record in the present writ application and the award passed by the Labour Court, it is apparent that there was no pleading on behalf of respondent No. 5 that he was not gainfully employed from the date of his termination till the date of passing the award. Even in the present writ application, there is no plea that respondent No. 5 was not gainfully employed elsewhere.

14. Learned counsel appearing on behalf of respondent No. 5 has vehemently contended that once the termination of service of respondent No. 5 was held to be in breach of Section 25-F of the Industrial Disputes Act, reinstatement with continuity of service and full back wages will be automatic consequence. He contended that the Labour Court had no other option in the facts and circumstances of the case than to direct for reinstatement of respondent No. 5 with the back wages and the award cannot be faulted with.

15. There has been a sea change in approach of the Courts on the question as to what would be the consequence if the termination of an employee is found to be in contravention of Section 25-F of the Industrial Disputes Act. This aspect has been succinctly dealt in the Supreme Court judgment reported in Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, . The Court in that case held, while relying on other judgments of the Apex Court reported in Uttaranchal Forest Development Corporation Vs. M.C. Joshi, ; Madhya Pradesh Administration Vs. Tribhuban, ; Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute, ; Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, ; Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another, , that the compensation instead of reinstatement may meet the ends of justice.

16. The Apex Court in case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, dealing with various others pronouncements of the Supreme Court as noted above held in paragraph 15 and 16 as follows:--

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages.

16. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

17. Following the same reasoning as enunciated in the Apex Court judgment in case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, , I am of the view that the award of reinstatement should not have been automatically passed if termination is found to be in violation of Section 25-F. The question of payment of back wages in the present case has to be viewed in the light of the fact that there is complete lack of pleading as to whether respondent No. 5 was gainfully employed during the period of his termination, elsewhere. I also take into account the fact that on the date with effect from which service of respondent No. 5 was discontinued, he was working at the rate of rupees ten per day.

18. In such circumstances, I am of the view that interest of justice will be subserved if the award of the labour Court is modified by directing the petitioner Bihar State Khadi and Village Industry Board to pay a sum of rupees forty thousand by way of damages/compensation to respondent No. 5 within a period of three months from the date of receipt/production of a copy of this order before Chief Executive Officer of the Board, failing which this amount will carry interest at the rate of nine per cent per annum.

19. With this direction and observation, the present writ application is disposed of. The impugned award dated 27.2.2001 (Annexure-8) passed by Presiding Officer, Labour Court, Muzaffarpur in Reference Case No. 15 of 1990 is modified to the extent indicated hereinabove. There will be no order as to costs.