

(2009) 08 JH CK 0070
In the Jharkhand High Court

Bimal Kumar Sinha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 2(4), 26(2), 4(2)

Factories Act, 1948 — Section 2(1)

Industrial Disputes Act, 1947 — Section 2(s), 25n(2)

Citation : (2010) 124 FLR 550

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Challenge in this writ application is to the order dated 30.04.2004, passed by the Labour Court, Ranchi in B.S. Case No. 22 of 1999, whereby the petitioner's claim u/s 26(2) of the Bihar Shops and Establishment Act, 1953 read with Rule 21 of the Bihar Shops and Establishment Rules 1953 against the respondent establishment for his reinstatement and for his payment of monetary compensation for the termination of his service was rejected.

2. Heard learned Counsel for the petitioner and learned Counsel for the respondents.

3. The petitioner's case is that he was initially appointed on 24.12.1987 on the post of Assistant Foreman (Production) under the respondent No. 2 Company which on that date, was functioning in the name and style of Jenson & Nicholson (I) Ltd.

Subsequently, a new company was formed under the name and style of Schenck Jenson & Nicholson Ltd on and from 1.4.1996.

4. After the formation of the new company, by a notification dated 4.3.1996 issued by the previous company, the petitioner's services was transferred to the new company with effect from 1.4.1996 on the same terms and conditions as

was made applicable to him under the former company. The transfer and posting of the petitioner with effect from 1.4.1996 was confirmed by the Managing Director of the new Company (Respondent No. 3) vide letter of confirmation dated 30.3.1996.

The petitioner's contention is that though, he was appointed on the post Assistant Foreman (Production), but by the nature of the job entrusted to him, he was essentially a Store man and his duties were not connected in any manner with the manufacturing process or with any subject matter relating to the manufacturing process or with any kind of work connected with the manufacturing process.

5. While, he was discharging his duties satisfactorily, the respondent No. 2 terminated his service with effect from 30.4.1999 by issuing a letter by invoking the condition of Clause-10 of the appointment letter dated 24.12.1987.

6. Being aggrieved with the order of his termination, the petitioner along with two other co-employees, whose services were similarly terminated, had approached the Assistant Labour Commissioner, Ranchi on 4.5.1999 with a request to intervene in the matter.

7. The Assistant Labour Commissioner, after considering the petitioner's case, issued a letter to the respondent No. 2 to withdraw the letter of termination on the ground that such termination amounted to retrenchment.

8. The respondent No. 2 had refused to comply with the instruction of the Assistant Labour Commissioner by stating that the petitioner being not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, therefore, the provisions of Section 25n(2) of the Act was not applicable to the Establishment.

9. The matter was referred by the Assistant Labour Commissioner to the Deputy Labour Commissioner vide order dated 22.5.1999 to conduct an inquiry and submit a detailed report.

10. When the matter was still pending before the Assistant Labour Commissioner, the petitioner choose to file his complaint before the court below under the provisions of Section 26(2) of the Bihar Shops and Establishment Act, challenging the order of his termination.

11. Before the court below, the respondent Establishment contested the claim of the petitioner inter-alia on the following grounds:

i. That the claim of the petitioner before the court below was not maintainable on the ground that the factory premises of the respondent Establishment being located beyond the precincts of Ranchi Municipal Area, and the B.S.E. Act being not applicable, the Labour Court cannot exercise its jurisdiction to entertain any complaint under the provisions of Bihar Shops and Establishment Act.

ii. Even otherwise, the complaint petition is fit to be rejected as the complainant

was appointed as managerial staff on the post of Senior Assistant Foreman (Mechanical Production) in the Grade-II and was engaged in the manufacturing process under the respondents, as defined u/s 2(1) of the Factories Act under which Act, the respondent is registered and was granted licence.

iii. That the complainant, upon his termination of his service, had left his job after having received the final payments without any objection and therefore, he is stopped from challenging the order of his termination from service.

12. The learned court below, framed issues for determination in the following terms:

I. Whether the complainant is an employee within the meaning of Section 2(4) of the Bihar Shops and Establishment Act and Schedule I Item No. 5 of Section 4(2)?

II. Whether Bihar Shops and Establishment Act extend within the territory of Tupudana Industrial Area where the factory is located? Whether Tupudana Industrial Area is under Ranchi Municipal Corporation or not?

III. Whether the termination of services of the complainant is illegal or not? Any other relief or reliefs the complainant is entitled to?

13. On the issue as to whether the Bihar Shops and Establishment Act extend within the territory of Tupudana Industrial Area where the factory is located and whether Tupudana Industrial Area falls under Ranchi Municipal Corporation or not, the learned court below after considering the evidences adduced by the parties, recorded its findings that Tupudana area within which the respondent factory is located, does not fall within the jurisdiction of the Ranchi Municipal Corporation and The Bihar Shops and Establishment Act does not extend to such area, consequently, the court below did not have jurisdiction to entertain any complaint under the provisions of the Bihar Shops and Establishment Act against the respondent Establishment.

14. Besides its findings on the issue relating on the point of jurisdiction, the learned court below has also recorded its findings on the other issues, namely, whether the complainant is an employee within the meaning of Section 2(4) of the Bihar Shops and Establishment Act and Schedule I Item No. 5 of Section 4(2) of the Act and has held that there was sufficient material on record to show that the complainant was connected with the manufacturing process and therefore, the provisions of Bihar Shops and Establishment Act, was not attracted and as such, the petitioner's complaint does not come under the purview of the Bihar Shops and Establishment Act.

15. The petitioner assailed the impugned order mainly on the ground that the learned court below has committed serious error by proceeding to decide on both the above mentioned issues simultaneously. Learned Counsel for the petitioner would explain that having decided on the issues, that it has no jurisdiction to entertain the complaint of the petitioner under the provisions of the Bihar Shops

and Establishment Act, on the ground that the respondent factory premises is located beyond the jurisdiction of Ranchi Municipal Corporation and the Act does not extend to the area where the factory is located, the learned court below ought not to have proceeded further to decide on the issue as to whether the petitioner is a workman and employee under the Bihar Shops and Establishment Act or not. Such a decision, according to the learned Counsel, is nonest and therefore, the Award of the court below is bad on both issues.

16. Per Contra, the respondents in their counter-affidavit would want to offer support to the impugned order of the court below. Counsel for the respondent, by referring to the evidences on record, would explain that by virtue of the nature of job rendered by the petitioner, his was exclusively a supervisory job in Grade-II of the managerial cadre of the respondent factory and that the learned court below has rightly considered these aspects and recorded its findings that the petitioner cannot claim any relief under the provisions of Bihar Shops and Establishment Act.

17. Learned Counsel, in course of argument, would however, find fault with the findings of the court below on the issue relating to jurisdiction and want to inform that there appears some error of record in as much as, the respondent factory is not located in the Tupudana Industrial Area. Rather, it is located in the Tupudana Industrial Estate which certainly falls within the jurisdiction of the Ranchi Municipal Corporation.

18. Having heard learned Counsel for the parties, and having gone through the impugned Award of the court below, I find force in the argument advanced by the learned Counsel for the petitioner.

19. Having recorded its findings that the respondent factory premises being located in the Tupudana Industrial Area, does not fall within the jurisdiction of Ranchi Municipal Corporation and therefore, the Bihar Shops and Establishment Act has no territorial jurisdiction over the respondent factory and consequently, the complaint filed by the petitioner under the aforesaid Act, cannot be entertained as being beyond the court's jurisdiction, the learned court below has obviously declared that it lacks authority to entertain the petitioner's complaint under the Bihar Shops and Establishment Act or to decide on the merits of the petitioner's case under the Act. Having recorded such finding, the learned court below ought not to have proceeded to decide on the merits of the case and on the issue as to whether the petitioner is a workman and employee under the Bihar Shops and Establishment Act. Such decision is totally uncalled for and is redundant. The decision on merits is nonest and is bad. It may also be noted, as rightly pointed out by the learned Counsel for the petitioner, the effect of such decision on merits would deprive the petitioner to avail his remedy under the other laws and before other forums to which he may be legitimately entitled.

20. In the light of the above discussions, and finding merit in this application, the same is allowed to the extent that the decision of the court below, as recorded in

the impugned Award, on the merits of the case relating to the issue whether the petitioner is a workman and employee under the Bihar Shops and Establishment Act, is quashed. Since admittedly, the petitioner was employed under the respondents and his service was terminated, as such, without going into the merits of the case or propriety of the order of termination, and in the interest of justice, I direct the respondent company to pay the petitioner his terminal dues, if not already paid to him, within one month from the date of this order.

With these observations, this writ application is disposed of.