

(2002) 07 JH CK 0036
In the Jharkhand High Court
Case No : LPA No. 36 of 1999 (R)

Binod Kumar

APPELLANT

Vs

Sr. Divisional Manager, LIC and Others

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 50 BLJR 1977

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : A.K. Sinha and S. Arun, for the Appellant; A.K. Das, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 11.1.1999 passed in CWJC No. 19 of 1999 (R) whereby the learned single Judge dismissed the writ petition in limine holding that the remedy under Industrial Disputes Act is available to the petitioner-appellant. The order dated 11.1.1999 passed in the writ petition reads as under :

"Heard learned counsel for the petitioner. On petitioner's own showing that he is a workman within the meaning of Industrial Disputes Act in my view this writ petition is not maintainable inasmuch as the petitioner, if so advised, may seek remedy under the Industrial Disputes Act. This application is dismissed."

2. The appellant, in the aforementioned writ petition challenged the order of termination from the post of Development Officer in the service of respondent-Life Insurance Corporation, Eastern Zonal Office, Calcutta. The main ground taken in the writ petition is that the appellant's termination order is illegal and the same is in violation of the principle of natural justice and also in violation of contract of employment. Admittedly the petitioner-appellant was appointed as an Apprentice Development Officer under Life Insurance Corporation in terms of

letter of appointment dated 9.1.1986. A copy of the letter of appointment has been annexed as Annexure to the Memo of Appeal. The terms of the appointment letter provides that the appointment of the appellant as Apprentice shall be governed in all respects by the terms and conditions set out in the Life Insurance Corporation of India, Recruitment Scheme, 1980 and 1991. It further provides that during the period of apprenticeship the appellant shall be liable to be discharged from the service without any notice.

3. The only question therefore that falls for consideration is whether the termination of the services of the petitioner-appellant was with a stigma or it was termination simpliciter. If the termination order is with a stigma then the respondent was required to follow the principle of natural justice. The learned single Judge, in the impugned order held that the petitioner on his own showing is a workman within the meaning of Industrial Disputes Act.

4. From perusal of para 1 of the writ petition, it appears that the petitioner has challenged mainly the order of termination as being illegal for non-compliance of the principle of natural justice and also on the ground that he is deemed to be workman under the Industrial Disputes Act and the termination will amount to retrenchment.

5. The respondents in their counter-affidavit disputed the averment made in the writ petition and it was stated that the petitioner is not a workman within the meaning of Industrial Disputes Act.

6. As notice above, irrespective of the fact that the petitioner was a workman, the moot question that fell for consideration was whether the termination of the petitioner without notice on certain allegation was in accordance with law or not.

7. Taking all these facts together into consideration we are of the view that the writ petition ought not to have been dismissed on the basis of some averment made in paragraph 1 of the writ application wherein the petitioner simply pleaded that he shall also be deemed to be a workman and the same was denied by the respondents. Besides the above on 27.2.1997 the writ petition was entertained and the notice was issued to respondents for disposal of the writ petition at the stage of admission itself on merit. Pursuant to the aforesaid notice the respondents appeared and filed counter affidavit and thereafter the writ petition remained pending for about more than two years. On that ground also we are of the view that the writ petition could not have been dismissed on technical ground.

8. We therefore allow this appeal, set aside the impugned order passed by the learned single Judge and remit the matter back to the learned single Judge for disposal of the writ petition on merit.