

(2006) 07 JH CK 0096

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 655 of 1999 (R)

Binod Prasad

APPELLANT

Vs

Project Auto and Company, HEC and Presiding Officer, Labour
Court

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 2(4), 26, 26(1), 26(2)
Bihar Shops and Establishments Rules, 1955 — Rule 25
Penal Code, 1860 (IPC) — Section 34, 406, 408

Citation : (2006) 4 JCR 229

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : R.R. Tiwari and Amit Tiwari, for the Appellant; Atanu Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—From the impugned order (Annexure-9) it appears that the Presiding Officer, Labour Court, Ranchi disposed of six cases under the Bihar Shops and Establishment Act, filed by the different employees of M/S Project Auto & Company, the respondent herein, and thereby, dismissed all the six cases, which were instituted on the basis of the complaint made by those employees u/s 26(2) of Bihar Shops and Establishment Act where the prayer was made for their reinstatement with back wages.

2. The complaint filed by the present petitioner Binod Prasad u/s 26(2) of Bihar Shops and Establishment Act was registered as B.S. Case No. 1/1996 and the same has also been dismissed by the impugned order, which has been challenged in the present writ application. Therefore, in the present case this Court is concerned with the case of the petitioner Binod Prasad only.

3. From the impugned order it appears that the learned Presiding Officer, Labour Court formulated the following points for determination:

(i) Whether the complaint petition of the petitioners is maintainable?

(ii) Whether their termination is proper and justified?

(iii) Whether petitioners are entitled to any relief?

4. The Labour Court has held that the petitioner was an employee of the opposite party as defined u/s 2(4) of the B.S.E. Act. Therefore, the complaint petition filed by him was maintainable in the eye of the law. It was further held that there was nothing on the record to show that the petitioner was removed from the service, therefore, it was not a case of removal or discharge rather it was a case of abandonment of service. Lastly, it was held that the inordinate delay in filing the complaint was not explained and, therefore, the complaint filed by the petitioner was barred by limitation.

5. According to the petitioner, he alongwith other employees were demanding payment of minimum wages, overtime and bonus etc. and then the employer suddenly terminated him and expelled from the service with effect from 25/09/1995 without following the procedure under Bihar Shop and Establishment Act. Before terminating the service of the petitioner neither any notice as required u/s 26(1) of the BSE Act was given nor compensation @ 15 days average wages for every completed year of service was given to the petitioner and, therefore, the termination of his service was bad in law. Accordingly, the petitioner filed a complaint on 18/01/1996 before the Presiding Officer, Labour Court, Ranchi under the provisions of Section 26(2) read with Rule 25 of the said Act and the Rules, which was registered as B.S. Case No. 1/1996. A separate application for condonation of delay in filing the complaint was also filed by the petitioner stating therein that he could not file the complaint within time due to the circumstances mentioned in the petition.

6. The claim of the petitioner was contested by the employer respondent No. 1. The case of the employer was that the petitioner was working since last three years and was looking after the work of cash and sales. It is stated that the petitioner and others misappropriated the amount, which was entrusted to them to the tune of Rs. 36439.35 paise from the fund of the employer and when question was asked from the petitioner he could not reply satisfactorily and, thereafter, the matter was reported to the police by lodging a criminal case being Hatia P.S. Case No. 191/95 u/s 406, 408/34 IPC against the petitioner and others and thereafter the petitioner stopped reporting to his duty since 29/09/1995.

Both the parties adduced their evidence before the Labour Court and then the Labour Court by the impugned order dismissed the complaint filed by the petitioner and others as has been stated earlier.

7. The learned Counsel for the petitioner in course of argument referred the statement of the petitioner made before the Labour Court, which has been annexed as Annexure-7 to the writ application. It appears from the oral evidence of the petitioner that he had clearly stated that since he was not being given the

minimum wages and bonus etc. and, therefore, he with other employees were making demand from the employer and, thereafter, the employees including the petitioner protested against the action of the employer and, therefore, on that account he and others were removed from the service on 25/10/1995 by the employer without giving any letter of termination. He further stated that against him and other employees the FIR was lodged by the employer and the petitioner was arrested in connection with the said case and he could be released from the jail on 26/10/1995.

8. No counter affidavit has been filed on behalf of the respondent No. 1. by controverting the statement made by the petitioner.

9. From the impugned order itself it appears that the employer respondent No. 1 admitted that the petitioner was his employee. There is nothing on the record to show that the provision of Section 26 of BSE Act was complied with before removing the petitioner from the service. From the materials on record, which has been discussed in the impugned order as well as the statement of the petitioner made before the Labour Court, I find that the learned Presiding Officer, was wrong in coming to the conclusion that the petitioner had abandoned his service and it was not a case of removal or termination. The material on record and uncontroverted statement of the petitioner go to show that the petitioner was stopped by the employer from doing his duty and, therefore, it cannot be said that the petitioner himself abandoned his service. Therefore, the finding of the Labour Court in this regard is held to be erroneous. Neither there is any material on record nor it is not the case of the respondent No. 1 that before removing the petitioner from service the mandatory provisions of Sub-Section 1 of Section 26 was complied with which runs as under:

26. Notice of the dismissal or discharge.- (1) No employer shall dismiss or discharge or otherwise terminate the employment of any employee who has been in his employment continuously for a period of not less than six months, except for a reasonable cause and after giving such employee at least one month's notice or one months' wages in lieu of such notice.

Provided that such notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government, supported by satisfactory evidence recorded at an enquiry held for the purpose:

Provided further that an employee who has been in continuous employment for a year or more and whose services are dispensed with otherwise than on a charge of misconduct shall also be paid compensation equivalent to fifteen days average wages for every completed year of service and any part thereof in excess of six months before his discharge in addition to the notice or pay in lieu of notice as prescribed above.

10. From a bare perusal of the aforesaid provision it is clear that the provisions of 26(1) of the BSE Act, quoted above, is of mandatory nature and, therefore,

non-compliance of the same would render the dismissal or discharge or termination of a employee from the service illegal. In the present case also as held above since the provisions of Section 26(1) of the BSE Act was not complied with by the respondent No. 1 and therefore, the termination of the petitioner is held to be illegal.

11. So far as the question of limitation is concerned, I find that the petitioner had made an application for condonation of delay in filing the complaint u/s 26(2) of the BSE Act stating therein that since he was arrested in connection with the case lodged by the employer and, therefore, he could not file the complaint in time as provided u/s 26(2) of the BSE Act, i.e. within 90 days of his dismissal. Therefore, it is apparent that the delay was properly explained by the petitioner and, therefore, the learned Presiding Officer of the Labour Court, Ranchi was not correct in holding that there was no explanation by the petitioner for delay in lodging the complaint.

12. In this view of the matter, the findings of the leaned Presiding Officer that the complaint filed by the petitioner u/s 26(2) of the BSE Act was barred by limitation, is also held to be erroneous.

13. In view of the discussions and findings above, I hold that the impugned order of the learned Labour Court cannot be sustained. Accordingly, this writ application is allowed and the Impugned order as contained in Annexure-9 to the writ application is hereby set aside. The Respondent No. 1 is directed to reinstate the petitioner forthwith but without any back wages.

No costs.