
(2013) 03 PAT CK 0019
In the Patna High Court
Case No : LPA No. 183 of 2013

Dharmendra Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14
Industrial Disputes Act, 1947 — Section 2(s), 25F

Citation : (2013) 139 FLR 806 : (2013) 3 LLJ 755

Hon'ble Judges : Shivaji Pandey, J;Navin Sinha, J

Bench : Division Bench

Advocate : Dharmendra Kumar, V.N. Sahay, Arun Srivastava and Manish Kumar, for the Appellant; Abu Haider, CGC and Sharad Kumar Sinha, for the Respondent

Judgement

Navin Sinha, J.—We have heard counsel for the Appellant and the Respondents. The present Appeal arises from order dated 19.09.2012 allowing C.W.J.C. No. 14349 of 2002 setting aside the award dated 11.03.2002 in Reference Case No. 88 of 1995 passed by the Central Government Industrial Tribunal No. I at Dhanbad. The Tribunal held that termination was in violation of Section 25F of the Industrial Disputes Act (hereinafter called "the Act") as the appellant had worked over 240 days in a calendar year. It ordered reinstatement and also directed regularisation.

2. The Learned Single Judge held that any adjudication and conclusion had to be on basis of evidence and not interferences. There was no evidence with regard to the nature of the engagement of the appellant as a Messenger cum Sweeper. But that he had been engaged as a regular Sweeper. The findings of the Tribunal was perverse with regard to the nature of the engagement and the conclusion unjustified. Learned Counsel for the Appellant submitted that the learned Single Judge has erred in arriving at the conclusion that there was no evidence before the Labour Court with regard to the status of the Appellant as a "Workman". The Management acknowledged his engagement for sweeping and cleaning work as a

part time Sweeper. The documents called for by the Workman such as Attendance Register, Vouchers and the Ledger of the relevant period were not produced by the Management. The Labour Court was justified in drawing an adverse inference for engagement of 240 days in a calendar year making compliance with Section 25F of the Act mandatory.

3. Reliance has been placed on Harjinder Singh Vs. Punjab State Warehousing Corporation, and Devinder Singh Vs. Municipal Council, Sanaur, for the proposition that if the appellant was a Workman within the terms of Section 2(s) of the Act, the nature of the appointment or the capacity in which he was working were irrelevant. Even an alleged invalid appointment cannot be an answer to non compliance with Section 25F of the Act and reinstatement must follow.

4. Counsel for the respondents submitted that the appellant was never appointed in accordance with law. The invalidity of the appointment was specifically raised before the Tribunal not answered by the Appellant and left undecided by the Tribunal. Even if he had completed 240 days in service, no reinstatement could have been granted to a person appointed invalidly in the law. The reference did not include consideration for regularisation.

5. The respondent Bank is a "State" under Article 12 of the Constitution. Any appointment had therefore to be in accordance with Article 14 of the Constitution. Indisputably he was appointed orally. It alone is conclusive of an invalid appointment. A specific objection had been taken on behalf of the Bank that the Chairman was the only competent authority and the candidates had to be sponsored by the Employment Exchange. No required procedures were followed when the appellant was allegedly engaged on contract basis. We find that this aspect has not been denied by the Workman and the Tribunal has failed to decide this question.

6. The Appellant was appointed as a part time Sweeper on a monthly payment of Rs. 30/- from 01.11.1990 to April 1992 and then @ 75/- from 01.05.1992 to 23.09.1993.

7. The fact that he may be a "Workman" under the Act and the termination done in violation of Section 25F of the Act cannot be confused with the issue for legality of the appointment specially in context of reinstatement. If reinstatement were to be ordered for violation of Section 25F, it shall amount to perpetuating an illegality by directing reinstatement of a person illegally appointed. The case of Harjinder Singh v. Punjab State Warehousing Corporation, (supra) is distinguishable as the Management had raised no objections regarding an illegal appointment before the Tribunal but the High Court suo motu invoked that ground. The Tribunal therefore had no occasion to apply its mind to this aspect of the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in perpetuation of illegality. Presently, the Management had specifically raised the issue of illegal

appointment before the Tribunal itself.

8. In *Devinder Singh v. Municipal Council, Sanaur* (supra), the opinion of the High Court that the appointment was illegal did not meet approval because it failed to notice that in view of the ban on appointments approval had been sought which remained un-responded.

9. In absence of any reference with regard to regularisation, the award to that extent is completely without jurisdiction. If the appointment was illegal, regularisation cannot be construed as a mode of appointment.

10. The learned Single Judge failed to appreciate the distinction between the status of the appellant as a "Workman" under the Act, the consequence for non compliance with Section 25F coupled with the appropriate relief if the appointment itself was illegal. We find it difficult to approve the finding that the conclusions of the Tribunal were based on no evidence. The engagement of the appellant as a part time Sweeper was acknowledged by the respondents. The Tribunal drew an adverse inference for failure of the Management to produce the official records called for.

11. Non compliance with Section 25F of the Act vitiates the termination. But the recent trend of judicial decisions has been that in cases like the present reinstatement shall not follow automatically. If the appointment was invalid and contractual, both grounds are relevant for purposes of reinstatement. But because the termination was in violation of Section 25F of the Act, we hold that the appellant is held entitled to appropriate compensation which in the facts assess of Rs. 1,00,000/- (one lac) in full and final settlement of his claim. We may only appropriately refer to *Bharat Sanchar Nigam Ltd. Vs. Man Singh*, in support of the conclusion by quoting paragraphs-4, 5 and 6 of the same which reads as follows:

4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, in our considered view, relief or reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

6. Accordingly, the impugned judgment passed by the High Court as also the award dated 27.05.2005 passed by the Labour Court are set aside. We direct the appellant, *Bharat Sanchar Nigal Ltd.* to pay Rs. 2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum.

12. The order to be complied with within two months failing which the respondents shall be obliged to consider grant of interest @ 6% per annum. The Appeal is allowed but only to the extent indicated.