
(1981) 12 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 3455 of 1979

Jagdish Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1982) 30 BLJR 154

Hon'ble Judges : S.K. Jha, J; R.P. Mandal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Jha and R.P. Mandal, JJ.—In this application under Articles 226 and 227 of the Constitution of India the petitioner has prayed for issuance of a writ in the nature of mandamus and/or any other appropriate writ, direction or order commanding the respondents to make reference in the matter involved in this case under the provisions of Section 12 of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act").

2. The petitioner was appointed in the Bata Shoe Company (India) Limited as Air Pressing on permanent basis. According to his case, he fell ill on 5th May, 1972, and was advised medical treatment and rest from the 5th May, 1972, and after recovering from illness on the 11th August, 1972, Dr. A.K. Roy, Insurance Medical Officer, granted a medical certificate in support of his illness and by the same certificate the petitioner was found fit to resume his duty from the 12th August, 1972. It has further been alleged in the petition that on the 5th May, 1972, the petitioner informed the employer Company about his illness along with a medical certificate and, accordingly, the Company issued a card known as "B.S.I. Leave Control". On the 12th August, 1972, the petitioner alleges, he went to the Company for resuming his duty but the Personnel Officer of the Company (respondent No. 3) pushed him out saying that he had absented from duty with

effect from the 11th May, 1972, without obtaining any leave. The petitioner was further informed by respondent No. 3 that he had been discharged from his service with effect from the 11th May, 1972. This fact, however, is controverted on behalf of the employer and his actual date of discharge from service has been as effective from the 10th August, 1972, and not, the 11th May, 1972. That, however, is of no consequence. The petitioner further states that on the 17th August, 1972, after becoming helpless in the matter, wrote a letter to the respondent No. 2, the Labour Commissioner of the State Government, raising the grievance of illegal discharge. Subsequently, on the 11th November, 1972, the 9th April, 1973, and on the other several dates the petitioner wrote letters to the respondents for their kind consideration in the matter of petitioner's employment, but respondent No. 2, the Labour Commissioner, did not do anything. On the 9th April, 1973, the petitioner submitted a petition before the Manager of the Factory of the Company (respondent No. 4) submitting that a labour dispute was raised before the Conciliation Officer, and, in course of the conciliation proceedings the Management ensured that the petitioner would be reinstated and on such an assurance being given the petitioner went to resume his duty but he was asked to put in writing that he was absent from duty from the 5th May, 1972, to 11th August, 1972. The petitioner, however, requested the Company that he should be allowed to resume his duty without any condition. Subsequently, respondent No. 2, the Labour Commissioner, sent the matter to the Labour Officer, who has not been made a party in his writ application, for deciding the matter of the petitioner. The matter with regard to his reinstatement became a protracted one and ultimately his claim for the matter being referred to an Industrial Tribunal or Labour Court was refused. The petitioner then moved this Court in C.W.J.C. No. 2753 of 1976, which was ultimately disposed of on the 6th March, 1979. A Bench of this Court remanded the case to the Labour Commissioner and the State Government for passing a fresh order after hearing the petitioner and giving reasons for not referring the matter u/s 12 of the Act.

3. The petitioner and the management were subsequently heard and the matter was reconsidered threadbare by the State Government. Ultimately, the State Government (respondent No. 1) refused to make any reference u/s 10 read with Section 12 of the Act. Reasons were given in the order refusing to make a reference. That is the impugned order which is incorporated in Annexure 7 to the writ petition. It has been specifically stated in Annexure 7 that the petitioner was being informed under the provisions of Section 12(5) of the Act that the management had been compelled to discharge him from service or to terminate his services for his unauthorised absence for months together and that, therefore, it was not a fit case for reference.

4. It has been repeatedly held not only by a series of Bench decisions of this Court but also by the Supreme Court that on a prima facie examination of the facts if the appropriate Government comes to the conclusion that the claim made is patently frivolous or that the facts were glaringly against the workmen concerned and that do not require any trial or adjudication by an Industrial

Tribunal or a court, then it is open to the appropriate Government to say that the case is not a fit one for reference. It is not open to this Court to sit in appeal over such an order of the appropriate Government. If decision be needed in this connection, reference to some of them may not be out of place to make vide State of Bombay v. E. P. Krishnan(1), Bombay Union Journalists v. The State of Bombay(2), Sivasubrahmanyam v. State of Madras(3), Guhi Ram Das v. Union of India(4), General Secretary, Coal Workers Union, Sudandih Branch v. Union of India(5), M. N. Chani v. The State of Bihar(6), Bhikhan Gope v. The Union of India and Ors. (T). Decisions are legion in number and it is no use multiplying the decisions and overloading the brief.

5. The management was generous enough to make an offer to the petitioner even in this Court that he may be re-employed if he so wanted, but, in spite of repeated contacts having been tried to be made between the learned Counsel for the petitioner and the petitioner, he has obstinately declined to accept this generous offer. In the circumstances of this case, therefore, while dismissing this application we are constrained to award cost against the petitioner. Heating fee assessed at Rs. 250 payable to respondent No. 4 on behalf of the Company of which he is the Factory Manager.