
(2005) 12 PAT CK 0015

In the Patna High Court

Case No : Criminal Miscellaneous No. 29259 of 2003

Jagdish Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Industrial Disputes Act, 1947 — Section 29

Citation : (2006) 1 PLJR 466

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner, the State and the learned counsel appearing on behalf of the opposite party Nos. 1 and 2 as also the learned counsel appearing on behalf of the opposite party No. 3. The application questions the order of cognizance dated 19.6.1999 by the Chief Judl. Magistrate, Patna in Case No. 825 (M) of 1999.

2. A complaint would have been filed by opposite party No. 2 u/s 29 of the Industrial Disputes Act against the management of the United Commercial Bank where the petitioner is stated to be the Zonal Manager. The allegation would be of failure to implement the award dated 31.10.98 by which the Bank was directed to regularize the services of opposite party No. 3 in the cadre of subordinate staff of the bank from the date of publication of the award and to reinstate his services from the date on which he was terminated with full back wages till his reinstatement and to pay full wages from the date of regularization.

3. Learned counsel for the petitioner states that in pursuance of the award the opposite party No. 3 would have been reinstated and paid his back wages and was getting his future wages in accordance with law. Insofar as the issue on regularization was concerned, in pursuance of an agreement by the Bank with its

Employees Union it had prepared a list for regularization in which the name of the petitioner also figured and that he would be accordingly considered and regularized. This would be stand of the Bank also C.W.J.C. No. 4001 of 1999, preferred against the Award, dis-posed-off on 24.7.2003 at Annexure-3A.

4. Learned counsel for the opposite party No. 3 does not dispute the fact that the petitioner would have been reinstated as a casual labour and would have been paid his back wages. He further makes a grievance that the petitioner would not have been regularized till now. The petitioner would not have been reinstated in casual post strictly with effect from the date in terms of award and he would not have been paid back wages strictly in accordance with the award.

5. Section 29 of the Industrial Dispute Act, 1947 would read as follows:--

Section 29: Penalty for breach of settlement or award: Any person who commits a breach of any terms of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, (and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first) and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid by way of compensation, to any person who, in its opinion, has been injured by such breach.

6. This Court would therefore find that it is only in the event of breach of the terms of the Award, that the prosecution would lie under the aforesaid provision. In the present case, this Court finds that the Bank would have approached this Court in C.W.J.C. No. 4001 of 1999 when this Court would have disposed-off the matter on 24.7.2003 noticing the stand of the Bank that the workmen would be regularized in terms of the Award as and when vacancy be available. The Bank would have prepared a list of persons for regularisation and the name of opposite party No. 3 does figure in it. The Award thus merged in the order of this Court dated 24.7.2003 (supra). It goes without saying that regularization can only be done against the available vacancy only. The Court, therefore finds it difficult to sustain the prosecution on the alleged plea that regularisation be not done till now thus constituting a breach of the Award.

7. Insofar as the plea with regard to reinstatement on casual basis and payment of back wages from the due date be concerned, this Court is satisfied that there would, in fact, have been substantial compliance of the Award. This Court for the purpose would appropriately consider the judgment of the Supreme Court in Phiroze Dinshaw Lam and Others Vs. Union of India (UOI) and Others, . In the said case, the Company Godrej wished to reply upon certain letters said to have been addressed to it by its dealers to support its claim for exclusion of the value of Corrugated Fibre Containers. The Revenue Charged Godrej with fabricating evidence and trying to misled the Court by the letters in question. The Supreme Court in paragraph-14 did notice that the Company did indulge in an act of

fabricating evidence in working of such a major Company. However noticing that the Company would have accepted the Revenue's Case and to pay all the duty on that basis as also to refund the amount which were refunded to it on basis of Court orders, and to pay time barred duty also, the Supreme Court held as follows at paragraph:--16

"Paragraph: 16. On a consideration of the relevant circumstances mentioned Supra including the fact that Godrej has paid up all amounts due accepting the contentions of the Revenue, we think that an order levying penal interest would meet the ends of justice instead of the direction for prosecution made in the impugned order. We may mention that when during the course of hearing, we suggested this alternate course and wanted to know the response of the appellants thereto, they agreed with alacrity to the course indicated by us."

8. Having considered the facts and circumstances of the case in its entirety this Court, in exercise of its power u/s 482 of the Code of Criminal Procedure finds that there has been substantial compliance of the award. This Court is satisfied that in view of the aforesaid substantial compliance of the award it would be an abuse of the process of the court to permit the prosecution to continue u/s 29 of the Industrial Disputes Act. This Court is conscious of the fact that the Industrial Disputes Act is a labour welfare legislation. Notwithstanding the same, this Court would also be satisfied that not only the bank had implemented the award by taking a positive steps also to regularise the services of opposite party No. 3. The contention of the bank that the regularisation was being done so as not to discriminate any one, cannot be faulted with. In the result this application has to be allowed. The impugned order of cognizance dated 19.6.1999 and the entire proceedings in the Complaint Case No. 825 (M) of 1999 are accordingly quashed.