
(2017) 06 JH CK 0034
In the Jharkhand High Court
Case No : 2908 of 2010

Jahangir Sk @ Md. Jahangir

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 21-06-2017

Acts Referred:

Citation : (2017) 06 JH CK 0034

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Sanjay Kumar Dwivedi

Judgement

1. Heard learned counsel for the petitioner. Respondents, despite service of notice, have not entered appearance.

2. By the impugned order dated 06.02.2010 learned Presiding Officer, Labour Court, Jamshedpur has rejected the claim of the petitioner for reinstatement along with back wages and other consequential benefits in B.S. Case No. 13 of 2002 (Annexure-5).

3. Facts, in brief, as carved out from the pleadings on record are as follows:-

(i) Petitioner claimed to have joined as a Cook on monthly wages of Rs. 1800/- per month from 15 th January, 1997. He has alleged termination by the opposite parties/respondents with effect from 09th July, 2002 without any reasonable cause for which neither any prior notice was issued nor one month notice pay including compensation was paid. (ii) According to the petitioner, he had committed no mis-conduct but he presumes that on some complaint made to the

Employees Provident Fund Commissioner as well as Employees State Insurance Corporation, his services have been dispensed with by an oral termination order. (iii) Despite representation made through registered post no reply was given by the respondent. On the date of his termination 09 th July, 2002, he was getting monthly salary of Rs. 2200/- per month and was compelled to work

for 12 hours daily. (iv) According to his own statement, neither appointment letter or salary slip was issued nor earned leave salary was paid. 4. Accordingly, he has prayed for setting aside of the order of termination as being illegal and without any basis and for consequential reliefs. 5. Opposite parties/respondents herein contested the case before the learned Labour Court, Jamshedpur and took the plea that the complainant had left the job on his own accord without any information to the opposite parties. According to them, the complainant has joined establishment on the first occasion on 15th January, 1997 and left the same on 09 th November, 1999, thereafter had again joined on 13.11.2000 and left the job on 09 th July, 2002. The respondent also replied to the complaint made before the Labour Superintendent, Jamshedpur by the complainant by letter dated 21 st August, 2002 taking the same plea that complainant Mohit Prasad has left the job as per his own accord. The opposite parties also stated that the monthly salary of the complainant was Rs. 2200/- per month when he left the job. Other allegations had been denied as fabricated and baseless.

6. Learned Labour Court framed three issues for determination of the pleadings which are as follows:-

(i) Whether the complaint under Section 26 (2) of B.S.E. Act 1953 filed by the complainant Mohit Prasad, is maintainable ? And as to whether there arises valid cause of action in favour of complainant to file the instant complaint? (ii) Whether the opp. Parties M/s. Lakhi Egg-Roll & others have terminated the services of the complainant Mohit Prasad with effect from 09.07.2002 illegally? (iii) What relief/relieves complainant is entitled to receive?

7. Complainant Mohit Prasad examined himself as a witness no. 1 and adduced the order dated 20th July, 2004 passed by Assistant Provident Fund Commissioner, Jamshedpur.

8. Opposite parties/respondents examined witness-Lakhi Kant Mahapatra, but no documentary evidence was filed in defence.

9. Learned Labour Court held the complaint maintainable in answer to issue no. 1 taking the inference from the material pleadings and statement of witnesses that the complaint was filed within 90 days from the date when complainant alleged his termination i.e. 09 th July, 2002. However, on issue no. 2 learned Labour Court did not find any cogent material evidence to come to a finding that the employer had dismissed or discharged the complainant without any reasonable cause or for any mis-conduct. The perusal of the impugned award also shows that apart from the statement on oath by the complainant denied by the opposite parties on oath, no other material evidence were adduced to substantiate the plea of illegal termination on the part of the complainant. As it further appears, no appointment letter nor any termination letter as such were adduced. No other witnesses were produced by the complainant to corroborate the allegation of illegal termination. Opposite parties on their part in their

examination had consistently taken the plea of his habitual absence and that his conduct was also not satisfactory but claimed that no notice or show cause was ever issued against him. He however, had earlier also joined and left the job and on this occasion also left the job voluntarily. On these material evidence learned Labour Court was not convinced that the allegation of illegal termination in breach of Section 26 (2) of B.S.E. Act was made on the part of the complainant.

10. Learned counsel for the petitioner has, during the course of the argument, also relied upon the judgment rendered by the Hon"ble Patna High Court in support of the plea that even oral termination is covered under the provisions of Section 26 (2) of the Act. The same has also been referred to in the impugned order as well, 1984 L.I.C. Patna page 1427 (K.K. Sharma Vrs. State of Bihar). Learned counsel further submits that on the part of the complainant, there was no occasion to leave the job on his own. Had it been so, the notice as contemplated under Section 27 would have been served upon the employer which is not the case. The learned Labour Court has, while holding the complaint maintainable in favour of the complainant, committed an error in deciding otherwise on the issue no. 2 relating to the illegal termination.

11. I have considered the relevant materials on record and also gone through the impugned order.

12. It is the admission on the part of the complainant as well as employer that till 02nd July, 2002 the complainant was working in the establishment. The complaint was filed within 90 days of 02 nd July, 2002. Therefore, the learned Labour Court was persuaded to hold the complaint as maintainable under Section 26 (2) of the B.S.E. Act, 1953. However, on the question of illegal termination the complainant have failed to establish by any cogent material evidence that he had been illegally terminated from employment without any notice or show cause and that no compensation either had been paid. The allegation of the applicant and the rebuttal of the employer both on oath do not take the case any further as no other material evidences were adduced to substantiate the allegation of illegal termination. If the employee had left the job on his own, ingredients of Section 26 (2) would not be satisfied. Accordingly, the learned Labour Court had no other option to hold otherwise. Since the complainant had completely failed to establish the allegation of illegal termination, issue no. 3 has also been decided against him. No relief could be granted in his favour.

13. Upon consideration of the material facts, evidences on record and the pleadings, this Court does not find any legal or factual infirmity in the impugned order. Accordingly, writ petition is dismissed. Let the Labour Court record be sent to the Court concerned.