
(2004) 01 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 1126 of 2001

Mahendra Prasad Shahi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4)

Citation : (2004) 3 LLJ 852 : (2004) 2 PLJR 446

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Advocate : Tarakant Jha, Kaushal Kumar Jha and Prafulla Chandra Jha, for the Appellant; J.C. to Standing Counsel III, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kumar Prasad, J.—This application has been filed for issuance of a writ in the nature of certiorari for quashing the award and order dated August 12, 2000 passed by the Labour Court, Muzaffarpur in Reference Case No. 2 of 1995 and Misc. Case No. 24-A of 1992 whereby the prayer of the petitioner for reinstatement and wages for the work done has been rejected.

2. Shorn of unnecessary details, facts giving rise to the present application are that the State Government in exercise of its power conferred u/s 10(1)(c) of the Industrial Disputes Act, made the following reference for adjudication by the Labour Court:

1. Whether the termination of service of Mahendra Prasad Shahi is justified and in accordance with law?
2. If not, then for what relief he is entitled for?
3. Aforesaid reference led to registration of Reference Case No. 2 of 1995 in which petitioner as also his employer i.e., Superintendent of Shri Krishna Medical College and Hospital, Muzaffarpur filed their written statement. According to the

petitioner he was employed in Sri Krishna Medical College and Hospital, Muzaffarpur (hereinafter referred to as the Hospital) @ Rs. 21.75 per day. According to the petitioner he worked till October 7, 1991 when his service was terminated without any notice or payment of retrenchment compensation. The plea of the employer in its written statement was that the petitioner was never appointed on muster roll or otherwise and he never worked as such. It was further averred that there is no sanctioned post and the petitioner is not entitled for any wages.

4. It is relevant here to state that the petitioner had also filed application before the Labour Court u/s 33C(2) of the Industrial Disputes Act (for short the Act) for payment of wages, inter alia, contending that he was employed in the Hospital on November 1, 1990 on daily wages @ Rs. 21.75 per day and work till the date of termination of his service i. e., May 15, 1992 but wages have not been paid to him. Aforesaid case led to registration of Misc. Case No. 24 of 1992. Both Reference and Misc. Case were taken up together and have been disposed of by the impugned awards.

5. In sum and substance the plea of the petitioner is that he was appointed in the Hospital on daily wages @ Rs. 21.75 per day and his service was illegally terminated on September 15, 1992 and for this entire period no wages was paid to him. Further no notice or retrenchment compensation having been paid to the petitioner, the termination of his service is illegal in the eye of law. The plea of the Hospital, however, is that the petitioner was never appointed, hence there was no occasion to pay to him the wages for the period he is alleged to have worked or the retrenchment compensation.

6. The Labour Court on appreciation of the materials placed before it, came to the conclusion that the relationship of employer and employee did not exist between the petitioner and the Hospital as the petitioner was never appointed. The reasons to record the aforesaid finding have been elaborately detailed by the Labour Court. It observed that although the petitioner claims to have been appointed by the Hospital but nowhere he has stated as to how and by whom he was appointed. Non-filing of the letter of appointment has also been taken into consideration to record a finding that the petitioner was never appointed by the Hospital. The plea raised by the petitioner for the first time in his evidence that he was appointed by the then Superintendent and the certificates said to have been given by the Superintendent of the Hospital were also considered but not relied upon. The reasons assigned by the Presiding Officer to reject the certificate was that the petitioner had not stated the occasion and under what circumstances the certificates were issued by two different Superintendents of the Hospital. It also took into consideration that no reference of the two certificates were made by the petitioner in the written statement filed by him. Certificates produced by the petitioner were its photostat copies and the originals were not produced. Aforesaid factors led the Labour Court to hold that the petitioner was never appointed and there did not exist relationship of master and

servant.

7. Mr. Tara Kant Jha appearing on behalf of the petitioner attempted to assail the finding of the Labour Court and submitted that it ought to have relied on the certificates produced by the petitioner and held that the petitioner was employed in the Hospital. I do not find any substance in this submission of Mr. Jha. It is well-settled that this Court interferes with the finding of the subordinate authorities only when it is shown that the finding recorded by it is perverse meaning thereby that the finding has been recorded on consideration of irrelevant materials or without considering the relevant material or a person duly instructed in law shall not come to that conclusion. Here in the present case the documents relied on by the petitioner have in fact been considered by the Labour Court and for good and valid reason it has not placed reliance on the same. Hence the finding recorded by the Labour Court cannot be said to be perverse calling for interference by this Court in exercise of its writ jurisdiction.

8. Mr. Jha has then taken an extreme stand that the Labour Court was incompetent to go into the question of relationship of the employer and the employee as from the term of reference it is evident that the same was not in dispute. He points out that in terms of the reference the Labour Court was to go into the question of termination of the petitioner's service which obviously means that the petitioner was an employee and the said question was not open to be adjudicated by the Labour Court.

9. J.C. to Standing Counsel III, however, appearing on behalf of the respondents submits that whether the petitioner was employed by the Hospital or not is inherent in the reference and as such the Labour Court did not err in going into this question.

10. Having considered the rival submissions, I do not find any substance in the submission of Mr. Jha. Section 10(4) of the Act, which is relevant for the purpose, reads as follows:

"10. Reference of disputes to Boards, Courts or Tribunals:

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal as the case may be, shall confine its adjudication to those points and matters incidental thereto."

11. From a plain reading of the aforesaid provision it is evident that the Labour Court shall confine its adjudication to the points of dispute specified by the appropriate Government and matters incidental thereto. However, to understand the point of dispute, the Labour Court is required to go into the pleas of the parties. Here in the present case the plea of the petitioner was that he was appointed by the Hospital whereas the employer has categorically stated that he

was never appointed. Hence, in my opinion, the Labour Court did not err in going into this question.

12. In the result, I do not find any merit in the application and it is dismissed accordingly. No cost.