

(1992) 07 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 1635 of 1986 (R)

Management of Hindustan Steelwork Construction Ltd.	APPELLANT
Vs	
The Presiding Officer, Labour Court, Bokaro Steel City and Another	RESPONDENT

Date of Decision : 28-07-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1994) 2 BLJR 1454 : (1994) 2 PLJR 237

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Judgement

G.C. Bharuka, J.—The present writ application has been filed for for quashing the award dated 28-6-1986 passed by the respondent the Presiding Officer, Labour Court in Reference Case No. 23 of 1983 whereby it has been held that the termination of services of Shri Bhim Shahi, A.H.P. Welder P. N. 11706 who is a workman of the petitioner, is not justified and accordingly, he has been directed to be reinstated with full back wages and consequential benefits.

2. The relevant facts of the present case and the question involved are very short. Admittedly the petitioner was a workman of the petitioner and his services were terminated with effect from 23-11-1978 in terms of Standing Order No. 16(X)(a) or (b), as is evident from letter as contained in Annexure 3 to the application, on the ground of unauthorised absence. The Labour Court on appraisal of the facts has come to the conclusion that the absence of the workman was because of illeness. Mr. Banerjee, appearing for the petitioner has sought to assail the said finding of fact on the ground that it has been arrived at by relying on inadmissible and inadequate evidence and as such it is perverse.

3. In my opinion, it is necessary to enter into the controversy as to whether the absence of the workman concerned was intentional or can be justified on the ground of illness as claimed by him. Even if the service of the workman had been terminated on the ground of unauthorised absence as per the Standing Orders,

admittedly before taking recourse to such an action the requirement of Section 25F of the Industrial Disputes Act, 1947 had not been complied with. Therefore, in view of a Bench decision of this Court in the case of *Desh Raj Sood and Anr. v. The Presiding Officer and Anr.* reported in 1984 PLJR 612 of the termination being "retrenchment" within the meaning of Section 2(oo) of the Act and the same has to be held as illegal and ineffective. Therefore, the order of the respondent Labour Court in annulling the termination is justified and valid.

4. Alternative argument advanced by Mr. Banerjee was that since the workman concerned was habitual absentee and employers have lost confidence in him, therefore, the Tribunal instead of directing for reinstatement should have settled the dispute by awarding compensation in lieu thereof. In support of his submission he has relied on the decisions of *M. Arunagiri v. Bata India Ltd. and Anr.* reported in 11 LL 816 and *Air Corporation Employee Union and Ors. v. Air India and Ors.* reported in 11 LL 711. It has been held by the Supreme Court as well as various High Courts that reinstatement for violation of Section 25F of the Industrial Disputes Act is not the universal rule in all cases and compensation can be awarded in lieu of reinstatement in exceptional case. Since this aspect of the matter has not been gone into by the Labour Court, therefore, in my opinion, it will be fit and proper if the case is remanded to the Labour Court only for deciding as to whether in the facts and the circumstances of the case, it will be proper to award compensation in lieu of reinstatement as directed under the impugned award.

5. The present case is accordingly remanded to the Respondent-Labour Court only for a limited determination on the question of awarding compensation, as stated above. The writ application is accordingly partly allowed in terms of the aforesaid direction. There will be no order as to costs.