
(2012) 08 PAT CK 0086
In the Patna High Court
Case No : CWJC No. 5482 of 2007

M/s Prem Talkies

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25H

Citation : (2013) 137 FLR 314 : (2013) 1 LLN 266 : (2013) LLR 384 : (2012) 4 PLJR 607

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : K.N. Gupta, Kr. Hari Narain Singh, Sanjay Kumar and R.C. Sinha, for the Appellant; Gaurav Govind, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—The award dated 25.11.2006 granted by the Presiding Officer, Labour Court, Dalmianagar in Ref. Case No. 3 of 1993 has become the bone of contention between the parties. According to the learned counsel for the petitioner, the award is per se illegal, beyond jurisdiction, without appreciation of law or facts whereas the respondents including the workmen, some of whom have filed I.A. application for impleadment, are for its enforcement. I.A. No. 5754 of 2008 is allowed permitting the persons who have asked for their impleadment to be heard.

2. There was a cinema hall by the name Prem Talkies located at Shaheed Road, Gaya. The movie hall was being run on the basis of a lease deed by one Murlidhar Gupta. After expiry of the lease a litigation started between Murlidhar Gupta and one Sushila Devi and others which carried right upto the Hon"ble Supreme Court. The Hon"ble Supreme Court gave a clear direction for eviction and handing over possession of the property to the original lessor within a time frame. This fact is reflected from Annexure-1 annexed with the writ application. Cinema hall thereafter stood closed as the lessee prepared to hand over

possession to the lessor and an agreement was reached between the workmen and the original licensee of the cinema hall whereof dues etc. came to be settled.

3. After some time the present petitioner Sushila Devi started business as a new entity. It is the case of the petitioner that they registered and obtained licenses in their name though no doubt the name of the movie hall Prem Talkies remained the same.

4. The dispute arose or was raised by the erstwhile employees before the Labour Department that now that the movie hall has got back into business and has been re-started, they are entitled to be reinstated if not re-employed. The present management resisted their demand which led to reference having been made to the Labour Court for adjudication which was registered as Ref. Case No. 3 of 1993. On a reading of the order of the Labour Court it is evident that a resistance was put up in matter of grant of any relief in favour of the workmen on the ground that no case for reinstatement u/s 25H of the Industrial Disputes Act (hereinafter referred to as the said Act) was made out as the movie hall was not restarted by the old management which had indulged into retrenchment of the workmen. The new management was not bound to re-engage or put back the old workmen into service merely because the property and the name of the property remained as what it was. New management has no obligation to the old establishment or its workmen specially when there was no master servant relationship between the parties nor was any obligation created by entering into agreement by the old management and the new management with regard to the status of the previous employees.

5. Mr. Gupta, representing the petitioner, attacks the decision of the Labour Court that the decision and the direction of the Labour Court to reinstate the workmen with 50% back wages from the date of starting of the movie hall i.e. 6.7.1991 defies all legal position and interpretation given to the provisions of the Industrial Disputes Act. He submits that the present management failed to understand as to how a legal obligation can be created to re-engage or reinstate an employee of the previous management when a clear and categorical evidence has been produced before the Labour Court which included adjudication made by the Regional Provident Fund Commissioner that Prem Talkies was a new establishment and had no co-relation with the earlier business or management.

6. Obligation of the management to re-engage the retrenched employees would arise provided there was some relationship of master and servant between the establishment which was closed down and the one which was re-started. If there was a change of hands and a new establishment with a different management and entity was brought back to life, mere continuance of the name of the movie hall with which it was earlier known would not create any obligation upon the new management specially u/s 25H of the Act. The matter would have been different if there was some kind of agreement reached as a part of the bargain before transfer of the property or the business, with past liability, including engagement of former employees was required to be made.

7. In the opinion of this Court, obviously the fine distinction which was required to be made between the two establishments and the management was not made by the Labour Court and the Court is compelled to reject the stand or contention of the workmen that there was no illegality in giving the direction which was passed. The Court is not impressed further by the fact that after all it is only a cinema hall with the same name which has been re-started and the old workmen were required to be given priority instead of recruiting new hands.

8. Obligation of the new management could have arisen provided the law created such an obligation statutorily but in absence of the same, obviously the decision of the Labour Court does not satisfy the touch stone of the provisions of the Act muchless Section 25H of the Act.

9. This writ application is allowed. Award dated 25.11.2006 stands quashed. In view of the above, the application filed on behalf of some of the workmen by way of I.A. No. 7082 of 2010 under the provision of Section 17B of the Industrial Disputes Act is rejected.