
(2008) 11 PAT CK 0094
In the Patna High Court
Case No : CWJC No. 5790 of 2002

Pawan Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25, 25F

Citation : (2009) 3 PLJR 72

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : R.S. Pradhan and Rajeev Lochan, Rajendra Prasad Singh, Devendra Kumar Sinha, Jyoti Saran, Anil Kumar No. 1, Pramod Kumar Sinha No. 1, Rajesh Prasad Choudhary, Bajarangi Lal, Ram Hriday Prasad and Harendra Pratap Singh, for the Appellant; Braj Kishore Prasad Sinha, Sunita Kumari, Suryakant Kumar and Sanjay Prasad, for the Respondent

Judgement

Shiva Kirti Singh, J.—Heard the parties at the stage of admission in all these writ petitions which have been treated from before as analogous matters. Several vexed questions of facts were raised. However, this Court finds from the impugned orders as well as the order of the Secretary dated 31.3.2007 passed pursuant to interim order and directions in these cases that the question of facts relevant for the issue whether the petitioners have a right against closure of concerned Engineering Cell and to continue in service have been gone into detail. It is further found that the validity of impugned decisions and orders effecting closure of Engineering Cell of the respondent-Bihar State Scheduled Caste Co-operative Development Corporation Limited (hereinafter referred to as the Corporation) and termination of services of the concerned employees including petitioners on account of such closure has been already decided against the employees by a Division Bench judgment of the Jharkhand High Court dated 22.8.2005 by which the appeal of the Corporation was allowed and cross-appeal of the writ petitioners was also disposed of. Some relief was granted by providing interest at the rate of 6 per cent per annum over the compensation payable u/s

25F of the Industrial Disputes Act up to August 2005, the month of the LPA decision. That judgment is Annexure-A to a supplementary counter affidavit of respondent-Corporation (respondents 5 and 6) in CWJC No. 5790 of 2002. It was challenged in the Apex Court but SLA (Civil) No. 2825/2006 was also dismissed on 27.1.2006.

2. A submission that this Corporation which is actually a Cooperative Society registered under the Bihar Cooperative Societies Act, had actually merged into a Department of a Bihar State by virtue of a policy decision of 1982 is not found acceptable on the basis of facts available on records. There is no order of the State Government that the Corporation or any part of it will stand merged in any Department of the State Government and its employees shall be Government servants. Some documents of 1991, 1992 and 1995 were shown but they mention only of control over the Engineering Cell of the respondent-Corporation so as to ensure that the Engineering Cell does not take up fresh projects which may create impediment in its final dissolution. A perusal of order dated 25.7.2000 by which the engineering cell of the Corporation was abolished refers to different decisions at various stages and it show that the decision by the Administrator was in consonance with the decision of the concerned authorities of the State Government. No legal infirmity is found in such decision by the Administrator.

3. The next submission advanced on behalf of the petitioners that they must be reinstated on account of admitted default in complying with provisions of Section 25F of the Industrial Disputes Act, is not fit to be accepted in view of Division Bench judgment of the Jharkhand High Court noticed above against which Special Leave to Appeal stands dismissed by the Hon"ble Supreme Court. That issue was the main issue decided by that judgment in the same factual situation.

4. Arguments were also advanced to the effect that the orders terminating the services of the petitioners are without proper application of mind to the relevant facts. Those questions are suitably answered by the order of the Secretary dated 31.3.2007 noticed earlier, which has been passed pursuant to interim order dated 11.1.2007 by which this Court directed the petitioners to file a consolidated representation before the Secretary, Welfare Department, Government of Bihar giving the backgrounds of the matter and enclosing all relevant documents so that the Secretary may apply his independent mind in the matter and take up policy decision at the Government level in the matters of petitioners. The decision of the Secretary shows that it is a bona fide case of closure of Engineering Cell of the respondent-Corporation as it was left without any work due to decision of the Government to entrust construction of buildings of the Welfare Department also to the Public Works Department (Building) and not to the Corporation. Thus, it is a case of retrenchment of employees on account of closure of business. On such closure all the posts stood abolished and only right survived was that of compensation as per law on account of such closure. Those employees who fell in the category of workmen were ordered to

be retrenched after giving compensation as per Section 25 of the Industrial Disputes Act. The decision was not correctly carried out and the compensation was not paid in advance but on account of Engineering Cell no longer in existence and near impossibility of such employees being taken back in the Engineering Cell was fully considered by the Division Bench and thereupon instead of reinstatement compensation with interest up to August 2005 was ordered to be paid to the concerned employees falling in the category of workmen. Admittedly, such compensation package pursuant to judgment of the Jharkhand High Court was offered to all the retrenched workmen including petitioners falling in that category. It is not in dispute that petitioners in the category of workmen accepted the compensation package as approved by the Jharkhand High Court and have received money on that account.

5. In the aforesaid facts and circumstances, this Court finds that when the petitioners have no right to be reinstated due to closure of the Engineering Cell, the arguments advanced on the ground of some procedural lapses like non-application of mind before issuing the termination orders, is of no help to the them.

6. This Court finds no merit in the writ petitions. They are accordingly dismissed. There shall be no order as to costs. However, it is made clear that if any of the petitioners being workmen has not been paid the compensation package alongwith interest as per judgment of the Jharkhand High Court dated 22.8.2005 passed in LPA No. 459 of 2003, such compensation package must be made available to such petitioners forthwith. Further observation of the Jharkhand High Court is also reiterated to the effect that if at all the Corporation plans to make fresh appointment in respect of the posts to which the writ petitioners had been appointed they should also consider the cases of the writ petitioners considering long years of service rendered by them.