
(2015) 11 JH CK 0001

In the Jharkhand High Court

Case No : L.P.A. No. 554 of 2006 with C.O. No. 7 of 2006

Ramadhar Singh

APPELLANT

Vs

M/s Tata Engineering & Locomotive Co. Ltd.

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 2(4), Section 26
Factories Act, 1948 — Section 2(i)

Citation : (2017) 1 AIRJharR 179 : (2017) 1 CLR 266 : (2017) 152 FLR 80 :
(2017) 1 JCR 507

Hon'ble Judges : Mr. D.N. Patel and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : M/s Vijay Pratap Singh, Sr. Advocate, Amit, Rashmi, Advocate, for the Respondents; M/s Manoj Tandon, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

D.N. Patel, J. - This Letters Patent Appeal has been preferred against the judgment and order dated 19th September, 2006 passed in CWJC No. 2275 of 1998 (R), whereby the petition preferred by this respondent was allowed and thereby order passed by the Presiding Officer cum Authority u/s 26 of the Bihar shops and Establishment Act, Labour Court, Jamshedpur in BSE Case No. 10 of 1994 (under Section 26 of the B.S.& E Act) has been quashed and set aside mainly on the ground that this appellant is not an "Employee" within the meaning of Section 2(4) of the Bihar Shops and Establishment Act, 1953 and he is a "Worker" within the meaning of Factories Act, 1948 under Section 2(i). Thus, as this appellant was covered by the definition of a worker under the Factories Act, 1948 he ceases to be an employee under the Bihar Shops and Establishment Act, 1953 and application under Section 26 of the B.S.& E Act was not tenable at law and the Authority under section 26 of the Bihar Shops and Establishment Act, 1953, Labour Court, Jamshedpur had no power, jurisdiction and authority to entertain such an application preferred by this appellant. Being aggrieved and feeling dissatisfied by the judgment passed by the learned Single Judge in

C.W.J.C. No. 2275 of 1998 (R) original respondents have preferred this Letters Patent Appeal.

Submissions made on behalf of the appellant

2. It is contented by the counsel for the appellant (Original Respondent No.2) that looking to the documents on record before the Presiding Officer cum Authority under section 26 of the Bihar Shops and Establishment Act, Labour Court, Jamshedpur in B.S.E Case No. 10 of 1994, it appears that this appellant is an "employee" under the Bihar Shops and Establishment Act, 1953 and he is not covered by the definition of the word "Worker" under the Factories Act, 1948. This aspect of the matter has been properly appreciated by the learned Labour Court, Jamshedpur, whereas the learned Single Judge has not appreciated the facts established before the Labour Court, Jamshedpur and wrongly allowed the writ petition preferred by the respondents. It is further submitted that duties attended to by this appellant is narrated in detail by the judgment delivered by the Labour Court, Jamshedpur and his work was neither connected with any manufacturing process nor his work was directly or indirectly connected with the subject of any manufacturing process and the work of this appellant was purely clerical in nature. This aspect of the matter has not been properly appreciated by the learned Single Judge. Moreover, looking to the judgment delivered by the Labour Court, Jamshedpur, the same cannot be said to be a perverse finding. The counsel appearing for the appellant has also pointed out that initially this worker was working as an apprentice. Thereafter, he was appointed as an Electrician. He was further promoted as a Chargeman, then as a Junior Engineer, Assistant Engineer and Assistant Materials Officer. He was further promoted to the post of Senior Materials Officer and lastly promoted as an Assistant Manager and on 21st October, 1994 his resignation was taken by the respondents under duress and coercion and therefore, the appellant preferred an application under Section 26 of the Bihar Shops and Establishment Act, 1953 and the Labour Court at Jamshedpur has rightly observed in Issue No.1 that the appellant is covered by the definition of the word "Employee" under Section 2(4) of the Bihar Shops & Establishment Act, 1953 looking to the nature of the work assigned to this appellant. This aspect of the matter has not been properly appreciated by the learned Single Judge. Learned counsel for the appellant has relied upon the decision reported in (2003) 6 SCC 675.

Submissions made on behalf of the respondents

3. Counsel for the respondent submitted that looking to the definition of "Worker" given under Section 2(l) of the Factories Act, 1948, it appears that this appellant is covered by the said definition, especially looking to the words "or in any other kind of work incidental to or connected with the manufacturing process". It is submitted by the counsel for the respondent that looking to the duties assigned to this appellant he is a worker under Section 2(l) of the Factories Act, 1948 as his nature of work was procurement and transportation of raw material. It is also submitted by counsel for the respondent that Ext. 9 is a

concocted and fabricated document. It is further submitted that looking to the documents at 13(a) and 14(a) presented before the Labour Court, Jamshedpur, it appears that the document presented by this appellant before the Labour court, which are at Ext. 13 and 14 are manipulated documents. It is also submitted by the counsel for the respondents that documents presented by this appellant at Ext. 13 and 14 were not true and were incorrect letters of the respondents. In the original letters there was no signature of this appellant, but, the documents presented by the appellant, which were photocopies, were having signature of the appellant. It is also submitted by the counsel for the respondent that interim order was passed by the learned Single Judge in CWJC No. 2275 of 1998(R) on 13th November, 1998 to the effect that this respondent will pay arrears of wages from the date of the order passed by the Labour Court, Jamshedpur. This appellant has been paid by the respondents till the writ petition was allowed by the learned Single Judge i.e. 19th September, 2006, but the fact remains that this appellant has become an Advocate, as stated in the cross-objection filed by the respondents, with effect from 22nd December, 1998. In fact, relationship of Master and Servant came to an end when this appellant became an Advocate and he should not have continued receiving the last wage drawn by him from the respondents from December, 1998 till September, 2006. This fact has been suppressed by this appellant. Moreover, false and fabricated documents have been given before the Labour Court. Documents exhibited at Ext. 13 and 14 are not matching with the original documents presented by the respondents at Ext. 13(a) and 14(a) before the Labour Court and as these appellant is covered by the definition of word "Worker" within the meaning of the Factories Act, 1948, he was exonerated from the definition of the word "Employee" under 2(4) Bihar Shops and Establishment Act, 1953. The Labour Court, Jamshedpur has no jurisdiction to decide the application of the appellants under Section 26 of the Bihar Shops and Establishment Act, 1953. This aspect of the matter has been properly appreciated by the learned Single Judge while allowing the writ petition preferred by the respondent and therefore, this letters Patent Appeal may not be entertained by this court.

4. So far as cross objection filed by the respondent is concerned, it is submitted by the counsel for the respondent that cross objection is filed only for the reason that this appellant has become an Advocate with effect from December, 1998 and therefore, there is no existence of Master - Servant relationship at all from that very date and as he has suppressed this fact and continued receiving last wage drawn by him from the respondent up to August/September, 2006, hence this cross objection was filed to bring this fact to the notice of the court. Counsel for the appellant submitted that cross objection is not tenable at law looking to the provisions of Order 41, Rule 22 CPC.

REASONS

5. Having heard counsel for both sides and looking to the facts and circumstances of the case, we see no reason to entertain this letters Patent

appeal mainly for the following facts and reasons:

(I) Counsel have read and re read 2(I) of the Factories Act, 1948 and Section 2(4) of the Bihar Shops and Establishment Act, 1953. These sub-sections of both the Acts read as under:

Section 2(4) of the Bihar Shops and Establishment Act:

"2(4) "employee" means a person wholly or partially employed for hire, wages including salary, reward, or commission in and in connection with any establishment and includes "apprentice" but does not include member of the employer's family. It also includes person employed in a factory who are not worker within the meaning of the Factories Act, 1948(63 of 1948), and for the purpose of proceeding under this Act, include an employee, who has been dismissed, discharged or retrenched for any reason whatsoever"

(Emphasis supplied)

Section 2(I) of the Factories Act

"2(I) "worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or member of the armed forces of the Union"

(Emphasis supplied)

In view of the aforesaid two definitions, it appears that to become an employee under the Bihar Shops and Establishment Act, 1953, a person is wholly or partially employed for hire, wages including salary, reward or commission and in connection with any establishment which includes "apprentice". It also includes a person employed in a factory who is not a worker within the meaning of Factories Act, 1948. Thus, if any person is a worker within the meaning of Factories Act, 1948 he is not included within the definition of the word Employee under Section 2(4) of the Bihar Shops and Establishment Act, 1953.

(II) Looking to the documents on record before the Labour court, Jamshedpur which is also an Authority under Section 26 of the Bihar Shops and Establishment Act, 1953, it appears that this appellant was initially appointed as an apprentice. Thereafter, as an Electrician on permanent basis. Thereafter, as a Chageman. He was further promoted as a Junior Engineer, then as an Assistant Engineer. Thereafter, further promoted as an Assistant Material Officer. Then, as a Senior Material Officer and lastly as Assistant Manager (Material), Contract Department. It appears that as his nature of work was procurement and transportation of raw materials, it was connected with the manufacturing process or is connected with a process or a work incidental to the manufacturing process. Therefore, this appellant was a Worker within the meaning of Section 2(i) of the Factories Act,

1948 and once he is covered by the definition of the word "Worker" under the Factories Act, 1948, this appellant ceases to be an employee under Section 2(4) of the Bihar Shops and Establishment Act, 1953.

This aspect of the matter has been properly appreciated by the learned Single Judge while allowing the writ petition preferred by the respondent and we see no reason to take any other view than what has been taken by the learned Single Judge.

(III) It further appears from the facts of the case that document at Ext.9 is a fabricated document presented before the Labour Court, Jamshedpur. Similarly, this appellant has also presented documents at Ext. 13 and 14 which bears the signature of this appellant. These are the Letters written by the respondents. When the respondents presented originals of the aforesaid documents before the Labour Court, which are at Ext. 13(a) and 14(a), there is no signature of this appellant upon these two documents. Thus, this appellant has presented fabricated documents before the Labour Court, Jamshedpur and this fact speaks of the behaviour of this appellant.

(IV) It further appears from the facts of the case, looking to the cross objection filed by the respondent, that this appellant has become an Advocate with effect from 22nd December, 1998 and looking to the interim order dated 13.11.1998 passed by the learned Single Judge in the writ petition bearing CWJC No. 2275 of 1998 (R), vide which stay has been granted against reinstatement, it appears that so far as back-wages are concerned, it was stated by the learned Single Judge that last wage drawn by this appellant was to be paid from the date of the award passed by the Labour Court and arrears of wages has to be paid within a period of one month from 13.11.1998. This respondent continued paying wages last drawn by this appellant and it was the duty of the appellant to point out to this court that he has become an Advocate since 22nd December, 1998. Master and Servant relationship comes to an end from the date from which this appellant has become an Advocate and therefore, he was not entitled to the last wage drawn with effect from 22nd December, 1998, but this appellant continued to receive last wage drawn till August/September, 2006. This fact also reflects the behaviour of this appellant.

(V) Thus, looking to the duties of this appellant which he was performing when he was with the respondents he was "worker" within the meaning of Factories Act, 1948. As he was a "worker" within the meaning of Factories Act, 1948 he was not "an employee" under Section 2(4) of the Bihar Shops and Establishment Act, 1953 and hence his application under Section 26 of the Bihar Shops and Establishment Act, 1953 was not tenable at law before the Labour Court, Jamshedpur.

6. As a cumulative effect of the aforesaid facts and reasons, no error has been committed by the learned Single Judge in deciding the writ petition bearing C.W.J.C.No. 2275 of 1998 (R) vide order dated 19th September, 2006.

7. There is no substance in this Letters Patent Appeal and the same is, accordingly, dismissed.

C.O. No. 07 of 2006

8. The Cross Objection is not pressed by the counsel for the respondent as it was filed only to bring to the notice of this court the facts that this appellant has become an Advocate with effect from December, 1998 and he continued to receive the last wage drawn by him without disclosing this fact.