
(2015) 09 JH CK 0023
In the Jharkhand High Court
Case No : W.P. (L) No. 6702 of 2013

Rameshwar Kumar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-F, 33(C)(2)

Citation : (2015) 4 JLJR 116

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : S.K. Dwivedi and R.K. Singh, for the Appellant; Lukesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by award dated 23.12.2011 in Reference Case No. 33 of 2005 whereby, reference has been answered in negative, the present writ petition has been filed. The brief facts of the case are that, the petitioner was employed between the period March, 1987 to January, 1992 and when the management of Swarnrekha Project, Chandil did not pay wages to the petitioner, he filed application under Section 33(C)(2) of the Industrial Disputes Act which was registered as M.J. Case No. 29 of 1992. Vide order dated 27.9.1996 a direction was issued to the opposite party to pay Rs. 16,348.30 on account of wages to the petitioner for the period between March, 1987 to March, 1990. Thereafter, petitioner's service was terminated and an industrial dispute was raised which after conciliation proceeding failed, was referred to the appropriate Government. The appropriate Government vide order dated 5.10.2005 referred the dispute for adjudication to the Labour Court, Jamshedpur. Finally, the reference has been answered against the workman. Aggrieved the petitioner has preferred the present writ petition.

2. Heard the learned counsel for the parties.

3. The learned counsel for the petitioner submits that it is not in dispute that the petitioner worked between March, 1987 to March, 1990 and he completed 240 days and thus, the finding recorded by the Labour Court that the petitioner did not continuously work for 240 days preceding the date of his termination, is factually incorrect. It is contended that without complying with the conditions under Section 25-F of the Industrial Disputes Act, termination of the petitioner from service was illegal and therefore, the petitioner was entitled for reinstatement in service. It is further submitted that, the management did not adduce evidence orally or documentary however, merely on the ground that the workman failed to establish that he worked between the period March, 1990 to January, 1992, the reference has been answered in negative. The learned counsel for the petitioner relies on decision in Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda, .

4. The learned counsel for the respondent-State of Jharkhand submits that the reference itself was not maintainable. The Department of Water Resources, Government of Jharkhand is not an Industry under the Industrial Disputes Act. The Labour Court has erroneously relied on a decision in C.W.J.C. No. 52 of 1997(R) and, on facts also, the workman failed to establish a case for regularisation of service. No evidence was produced by the workman that he continued to work till January, 1992 when allegedly his service was terminated.

5. I have carefully considered the submissions raised on behalf of the parties and perused the documents on record.

6. A perusal of award dated 23.12.2011 would disclose that M.J. Case No. 29 of 1992 was finally disposed of on 27.9.1996. In application under Section 33(C)(2) of the Industrial Disputes Act, the petitioner had claimed that he continued to work till January, 1992 however, the claim of the petitioner only for the period between March, 1987 to March, 1990 was accepted by the Court. Order dated 27.9.1996 was not challenged by the workman. Though, on behalf of the opposite party no evidence was produced, the fact remains that the workman admitted during cross-examination that no appointment letter was issued to him. Neither any advertisement for appointment was issued nor he submitted an application for appointment. It is not in dispute that no interview was conducted and the workman was employed by Sub-Divisional Officer namely, Mahindera Babu on Muster roll. Merely because an erroneous finding has been recorded by the Labour Court that the workman failed to establish that he continuously worked for 240 days preceding the date of termination, the workman would not become entitled for regularisation. For seeking regularisation, a workman must establish that after being appointed validly, he continued to work for such a long period as provided under the management's rules/regulations, so as to entitle him for regularisation. The said fact has not been established by the workman. Even if it is assumed that the workman completed 240 days between the period March, 1987 to March, 1990, it alone would not confer a legal right in the workman to seek regularisation in the service. I further find that the Labour

Court has taken note of order in C.W.J.C. No. 52 of 1997(R), on behalf of the management. The decision of this Court in L.P.A. No. 303 of 2007* "Pranaya Kumar Srivastava @ Pranay Kumar Srivastava vs. The State of Jharkhand" was not brought to the notice of the Labour Court. The Division Bench of this Court has authoritatively held that Department of Minor Irrigation is not an industry. Considering the above facts, I find no merit in the writ petition and accordingly, it is dismissed.

*Ed.--Reported in Pranaya Kumar Srivastava Vs. The State of Jharkhand, .