
(1999) 11 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 10265 of 1998

Sanjay Kumar Tiwary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2(oo), 25, 25F

Citation : (2000) 4 PLJR 771

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi and Viveka Nand Pathak, for the Appellant;
Rajeev Prakash for State, for the Respondent

Judgement

S.N. Jha, J.—This writ petition on behalf of seven petitioners is directed against the order of termination of their services vide letter no. 254 dated 17.10.98 of the Incharge Medical Officer, Vijayeeupur, Gopalganj passed pursuant to the direction of the Director-in-chief, Health Services, contained in his letter no. 69(22) dated 21.1.98. The services of the petitioners were earlier also terminated in 1991. The petitioners moved this Court in C.W.J.C. No. 11289/92, which they withdrew on 6.1.93 stating that they would seek remedy before the appropriate court under the Industrial Disputes Act with respect to their grievances. The petitioners, it appears, raised a dispute which was eventually referred to the Labour Court, Chapra for adjudication "as to whether order to termination of their services is proper ? If not, what relief they are entitled to ?" The reference was registered as Reference case No. 8 of 1994. Vide judgment and award dated 1.12.94 the Labour Court held that termination of services was violative of provisions of Section 25 F.I.D. Act and therefore, not in accordance with law After holding that the termination was unjust and illegal, the court held that the petitioners are entitled to reinstatement with full back wages and other benefits and further entitled to regularisation of their services. The award was thereafter sent to the State Government for publication in the official gazette which was done. On the ground of non-implementation of the award a complaint

was filed of which cognizance was taken and the case is pending trial. The petitioners in the meantime were reinstated on the post on 30.12.95. As, however, salary was not being paid to them, they came to this Court in C.W.J.C. No. 9981/96. A plea appears to have been taken on behalf of the respondents in that case to the effect that implementation of the award has been stayed by the District Judge. This was a obvious error inasmuch as what had been stayed by the District and Sessions Judge was the order taking cognizance on the complaint filed for non-implementation of the award as stated above which was later vacated. In fact as already pointed out the case is pending trial in the competent court. C.W.J.C. No. 9981/96 was finally disposed of on 27.6.97. This court directed the Director-in-chief, Health Services to look into the matter and if the award is still effective, to reinstate the petitioners in service "at least on daily wages basis" and if any regularisation order has been passed by the lower court (sic for Labour Court) then order dated 30.12.95 should be given effect to.

2. Instead of passing any effective order in favour of the petitioners, by the impugned order their services have been terminated with retrospective effect.

3. Sri Shashi Shekhar Dwivedi, learned counsel for the petitioner submitted that whole stand of the respondent before this court in the previous writ petition was misconceived as the implementation of the award was never stayed. Counsel emphasized that since the respondents have not challenged the correctness of the award of the Labour Court they are estopped from doing so at this stage and thus have no option but to reinstate the petitioners giving them arrears of salary and also regularise their services as directed by the Labour Court.

4. On behalf of the respondents it was submitted that the award was passed *ex parte* without giving any notice of the proceeding to the concerned authorities of the Government.

5. It is true that the award of the Labour Court has not been challenged by the respondents. There is, however, a fundamental error in the order of the Labour Court which is difficult to ignore. As indicated above, the Labour Court passed the award on the finding that termination of the services of the petitioners was violative of the provisions of Section 25F of the Industrial Disputes Act. Section 25F prohibits the management from retrenching any employee except in the manner laid down therein. Where conditions precedent as mentioned therein are not fulfilled, the order of termination becomes bad and the employee becomes entitled to consequential benefits as if no retrenchment order was ever passed, the term "retrenchment" has been defined in clause (oo) of Section 2 of the I.D. Act to mean "the termination by ther employer of the service of a workman for any reason whatsoever otherwise as a punishment inflicted by way of disciplinary action, but does not include :

(a).....

(b).....

(bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c).....

6. There are several decisions of the Courts in which it has been held that termination of engagement of persons working on daily wage does not amount retrenchment within the meaning of clause (oo) after insertion of sub-clause (bb) by Act 49 of 1984 with effect from 18.8.84. Reference for instance may be made to a decision of this Court in the case of Krishna Murari Prasad & anr. vs. The Allahabad Bank through its Chairman-cum-Managing Director & ors., 1991(1) PLJR-567. The petitioners admittedly being daily wages employees prior to termination of their employment in 1991 could not therefore complain of any "retrenchment" within the meaning of section 2(oo) of the Act and that being so, provisions of Section 25F were clearly not applicable.

7. That apart, on general principles also even if a particular order is held to be illegal and accordingly set aside, the consequence of setting aside cannot confer on the person a status which was not enjoyed by the person at the time the impugned order had been passed. The petitioners admittedly being daily wages employees no order could be passed for regularisation of their services nor any order could be passed for payment of arrear of salary. Such an order in my opinion can be passed in respect of persons who hold regular employment, but retrenched without following the procedure and fulfilling the conditions laid down in Section 25F of the Industrial Disputes Act. The defect in the order of the Labour Court being so patent I find it difficult to accept the contention of the counsel for the petitioners in toto and on their face value.

8. However, there is already an order of this Court in C.W.J.C. No. 9981/96. That order inter alia had said that if award is still effective the petitioners should be reinstated in service "at least on daily wage basis". It would only be just and proper and in consonance with the earlier direction of this court that the petitioners be treated as reinstated on daily wage basis. The respondents, particularly Director-in-chief, are accordingly directed to issue fresh order within two weeks of the receipt of copy of this order reinstating the petitioners and to pay them wages admissible according to rules. Such entitlement shall be reckoned from the date of passing of the order which must be issued within two weeks from the date of receipt of a copy of this order as aforesaid.

9. It is needless to point out that reinstatement would not confer on the petitioners the status of regular employees and their services therefore will be liable to be terminated for good reasons in accordance with law. If a permanent employee can be removed from service according to law, surely, a daily wage employee cannot claim better rights, but I must clarify that above observation should not be used as a handle to remove the petitioners from service without

sufficient cause. This writ petition is, accordingly disposed of with the directions and observations as made hereinabove.