
(2004) 07 JH CK 0001

In the Jharkhand High Court

Case No : C.W.J.C No. 2267 of 1997 (R)

Satya Narain Sharma

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 2(4), 26(2)
Constitution of India, 1950 — Article 226

Citation : (2004) 4 JCR 219

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : R. Krishna, for the Appellant; H.K. Mehta and Satish Bakshi, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In this writ application, the petitioner has prayed for quashing of order dated 6.6.1997 passed in B.S. Case No. 9/93 by the Presiding Officer, Labour Court, Ranchi dismissing the complaint petition u/s 26(2) of the Bihar Shops and Establishment Act.

2. The petitioner's case is that he was appointed in the year 1962 and was posted at Ranchi and continued to work at Ranchi in the respondents No. 3 company. The company has its Head Office at Calcutta and its different branches at various towns in India including at Patna and Ranchi. According to the petitioner, the work assigned to him was the work of sales representative, in real sense he was not controlling the affairs of the company at Patna. By virtue of a Power of Attorney dated 3.2.1983 the petitioner was given an authority to act as a Manager but the said Power-of-Attorney was executed by respondent No. 3 for specific performance and no absolute power with regard to the management of affairs of the Patna Branch was ever given to him. According to the petitioner, since he was never given the duties to function as an independent authority as a Master to this subordinates, he was not holding a managerial post either at Patna

or Ranchi. According to him, although he had been functioning as Branch Manager at Patna yet the nature of job was of an employee and not managerial. He was subsequently transferred to Ranchi designated as Manager on Special Duty he was assigned to work to receive/collect orders from various parties, collect payments from them and sent compliance report to Patna office and head office. At Ranchi, the petitioner was the sole employee and no other person was appointed to perform the job under his control and direction. Petitioner made out a case that he was not paid his salary for December, 1992 in time and as such he wrote several letters to the Chairman, who instead of paying his salary, sent a letter dated 4.6.1993 asking the petitioner to deposit a sum of Rs. 12,427/- with Patna Branch which was shown standing in his name and debited in his account and thus in that way the respondent No. 3 developed bias against him. For the said reason and also that the petitioner prayed for payment of salary of December, 1992, a letter was issued on 15.6.1993 threatening him and levelling false allegation which ultimately culminated into a termination of the services of the petitioner by letter No. JJA-13/ SNS/93 dated 14.7.1993. According to the petitioner, when show cause notice was not served on him. Aggrieved by the said termination order, the petitioner filed complaint petition u/s 26(2) of the Bihar Shops and Establishment Act, (hereinafter referred to as the "said Act" for the sake of brevity) before the respondent No. 2, which was registered as B.S. Case No. 9 of 1993 and in the said case the respondents also appeared on notice and contested the same. Both the parties led evidences, oral and documentary. The Presiding Officer, Labour Court then passed the impugned order dismissing the complaint of the petitioner, which is under challenge in this writ application. The grounds of challenge made out in the writ application is that the Presiding Officer, Labour Court has not properly appreciated the material and evidences on record and has arrived at erroneous conclusions which are not based on legal evidences and are perverse.

3. The respondent No. 3, M/s. J.J. Automotive Limited, who is admittedly the employer of the petitioner, appeared on notice and filed a detailed counter affidavit. In the counter affidavit, the respondent No. 3 refuted the grounds made in the writ application stating, inter alia, that there is absolutely no infirmity, illegality or arbitrariness in the order of the Presiding Officer, Labour Court. The said order has been made on thorough appraisal of evidences and materials on record and also on proper appreciation of the provisions of law and as such the same is wholly sound and legal.

4. Mr. R. Krishna, learned counsel appearing on behalf, of the petitioner made submissions in support of his grounds taken in the writ application. According to him from the materials brought on record, the Presiding Officer should have held that the petitioner comes within the definition of an employee as defined in Section 2(4) of the said Act. According to him, it is evident from the record that the petitioner at the relevant time was working alone and there was no other employee of whom the petitioner had any control or supervision. According to Mr. Krishna, a Manager is not expected to discharge a duty of sales representative or

salesman. According to him, after his transfer at Ranchi, he was assigned the duty of sales representative and salesman and in that view, it cannot be said that the petitioner was holding a managerial post, though he was called Manager or Branch Manager in the letters or in the document. According to Mr. Krishna, only labeling the word "Manager" does not mean that he comes within the ambit of Section 2(5) of the said Act, rather in view of his work and duties he comes within the definition of "employee" as envisaged u/s 2(4) of the Act. On that premise, Mr. Krishna submits that the impugned order is vitiated due to total non-consideration of the said relevant facts and the same is arbitrary and illegal.

5. Mr. Satish Bakshi, learned counsel appearing on behalf of the respondent Nos. 3 and 4, on the other hand, emphatically supported the order of the Labour Court. Mr. Bakshi pointed out that the order has been passed on thorough and proper consideration of the evidences and materials on record and Labour Court being a competent Court for that purpose has decided the issue holding that the petitioner was holding a managerial post and was not an employee within the ambit of Section 2(4) of the said Act. According to Mr. Bakshi, there are overwhelming documentary evidences to support that the petitioner was holding a managerial post while there is not an iota of evidence to contradict the same. According to him, the said finding) of fact arrived at on thorough appraisal of the evidences, cannot be interfered with by this Court in exercise of its writ jurisdiction. Mr. Bakshi, the learned counsel, further submitted that Section 26 of the said Act refers two words "employer" and "employee", the meaning of which has to be read in context of the said Act. The petitioner not being the employee, the complaint on his behalf under the provisions of Section 26(2) of the said Act, is not at all maintainable. According to Mr. Bakshi, the labour Court has decided all the points in right perspective and in accordance with law and has rightly come to a conclusion that the complaint petition is not maintainable and has dismissed the same on proper appreciation of facts, material and provisions of law and there is no illegality in the said order.

6. Mr. Himanshu Kumar Mehta, learned Government Advocate appearing on behalf of the respondent Nos. 1 and 2 fully supported the contentions and submissions made by Mr. Bakshi and additionally submitted that the case of the petitioner does not come within the scope of the said Act, rather if at all there is any case, it comes within the purview of Industrial Disputes Act. According to Mr. Mehta, the Presiding Officer, Labour Court has not committed any illegality and there is absolutely no arbitrariness on his part as has been alleged by the petitioner in this writ application. According to him, the said order is sound and legal and requires no interference by this Court.

7. I have heard the learned counsel of the parties at length and perused the materials and evidences on record, I find that the impugned order has been passed by the Presiding Officer, Labour Court, on thorough discussion of evidences and materials on record. After appraising and scrutinizing the evidences properly, the Labour Court has come to the finding that the

complainant is not an employee, rather he is an employer as a Manager within the meaning of the said Act and that the application under the said Act, is not maintainable. It has been categorically held that the petitioner was holding a managerial post and the provisions of the Act are not applicable in his case. The learned counsel appearing on behalf of the petitioner could not bring to my notice any illegality in the said finding rather went on submitting that although there is no such evidence in contradiction, the nature of job of the petitioner was not managerial and he comes within the definition of an employee falling within the ambit of Section 2(4) of the said Act. I find no substance in the said submission of the learned counsel. Since, the finding of the Tribunal is based on evidence on record, the said findings cannot be said to be illegal, perverse or arbitrary. This Court in exercise of writ jurisdiction cannot reverse such finding of fact, unless the finding is perverse or based on no evidence, which is not the case here. In that view of the matter, I find no infirmity in the said order of the Labour Court warranting any interference in exercise of extra-ordinary writ jurisdiction. This writ application is, accordingly, dismissed.

However, there will be no order as to costs.