
(2009) 04 PAT CK 0113
In the Patna High Court

Shatrughan Prasad Sah

APPELLANT

Vs

Saran Kshetriya Gramin Bank

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2010) 124 FLR 567 : (2010) 2 LLJ 820 : (2009) 4 PLJR 402

Hon'ble Judges : Shiva Kirti Singh, J; Dharnidhar Jha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shiva Kirti Singh and Dharnidhar Jha, JJ.—Heard the parties.

This Letters Patent Appeal has been preferred by the respondent-employee against whom writ petition bearing CWJC No. 4814 of 2006 has been allowed by the order under appeal dated January 14, 2009 and the award dated December 29, 2005 passed by the Presiding Officer, Industrial Tribunal, Patna in Reference Case No. 2(C)/2003 has been set aside at the instance of Saran Kshetriya Gramin Bank, Chapra which has now been redesignated as Uttar Bihar Gramin Bank.

2. From the award dated December 29, 2005 contained in Annexure-t to the LPA it is clear that the appellant sought an adjudication on the issue: "whether the action of the management of Saran Kshetriya Gramin Bank, Satan in terminating the services of Sri Shatrughan Prasad Sah, Sweeper-cum-Messenger is justified? If not, what relief the workman is entitled?." The management, writ petitioner denied relationship of employer and employee as well as existence of any industrial dispute between the parties in the eyes of law. According to the management the worker, Shatrughan Prasad Sah, was not a worker of the Bank within the meaning of Section 2(oo) of the Industrial Disputes Act (hereinafter referred to as the Act).

3. The Tribunal decided in favour of the workman by holding that the attendance sheets from December, 1983 to February, 1985 show that the workman worked in the Bank during the relevant period and although he could not produce copy of attendance sheet till the date of his retrenchment, i.e., till November 27, 1985 the attendance sheet from December, 83 to February, 85 showed that he had worked for more than 240 days in a calendar year. On that basis the Tribunal held that the management had violated Section 25-F of the Act in retrenching the workman with out following the conditions incorporated in the Statute. The Tribunal held the action of management as not justified and further held that the workman will be entitled to be regularized in subordinate cadre of Bank service from November 28, 1985 and get all the benefits admissible to his rank and post from the date of his reinstatement.

4. On behalf of the appellant it has been submitted that in view of the finding of the Tribunal the learned writ Court committed an error in holding that the law requires the workman to establish that he was in employment for more than 240 days in the calendar year preceding the date of termination. We have underscored the relevant clause in earlier sentence only for the sake of convenience. We find no substance in the aforesaid submission advanced on behalf of the appellant in view of catena of judgments of the Apex Court noticed by the writ Court on this point.

5. On behalf of the appellant it has been submitted in alternative that even if the writ Court came to a right conclusion that the finding of the Tribunal was not sufficient to infer breach of Section 25-F of the Act, the matter should have been remitted back by the writ Court so that the Tribunal would have summoned further materials from the management so that a sincere effort could have been made to answer the issue whether the appellant was in employment for more than 240 days in the calendar year preceding the date of termination, that is, November 27, 1985.

6. Learned counsel appearing for the management submitted that no useful purpose will be served by remitting the matter back to the Tribunal because the appellant being a daily wage worker is not entitled to claim to be a workman as defined by Section 2(s) of the Act and even if he succeeds in showing that he is a workman as defined under the Act, he cannot claim that he was subjected to retrenchment in view of Sub-section (bb) of Section 2(oo).

7. Both the parties cited different case laws in support of their respective cases that the appellant could not or could raise a dispute under the Act on account of alleged retrenchment. However, we do not propose to go into this dispute in view of certain peculiar facts of this case. It is admitted before us that the appellant, before approaching the Industrial Tribunal with the present reference had challenged his removal from service through a suit before the civil Court in which he obtained a decree in his favour which was put to execution. However, before the executing Court the management succeeded in getting rid of the effect of that decree by adopting a stand that civil Court had no jurisdiction in the matter

since the dispute was covered by the provisions of Industrial Disputes Act. Such stand of the management was accepted by the executing Court. Aggrieved by that the appellant approached this Court through Civil Revision No. 2187/1996 in which notices were issued to the concerned opposite parties. We have seen the records of that Civil Revision which shows that notices were served also. This Court dismissed the revision application on November 17, 1997 holding thus: "there is no dispute in the present case that the petitioner is a workman within the meaning of Industrial Disputes Act. It would a priori follow that he had remedy available to him under that Act. The suit in the civil Court was, therefore, not maintainable.

8. In our considered view the management now cannot be permitted to take a different stand that the appellant, a workman, has no remedy available to him under the Industrial Disputes Act. When a serious challenge was made on that ground, we gave an option to learned counsel for the management to choose between the civil Court decree or the option of remitting the matter to the Tribunal under Industrial Disputes Act. Learned counsel preferred to stick to the stand of the management in the execution proceeding and hence, we have no difficulty in remitting the matter back to the learned Tribunal for deciding the main issue as to whether the workman had worked for more than 240 days in the last preceding 12 months. There is no dispute that last preceding 12 months period would have to be counted backwards from November 27, 1985 It goes without saying that the parties will be at liberty to advance all their arguments and points including the point whether in view of Articles 14 and 16 of Constitution of India, a direction for regularization of service can be given by the Tribunal even if it is found that the workman, a casual daily wager was wrongly retrenched. Reinstatement and regularization may have different connotation in law. The Tribunal shall decide the issue if raised before it by the management in accordance with law. The appeal is, thus, allowed in part and the only modification we make in the order of the writ Court is to substitute the direction for dismissal with a direction of remitting to the Tribunal. Considering the hardship or the workman in such cases, we direct the Tribunal to decide the dispute as early as possible, preferably, within four months from the date of receipt of a copy of this order.