
(2016) 04 PAT CK 0164

In the Patna High Court

Case No : Letters Patent Appeal No. 1585 of 2010 in Civil Writ Jurisdiction Case No. 11805 of 2010

State Bank of India

APPELLANT

Vs

Barun Kumar

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Citation : (2016) 4 PLJR 225

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. S.D. Sanjay, Senior Advocate, for the Appellants; Mr. K.C.K. Sinha, Advocate, for the Respondents; Mr. S.D. Sanjay, Senior Advocate, Mr. Abhishek Kumar, Advocate, for the Appellants; Mr. Bindhyachal Singh, Senior Advocate, Mr. Ram Binod Singh, Mr. Sur

Final Decision : Disposed Off

Judgement

Mr. Navaniti Prasad Singh, J. (Oral) — These three Letters Patent Appeals arise from the judgment and order of learned Single Judge of this Court passed basically in C.W.J.C. No. 11805 of 2010 and followed in the other writ application.

2. The basic question involved is whether the Canteen Boys who were serving in the canteens and were also used as Messengers in the Branches of State Bank of India could be directed to be regularised by this Court in a writ proceeding.

3. Learned Single Judge referring to Article 39 of the Constitution held that they have to be regularized. State Bank of India has filed this intra - Court Appeal against such directions.

4. Sri S.D. Sanjay, learned Senior counsel, in support of the appeal, submits that so far as Canteen Boys are concerned, there is no privity of contract between the State Bank of India and the canteen boys who are engaged by the employees of the State Bank of India for their personal convenience through the aegis of Local Implementation Committee, which is nothing but a committee of Bank Staff

providing for their own benefit and convenience. These Canteen Boys are not paid by State Bank of India nor are they on the rolls of State Bank of India. There are times when some menial employee of the State Bank of India does not come, i.e. Sweeper or the Messenger Boy, then only work intermittently, is taken from these Canteen boys as Sweeper or Messenger Boys. In our view, it would not make much of a difference as they are not regularly shown employees. The first requirement for regularisation is the key of contract. As noted above, there is no privity of contract between the canteen boys and the State Bank of India. The privity of contract, if any, is between canteen boys and the Local Implementation Committee. It would not be proper for us to interfere, once this matter has been settled by the Apex Court in the case of State Bank of India v. State Bank of India Canteen Employees' Union (Bengal Circle), since reported in (2000) 5 SCC 531 ; where similar questions and arguments have been taken on record and the Apex Court set aside the order of the Calcutta High Court directing the absorption and regularisation of Canteen Boys.

5. Sri Bindhyachal Singh, learned counsel appearing in one of the appeals of the employee submits that Bank having taken work as Messenger or as Sweeper, they became integral part of the establishment. They having worked more than 240 days, were entitled to benefits in terms of Industrial Disputes Act.

6. If that be so, then, in our view, they have their forum under the Industrial Disputes Act. Surely, the writ Court in such situation should not have entertained the writ petition at the very first instance.

7. In view of the judgment of the Apex Court, as noted above, we have no option but to allow the appeal and set aside the order of the learned Single Judge.