

(2006) 10 JH CK 0040

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 261 of 2000 (R)

Surya Roshni Limited, Assistant General Manager, Surya
Roshni Limited and Senior Area Manager

APPELLANT

Vs

Presiding Officer, Labour Court and Atanu Sen Gupta

RESPONDENT

Date of Decision : 31-10-2006

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 2(4), 2(5), 26, 26(2)
Bihar Shops and Establishments Rules, 1955 — Rule 21

Citation : (2007) 2 BLJR 1145 : (2007) 115 FLR 396 : (2007) 3 JCR 519

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Pravash Kumar and T. Kabiraj, for the Appellant; Ashwini Kumar Sinha and V.K. Sinha, for the Respondent

Judgement

Amareshwar Sahay, J.—The petitioner M/s. Surya Roshni Limited, by filing this Writ Application, has challenged the order contained in Annexure-10 to the Writ Application dated 21.12.1999 in B.S. Case No. 7/98 by the Presiding Officer, Labour Court, Ranchi, whereby and whereunder, the Labour Court allowed the application u/s 26(2) of the Bihar Shops and Establishment Act, 1953 read with Rule 21 of the Bihar Shops and Establishment Rules, 1955 filed by the respondent No. 2 Atanu Sengupta directing his reinstatement in service with full back wages and consequential benefits.

2. A complaint u/s 26(2) of the Bihar Shops and Establishment Act, 1953 (hereinafter referred to as Act) was filed by the respondent No. 2 Atanu Sengupta (hereinafter referred to as the Complainant) before the Labour Court stating therein as follows:

(a) He was initially appointed as Deputy Manager (Technical Marketing) on 03.02.1996 by M/s. Surya Roshni Limited on a fixed salary of Rs. 7,230/- per month. The Complainant joined at the place of posting at Bhubneshwar Sales Office under the administrative control of the Sales Officer. From Bhubneshwar,

he was transferred to Calcutta Sales Office and he joined there at Calcutta. The service of the Complainant was confirmed on 16.10.1996. After granting increment, his salary was fixed at Rs. 8,030/- per month with effect from 01.01.1997 apart from other allowances.

(b) From Calcutta, he was transferred to Ranchi Sales Office and thereby, he joined Ranchi Sales Office on 21.04.1997. He was made responsible for Technical Marketing Sales for the entire Ranchi and Patna Sales territory and his Headquarters was fixed at Ranchi. His nature of job was to promote sales of the produce of the Company. He was an employee within the meaning of Section 2(4) of the Act and M/s. Surya Roshni Limited was the employer within the meaning of Section 2(5) of the said Act.

(c) The Complainant was not acting in any supervisory or managerial position rather, he was posted under the administrative control of the Senior Area Manager, Ranchi Sales Office who was his reporting officer.

(d) All of a sudden, the complainant received a letter dated 27.01.1998 on 31.01.1998 whereby, his services were terminated with effect from 31.01.1998 on the ground that his services were not found satisfactory and his performance during the tenure of the service was poor.

(e) Prior to issuance of such letter, he was never served with any chargesheet. According to the Complainant, since the letter of termination was stigmatic and as such, it was incumbent upon his employer to serve a formal chargesheet and to hold domestic enquiry but the same was not done and therefore the Complainant challenged the order of termination. He further stated that no compensation as prescribed in proviso 1 or proviso 2 to Section 26 of the Act was made before dispensing with his services.

3. The writ petitioner M/s. Surya Roshni Limited and his officers who were arrayed as opposite party in the said complaint petition filed by the Complainant, filed their show-cause contesting the claim of the Complainant on the grounds:

that the Bihar Shops and Establishment Act, 1953 was not applicable because the Complainant was not an employee as envisaged within the meaning of Section 2(4) of the Act rather, the Complainant fall in the category of the employer within the definition of Section 2(5) of the Bihar Shops and Establishment Act and therefore, the Complaint u/s 26 of the Act filed by the Complainant was not maintainable.

4. In support of the respective claims, both the parties led their evidences both oral and documentary and thereafter, by the impugned order, the Labour Court passed the impugned order in favour of the Complainant employee asking the employer to reinstate the Complainant in service with full back wages which is under challenge in this writ application.

5. While admitting this writ application on 11.06.2001, this Court granted conditional stay of the impugned order only with regard to payment of the back

wages subject to the condition that the concerned employee i.e. the Complainant was reinstated in service in terms of the impugned order of the Labour Court.

6. Admittedly, during the pendency of this writ application, the respondent No. 2 Atanu Sengupta was reinstated in service by the writ petitioner but as it appears from the reply/rejoinder filed on behalf of the petitioner that the respondent No. 2 subsequently, during the pendency of this writ application, resigned from the service and he has been relieved from the service with effect from 11.12.2002.

In view of this changed situation; Mr. Ashwini Kumar Sinha, learned Counsel for the respondent No. 2, states that now he confines his arguments with regard to back wages only as has been ordered by the Labour Court in the impugned order.

7. It is a settled law that a finding of fact arrived on the basis of the materials on record by the Labour Court/Tribunal is generally not interfered with by this Court in its writ jurisdiction by reappraisal of the evidence unless it is specifically shown that any of the findings arrived at by the Labour Court or the Tribunal, is not based on record or is perverse.

8. Mr. Pravash Kumar Sinha, learned Counsel appearing for the petitioner has tried to assail the findings of the Labour Court mainly on the ground that by wrong appraisal of the evidence on record by the Labour Court, it arrived at a wrong findings of fact that the Complainant (respondent No. 2 herein) was having no control over the Management of the establishment at Ranchi Sales Office since Shri R.K. Mishra was Area Sales Manager of the Ranchi Sales Office. Mr. Sinha further contended that the findings of the Labour Court that the Complainant was an employee and not an employer is not correct in view of the evidence on record. According to him, the Labour Court committed error in holding that the Complaint filed u/s 26 of the Act was maintainable.

9. From the impugned order, I find that the learned Labour Court has discussed in details each and every evidence/materials on record and then, on appreciation of the facts based on the record has rightly come to the following findings arrived at paragraphs 15 and 16 of the impugned order which is quoted hereinbelow:

15. On the basis of above facts and circumstances of the case, I find that complainant had no control over the management of the establishment of the opp. Parties at Ranchi Sales Office. In this case it is admitted that R.K. Mishra was Area Branch Manager of Ranchi Sales Office. It is also evident that L.T.C. of the complainant was forwarded to the Head office by R.K. Mishra Area Manager. From the evidence of O.W.-1, it is clear that Area Manager is the head of Branch office. Admittedly complainant was Dy. Area Manager Technical Marketing, Ranchi office. There is nothing to show that the complainant was appointing or dismissing authority of any staff of the Ranchi Sales Office. There is also nothing to show that the complainant ever took any decision on important dispute on behalf of the management for the purposes of administration of the Ranchi Sales Office. Thus, I find that complainant is an employee and not an employer as defined under the Bihar Shops and Establishments Act. In view of above facts

and circumstances, I find no defects in the complaint petition. Hence, the complaint petition is maintainable.

16. This is also one of the point to be decided in this case. Ext.1/H is a letter dated 27.1.98 by which the service of the complainant was terminated. From this letter it appears that service of the complainant was terminated due to poor performance of the complainant. From this letter, it also appears that one month's salary in lieu of notice shall be paid. It is also mentioned that dues of the complainant is, if any, will be settled in due course. From this letter, it is obvious that service of the complainant was terminated by putting stigma. Admittedly, no chargesheet was framed against the complainant. Admittedly, no enquiry was held against the complainant on the allegation on which complainant was dismissed. Complainant clearly stated while deposing in Court that no chargesheet was issued against him. It is also stated that no domestic enquiry was conducted against him. According to the complainant, his dismissal is without any valid reason. It is also stated that no compensation was paid to him. O.W.-1 tried to show that domestic enquiry was held against the complainant but from his statement, it appears that this witness is confused on the point of domestic enquiry. Ext.A/1G the letter dated 11.7.97 has been filed that performance of the complainant was not satisfactory. But, admittedly no enquiry was conducted giving chance to the complainant to meet the allegations as levelled against him. Admittedly, no notice was served on the complainant nor one month's wages in lieu of such notice was given to him. Admittedly, no compensation was paid to the complainant before dispensing with from the services. Thus, it is obvious that service of the complainant was terminated without performing the conditions mentioned u/s 26 of the Act. The termination order Ext.1/11 is against the provision as mentioned in Section 26 of the Act. Thus, I find that termination order is not just and proper. It is illegal and against the law.

10. From the above findings, it is apparent that the findings arrived at by the Labour Court is purely based on the materials on record and those are the findings of fact which, in my view, does not require any interference by this Court in its writ jurisdiction.

11. So far as the question of payment of back wages/compensation is concerned, it appears that the law in this regard is that the back wages are not to be paid as a matter of course. Various factors pertaining to employment are to be kept in view along with the actual service by the employee and the nature of such service. Direction for payment of back wages cannot follow automatically upon setting aside the so-called termination. Before awarding back wages, the Labour Court has to address itself to the question whether the concerned employee was otherwise employed or had at all made a plea for back wages. Reference in this regard be made to the case of Nagar Panchayat Kharkhauda v. Yogendra Singh reported in 2005(13) SCC 428.

12. In the present case, as it appears from the impugned order that the Labour

Court has allowed full back wages to the Complainant (respondent No. 2 herein) without following the above noted criteria laid by the Supreme Court as noticed above in the case of Nagar Panchayat Kharkhauda... (Supra) and therefore, in my view, that part of the order by which the Labour Court directed the payment of full back wages to the respondent No. 2/Complainant, cannot be sustained.

13. In view of the discussions and findings above, this writ application is partly allowed and only that part of the impugned order whereby the Labour Court directed the payment of full back wages to the respondent No. 2/Complainant, is hereby set aside.

There shall be no order as to costs.