

**(2012) 07 PAT CK 0012**  
**In the Patna High Court**  
**Case No : CWJC No. 1828 of 2010**

The Chief Postmaster General, G.P.O., Patna, Bihar and  
Another

APPELLANT

Vs

The Regional Labour Commissioner (C), Patna and Others

RESPONDENT

**Date of Decision :** 25-07-2012

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2(s), 25B, 25F, 25H

**Citation :** (2012) 135 FLR 759 : (2012) 3 PLJR 870

**Hon'ble Judges :** Samarendra Pratap Singh, J

**Bench :** Single Bench

**Advocate :** Sudhir Kumar Tiwary, for the Appellant;

## Judgement

Samarendra Pratap Singh, J.—The petitioners pray for quashing of the Award dated 3.2.2009 passed by the Presiding Officer, Industrial tribunal, Patna in Reference Case No. 37 of 2006/No. 1(C) of 2007 directing the petitioners to reinstate Surendra Kumar, respondent no. 6, from the date of publication of the Award with full back wages calculated @ the last wages paid. According to the petitioners, respondent no. 6 was engaged in the office of the Postal Department, Mail Dak Seva, P.T. Division, Patna for few hours on casual basis from time to time depending upon urgency of work on job of Coolie. On verbal assurance, the respondent no. 6 was allowed to perform work on rate admissible to coolie for which the payment was made through coolie voucher (ACG-17). The petitioners submit that "ACG-17" vouchers are used to make payments for casual expenses like purchasing some petty/consumable items of Official usage, effecting payment to coolies, painters, Rickshaw fares, Thela fares and such other expenses as per the causal/contingency requirements. The petitioners submit that ACG-17 voucher is not a payroll or acquaintance roll given to the employees of the Management for the payment of wages.

2. The case of respondent no. 6 is that he was employed by the management as "Mailman" on 31.12.2002 and he continued to work as such till 30.4.2005. He

performed his duties from 3 P.M. to 10.30 P.M. every day. Initially he used to be paid @ Rs. 39.70 per day through vouchers which was subsequently enhanced. He claims to have put in more than 240 days of continuous service in a calendar year within a meaning of Section 25B of the Act preceding the date of termination of his services on 1.5.2005. He alleges that his service was terminated without any notice, or pay in lieu of notice or compensation. It is further case of the workman that after his termination on 1.5.2005, the management soon made appointments for the same work, without an information or opportunity to him for employment in terms of Rule 78 of the Industrial Disputes (Central) Rules, 1957 read with Section 25H of the Industrial Disputes Act. The workman even sent notice to the management but to no effect. The workman raised industrial dispute before the Assistant Labour Commissioner (Central), Patna, the Conciliation Officer under the Act. The conciliation proceedings ended in failure and on his report a reference was made for adjudication which is quoted hereinbelow:--

Whether the action of the Management of P&T Department, RMS Sub-Division, Patna in terminating the services of Shri Surendra Kumar w.e.f. 1.5.2005 and not considering him for re-employment while engaging fresh hands after 1.5.2005 is legal and justified?

3. Both sides were allowed opportunity to lead evidence and after considering the materials on record, the Presiding Officer, Labour Court passed an award on 3.2.2009, the concluding portion of which is quoted hereinbelow:--

16. Under the circumstances discussed above, I find and hold that the action of the Management of P&T Department, R.M.S. Sub-Division, Patna in terminating the services of Sri Surendra Kumar w.e.f. 1.5.2005 and in not considering him for re-employment while engaging fresh hands after 1.5.2005 is illegal and unjustified. The workman deserves to be reinstated with full back wages calculated @ the wages last paid. The management is directed to comply the same within two months from the date of publication of the Award.

4. Counsel for the petitioners submit that termination of respondent no. 6 was set aside on technical ground that no notice was issued to him or compensation paid in lieu of notice, still he could be entitled utmost for compensation and not of reinstatement. In support of his submissions, the petitioners have relied upon the decisions of the Hon'ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, ; M.P. Housing Board and Another Vs. Manoj Shrivastava, ; Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, . The petitioners with reference to the aforesaid judgments submit that the direction of the Tribunal given under the impugned Award to reinstate respondent no. 6 is wholly unjustified as it would open a Pandora box with the result that office would be burdened with unwanted staff.

5. The petitioners further submit that in similar case of same department, a

learned Single Judge of this court by order dated 14.12.2010 passed in C.W.J.C. No. 8890 of 2008 has set aside the part of the Award by which reinstatement was ordered and granted compensation of Rs. 60,000/- to respondent no. 6 as he had been in job for four years. In other words, the petitioners submit that even if the retrenchment of workman is found to be illegal, at the most he would have been entitled to compensation only.

6. On the other hand respondent no. 6 submits that no reason has been assigned by the petitioners for retrenching him. Further more, the petitioners have engaged another workman in his place to perform similar nature of work which showed that retrenchment was mala fide. He submits that petitioners ought to have considered respondent no. 6 again while engaging another person to fill up the job arising due to his retrenchment. The respondent no. 6 has referred to Section 25H of the Industrial Disputes Act and Rule 78 of the Industrial Dispute (Central) Rules, 1957.

7. Section 25-F of the Industrial Disputes Act, 1947 is quoted herein below:--

25-F. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

8. Rule 78 of the Industrial Disputes (Central) Rules, 1957 provides for re-employment of retrenched workmen. It states that at least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to all the retrenched workmen eligible to be considered therefore, to the address given by him at the time of retrenchment or at any time thereafter.

9. Respondent No. 6 thus submits that employment or engagement of other workman in his place is bad in law. He further submits that the order directing reinstatement by the Industrial Tribunal should be only interfered with if there is a jurisdictional error or the error is such a grave nature that would cause miscarriage of justice. In support of his submission, the respondent no. 6 has relied upon a decision of the Hon"ble Apex Court in the case of Devinder Singh

Vs. Municipal Council, Sanaur, .

10. I have heard counsel for the parties.

11. Initially, the management tried to dispute that respondent no. 6 will not fall within the definition of workman provided u/s 2(s) of the Industrial Disputes Act but subsequently in view of authoritative pronouncement of Hon"ble Apex Court in the case of Devinder Singh Vs. Municipal Council, Sanaur, , the petitioners noticing the futility the stand, did not pursue with the point. The Apex Court while interpreting Section 2(s) of the Industrial Disputes Act held that workman would include both "part-time" or "contract basis" on fixed wages or as a "casual employee" or for doing duty even for fixed hours. The materials on record would show that respondent no. 6 has worked for more than 240 days preceding his retrenchment.

12. From perusal of the materials on record, it is evident that no notice or compensation in lieu of notice was paid as required under the mandatory provision of Section 25F of the Industrial Disputes Act. 1947 to the respondent no. 6 before retrenching him from the job. This court in such circumstances does not find any error in the order of the Presiding Officer holding retrenchment bad. The Industrial Tribunal further noticed that no justifiable cause was given for retrenching the workman on 1.5.2005. I do not find any material on record to show that while making fresh engagement in place of the workman, a compliance of Section 25H or Rule 78 of the Industrial Disputes (Central) Rules, 1957 was adhered to. However, the workman who has been engaged in place of respondent no. 6 has not been sought to be added as party either by the respondent no. 6 or petitioners at any stage of proceeding. Any order at this stage directing employment of respondent no. 6 would amount to retrenchment of the workman who has been engaged in place of respondent no. 6 which would not be in consonance with the principle of natural justice.

13. In this view of the matter, part of the order directing reinstatement of respondent no. 6 by the Industrial Tribunal is set aside. As the respondent no. 6 has worked for a period 2? years, the petitioners are directed to pay a compensation of Rs. 20,000/- per year of service rounding off to a figure of Rs. 50,000/-. The appeal thus allowed to the extent mentioned in this order. In case the aforesaid amount is not paid within a period of four months from today, the respondent no. 6 would be entitled to 8% simple interest on the aforesaid amount. It goes without saying that in case there is future vacancy, the department would give priority to respondent no. 6 in matter of employment of similar nature. With the aforesaid observations and directions, this writ application stands disposed of.