

(2012) 09 PAT CK 0073
In the Patna High Court
Case No : CWJC No. 10771 of 2006

The Managing Director, Bihar State Tourism Development
Corporation Limited and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 18A, 2(6), 26, 26(1), 26(2)
Motor Transport Workers Act, 1961 — Section 2

Citation : (2013) 2 PLJR 245

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Alok Kumar Sinha, Manish Kumar and Indrajeet Bhushan, for the Appellant; Brisketu Sharan Pandey and Ajay Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—The Managing Director, Bihar State Tourism Development Corporation Limited as well as the Corporation are petitioners before this Court challenging the order dated 9.5.2006 passed by the Labour Court under the Bihar Shops and Establishment Act, 1953, Patna. Respondent No. 2 Kaushal Kishore Singh moved the Labour Court u/s 26(2) of the Bihar Shops & Establishment Act, 1953 (hereinafter referred to as the said Act). He assailed the order of termination dated 29.8.1995 contained in Annexure-14. His contention was that the order of termination was per se illegal and in conflict with the law as laid down u/s 26(1) of the Act. He also wanted his reinstatement with full back wages as well as other consequential benefits.

2. Submission of the learned counsel representing the Corporation is that the establishment of the Corporation does not come within the ambit of the Act because the object and purpose behind setting up of the Corporation as well as various establishments including Hotel Gautam Vihar, Rajgir was to promote tourism and is not a commercial venture of the kind which could be understood

in the common parlance of the shop and establishment. The other contention is that even if the first objection against the order is overlooked, the Labour Court has exceeded its jurisdiction in matter of grant of relief to the private respondent in the sense that he has ended with an exalted status which he did not have or had at the time of his termination or removal.

3. Admitted position is that the private respondent was engaged on daily wage basis without following any procedure as such by the erstwhile Managing Director and was working at Hotel Gautam Vihar located at Rajgir as a receptionist. All kinds of accusations and allegations came to be levelled against him from time to time for which action was taken, if not caution was advised to him but it did not make any difference which compelled the authorities to pass an order contained in Annexure-14. In such a situation it is his stand whether the Tribunal/Labour Court could have permitted reinstatement as well as payment of back wages with all consequential benefits to the private respondent.

4. The Court has gone through Section 2(6) of the Act where the word "establishment" has been defined which runs as follows:--

"establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and includes--

(i) administrative or clerical service appertaining to such establishment;

(ii) a shop, restaurant, residential hotel, eating house, theatre or any place of public amusement or entertainment; and

(iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies;

but does not include a "motor transport undertaking" as defined in clause (g) of Section 2 of the Motor Transport Workers Act, 1961 (27 of 1961).

5. A reading of the above provision would show that the establishment in which private respondent was engaged, may be as a daily wager, does come within the definition noted above. No doubt Section 18-A of the Act does give power to the State Government to exempt certain establishment from the ambit as well as the rigors of the provisions of the Act but no notification of the kind has been produced by the petitioner to show that they are class apart vis-a-vis other similarly situated establishment in the business of providing hospitality, may be with the object of encouraging tourism. The first contention of the petitioner, therefore, stands rejected.

6. Coming to the second aspect of the matter, there is no dispute that private respondent was a daily wager who was engaged by the petitioner in whatever circumstance which are not required to be gone into but then if the services of a daily wager was not found to be satisfactory or upto the mark, all that was required to be done was to take recourse to Section 26(1) of the Act. There was

no occasion for the Managing Director to use all those adjectives as well as accusations which have been talked about in Annexure-14 to remove the private respondent from his responsibility as a daily wager. In fact, it is a case of dismissal as is evident from reading of Annexure-14. Whenever there is dismissal which has been resorted to with the allegations having civil consequences, then a procedure has to be followed which has not been done in the present case. If that be so, the Labour Court has done no wrong in coming to the conclusion that the removal or the so-called dismissal of private respondent or the workman was uncalled for.

7. The Court has gone through the detailed order contained in Annexure-14 and on a reading of the same, it is in agreement with the findings given by the Labour Court that the order contained in Annexure-14 is in teeth of Section 26 of the Act and, therefore, no case for intervention is made out in favour of the petitioners.

8. However, coming to the final relief which has been granted by the Labour Court, the contention on behalf of the petitioners does merit consideration in the view that it is not the business of the Labour Court to change or alter the status or position of the Workman who had been dealt with by the management. There is no denial on behalf of the private respondent by way of any affidavit filed in opposition to the present writ application or during the course of argument by his counsel that private respondent was not a daily wager. If he was a daily wager, then there was no question of ordering reinstatement with back wages and all consequential benefits. If these words are closely scrutinized, it amounts to giving an interpretation as if the private respondent was a permanent employee of the Corporation and the termination, if held to be bad, is entitled to all the benefits of a regular employee. This aspect of the matter or relief surely merits interference by this Court.

9. This Court, therefore, is of the opinion that while holding the removal or termination of private respondent from the post was correct, however, the relief which has been granted exceeds the power of the Labour Court in the bundle of facts which are not in dispute. The private respondent could be ordered to be restored to its original position as a Workman on daily wage basis but the reinstatement will not beget him full back wages or any consequential benefits whatsoever because grant of such relief would amount to altering or changing his status from a daily wager to a permanent employee which cannot be done taking into consideration the status of the Workman and the circumstance under which he came to be removed.

10. This writ application is allowed to the extent that the order of the Labour Court will be read to mean that private respondent Kamal Kishore Singh will be restored or will be reinstated/allowed to rejoin as a daily wager but direction for full back wages and the consequential benefits stands quashed. This writ application is allowed to the extent indicated above.