
(2011) 01 PAT CK 0140
In the Patna High Court
Case No : CWJC No. 11121 of 2003

The State of Bihar

APPELLANT

Vs

Gajadhar Singh (Amin)

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0140

Judgement

B.P. Verma, J.—Heard the parties.

2. The present writ petition under Article 226 of the Constitution of India has been filed by the State of Bihar through the Executive Engineer, Petitioner herein, questioning the validity and legality of the award dated 22.12.1998 (Annexure-2) given by the learned Presiding Officer, Labour Court, Chapra, District-Saran, in Reference Case No. 6 of 1994, whereby the retrenchment of the workman, the Respondent herein, has been held to be illegal and he has been directed to be reinstated in service with effect from 10.3.1975 i.e. date of retrenchment, with all back wages.

3. The factual matrix involved in the present writ petition can be put in a very narrow compass. The appropriate Government under the meaning of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act only in short), in the present case the State Government, by a notification dated 21.1.1994 referred an Industrial Dispute raised by the workman in exercise of power u/s 10(1)(c) of the Act to the Labour Court, Chapra for its adjudication.

4. As per the case of the workman, he was appointed on the post of "Amin" on muster roll by the competent authority of the State of Bihar (employer herein) on 11.1.1973 and he continued on the post till 9.3.1975 and suddenly with effect from 10.3.1975, without complying the mandate of Section 25F of the Act, he was retrenched from the service. However, according to the case of the employer, the Petitioner in the present case, the workman was engaged on 11.12.1973 and he was allowed to function on the post of "Amin" till 10.3.1975 and thereafter he was removed from service. However, without going into the

controversy about the initial date of entry of the workman in service, even according to the case of employer, the workman remained in service for more than one year and has completed the minimum requisite days of work of 240 days.

5. On the basis of aforesaid notification dated 21.1.1994 issued by the State Government, Reference Case No. 6 of 1994 was registered in the Court of learned Presiding Officer, Labour Court, Chapra. On issuance of notice by the learned Labour Court, both sides appeared and submitted their show cause/written statement and this fact has been noticed by learned Presiding Officer in his impugned award in para-graphs-3 and 4, which are relevant and are reproduced hereinbelow for ready reference for the disposal of the present proceeding:

6. It appears that the employer/management initially filed a written statement resisting the claim made on behalf of the workman, but subsequently no witness was produced on behalf of the employer in support of his claim. Consequently matter proceeded and finally an award was prepared. Paragraph-10 of the award is relevant for disposal of the present proceeding and is reproduced hereinbelow:

7. Mr. Jainendra Kumar Sinha, learned A.C. to G.A. 6 appearing on behalf of the Petitioner, has challenged the validity of the impugned award primarily on the ground that the Department of Irrigation is not an Industry under the meaning of Section 2(j) of the Act and, therefore, in his submission, the impugned award is wholly without jurisdiction. In support of his contention he has heavily placed reliance on a Division Bench judgment dated 26th September, 1997 (Annexure-1) of this Court passed in L.P.A. No. 884 of 1996, wherein Koshi Project, Gandak Yojana and Bihar Rajya Nadighati Pariyojana, were held not to be Industry within the meaning of the Act in the light of certain pronouncements made by the Apex Court, which have been referred to in paragraph 9 of that judgment. However, he has fairly conceded that at the initial stage a written statement was filed by the Executive Engineer representing the department, but no documents were produced in rebuttal of the claim and the argument made on behalf of the workman in the aforesaid reference case. It is also sub-mitted that on the basis of award (Annexure-2), a consequential judgment dated 4.9.2006 (Annexure-A) was passed by the learned Labour Court in I.D. Misc. Case No. 3 of 2002 directing the Petitioner/employer to pay a sum of Rs. 1,51,182.14 towards the back wages from the date of notification of the reference i.e. 21.1.1994 till the date of order/judgment i.e. 4.9.2006, which was not justified.

8. Learned Counsel appearing on behalf of the Respondent workman has stoutly opposed the prayer made on behalf of the employer-Petitioner and submits that it is true that Respondent herein raised an industrial dispute regarding his retrenchment and the State Government after being satisfied issued notification dated 21.1.1994 referring the Industrial Dispute u/s 10(1)(c) of the Act for its adjudication by the Labour Court, Chapra. In the same vein, he submits that the employer, the Petitioner herein, had filed its written statement and from that

written statement also it is apparent that the workman remained in continuous service for more than one year and, therefore, it was obligatory on the part of the Petitioner herein to comply the mandate of Section 25F of the Act before passing the order of retrenchment. Learned Counsel for the Respondent workman further submits that the judgment dated 26th September, 1997 passed in L.P.A. No. 884 of 1996 (Annexure-1) by a Division Bench of this Court has been set aside by the Hon'ble Supreme Court in Civil Appeal No. 5031 of 1998 (Koshi Project Workers Association and Ors. v. State of Bihar and Ors.) vide order dated 13th December, 2000 (Annexure-R-1) . It is also submitted that question as to whether Department of Irrigation is an industry under the meaning of Section 2(j) of the Act came up for consideration before a Full Bench of this Court in the case of Bijay Kumar Bharti v. State of Bihar reported in 1983 PLJR 667, wherein the Full Bench in paragraph 46 has categorically held that Department of Irrigation shall be deemed to be an Industry within the meaning of the Act. For ready reference paragraph 46 of the aforesaid Full Bench judgment is reproduced herein-below:

46. On behalf of Respondents there is no denial of the aforesaid assertion, but it has been simply urged that as the aforesaid functions are governmental functions which the State Government is required to perform, the department cannot be held to be an "industry". From the affidavits filed on behalf of the Petitioners and the counter affidavit on behalf of the Respondents it appears that in the department there is a systematic activity organized by the State Government and its employees for satisfying the need of irrigation, supply of electricity, protection from flood. For supplying most of the aforesaid facilities people have to pay charges. As such it has to be held that such activities for satisfying human needs are analogous to trade and business. Therefore, there is no escape from the conclusion that the Department of Irrigation shall be deemed to be an "industry" within the meaning of the Act."

(Emphasis added)

9. It is also submitted that though workman is entitled to be reinstated in service with back wages with effect from 10.3.1975, but if this Court is otherwise satisfied, then in that case the Petitioner herein may be directed to pay the adequate compensation to the workman instead of his reinstatement in the service.

10. After having heard the parties at length and after considering the materials available on record, this Court comes to the following conclusion:

(i) That the workman (Respondent) was appointed on the post of Amin in the Department of Irrigation at Saran Canal Division, Gandak Project, Maharajganj in the year 1973 by the competent officer of the State of Bihar and even if the date of engagement dated 11.12.1973, as stated by the employer, is accepted to be true, in that case also he remained in continuous service for more than one year.

(ii) The State Government, an appropriate Government under the meaning of the

Act, being satisfied that Department of Irrigation is an "Industry" in view of law laid down by a Full Bench of this Court in the case of Bijay Kumar Bharti (supra), passed an order u/s 10(1)(c) of the Act referring industrial dispute raised by the workman to the Labour Court for its adjudication.

(iii) After having issued such a notification, it is not open for the State of Bihar to challenge its own notification and take a plea that Department of Irrigation is not an industry under the meaning of the Act.

(iv) In view of the law laid down by the Full Bench in Bijay Kumar Bharti case (supra) Department of Irrigation has to be held as an industry under the meaning of Section 2(j) of the Act.

(v) So far judgment of Division Bench (Annexure-1) is concerned, that was with respect to the transfer of certain employees of the department and was not exactly on the same issue; and furthermore, that judgment has already been set aside by the Apex Court.

11. In view of the findings recorded above, the reliefs prayed by the learned Counsel appearing on behalf of the Petitioner is apparently misconceived and has . to be rejected. After having come to the conclusion that the Department of Irrigation, under which workman was engaged, is an industry, the award passed by the learned Labour Court is fit to be affirmed.

12. However, one question still remains to be answered as to whether the award prepared in its present form should be allowed to stand or it should be moulded in the light of certain recent decision pronounced by the Apex Court. It is well established by long line of judgments that court can always mould the reliefs either prayed for or granted by the lower authority/court. Apparently, the Respondent was engaged on the post of Amin in the year 1973, he was retrenched from service on 10.3.1975 and the award was prepared on 22nd December, 1998, but till date the workman has not been reinstated in service and has not been paid his back wages. More than 35 years have passed since the date of retrenchment of the Respondent from the service, therefore, this Court is of the considered opinion that award dated 22nd December, 1998 (Annexure-2) is required to be modified. Instead of directing for reinstatement of workman, it would be appropriate to direct the Petitioner herein to pay adequate compensation to the workman (Respondent herein) . Recently, the Hon''ble Apex Court had occasion to consider exactly similar issue involved herein in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, and paragraphs-7 and 14 are relevant for the present case and are reproduced hereinbelow:

7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of

reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

13. In yet another case of Ashok Kumar Sharma Vs. Oberoi Flight Services, the Hon"ble Apex Court, after discussing the law laid down previously in the case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, as also in the case of Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute, has reiterated the previ-ous view and has held that on the ground of infraction of Section 25F of the Act reinstatement should not be made automatic. In the given facts adequate compensation was directed to be paid to the workman by the employer. Paragraph 10 of the aforesaid judgment in the case of Ashok Kumar Sharma (supra) is relevant and is quoted hereinbelow:

10. It is not necessary to multiply the decisions of this Court wherein award of compensation in lieu of reinstatement and back wages has been held to be adequate and in the interest of justice. In light of the aforesaid legal position, the view of the High Court that monetary compensation in lieu of reinstatement of the workman would be proper cannot be said to be unjustified. However, we find that the compensation in the sum of Rs. 60,000/- awarded by the Division Bench is grossly inadequate. Regard being had to all relevant facts and circumstances, including the nature of employment and the fact that he was a confirmed employee, in our considered view compensation of Rs. 2 lakhs to the Appellants by the Respondent shall meet the ends of justice. We order accordingly. Such payment should be made, after deducting the amount already paid, within six weeks from today failing which the same shall carry interest at the rate of 9% per annum on unpaid amount .

14. After having noticed the judicial pronouncements of the Apex Court, this Court is of the view that instead of reinstating the workman in service after lapse of more than 35 years from the date of retrenchment the Respondent herein be adequately compensated by the Petitioner. From the order/judgment dated 4.9.2006, Annexure-A to the I.A. No. 4537 of 2007 filed in the present proceeding by the Petitioner, it appears that the learned Labour Court had calculated the wages of the workman, from the date of notification making the reference till 8.8.2002, when I.D. Misc. No. 3 of 2002 in terms of Section 33(c)

of the Act was filed, to be Rs. 1,51,182.14. However, admittedly aforesaid amount has not been paid to the workman by the Petitioner. After the aforesaid order dated 4.9.2006, more than four years have elapsed. Therefore, in the considered opinion of this Court a compensation amount of Rs. 2,00,000/- (Rupees two lacs) payable to the workman by the Petitioner shall serve the ends of justice. Accordingly the Petitioner herein is directed to make payment of Rs. 2,00,000/- to the Respondent herein within a period of three months from today, failing which it shall carry an interest at the rate of 9% per annum till the actual payment of the aforesaid amount of compensation.

15. With the aforesaid modification in the award and above directions, the present writ petition stand disposed of. No costs.