

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3060 of 1994

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Bihar State Electricity Board, Bailey Road, Patna.

.... Petitioner/s

Versus

1. Workman, Represented By Bihar State Electric Supply Workers Union, Jakkanpur, Patna through its Secretary.

2. Smt. Krishna Rai, w/o of Sudarshan Rai, resident of Krishna Kunj, Shiv shakti Nagar, Haider Ali Road, Kokar at Ranchi.

3. The Presiding Officer, Labour Court, Muzaffarpur.

4. The State of Bihar through the Secretary, Department of Labour, Employment and Training, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Kirti Singh, Adv

For the Respondent No.2: Mr. Rajiv Roy, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

14 29-01-2015

I.A. No. 9274 of 2013

Learned counsel for the petitioner submits that during the pendency of this writ application the workman respondent no. 2 has died in the year 2007 and therefore his substitution should be allowed by making his heir and legal representative mentioned in paragraph no. 2 of the interlocutory application.

2. There is no opposition to such prayer by learned counsel for respondent no. 2.

3. In that view of the matter though this writ application for substitution is quite belated but then



keeping in view that the right to sue survive after the death of the respondent no. 2, the prayer for substitution made in this writ application is allowed and the heirs and legal representatives of respondent no. 2 are directed to be substituted in place of the deceased respondent no. 2. Let necessary correction be made by learned counsel for the petitioner in the cage column bringing on record the heirs and legal representatives of respondent no. 2.

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4. Heard learned counsel for the parties as with regard to the following relief, prayed in this writ application:-

“That this is an application for the issuance of an appropriate writ and/or direction quashing the Award of the Labour Court, Muzaffarpur dated 20th April, 1993 made in Reference Case No. 11 of 1981 in favour of Sri Sudarshan Rai, a workman whose service got transferred to the Board on vesting of the management of the erstwhile Darbhanga Laheriasarai Electric Supply Corporation Limited.”

5. Mr. Vinay Kirti Singh, learned counsel for the petitioner in support of the aforementioned prayer has



submitted that the Labour Court has acted in excess of its jurisdiction by deciding the Reference Case No. 11 of 1981, because on account of intervening events during the pendency of the reference case, the Labour Court was made functus officio. In this regard, he explains that as per the agreement between the labour union and the management of Bihar State Electricity Board the dispute arising out of categorization and fitment of workman already done in different scale of pay relating to eleven taken over supply companies were referred to the arbitration of Late Hon'ble Mr. Justice Sarju Prasad Singh in terms of Section-10A(3) of the Industrial Disputes Act. On this basis he explains that when information was given to the Labour Court by the petitioner by filing an application in continuation of the earlier written statement in the case of respondent no. 2, the Labour Court ought to have not proceeded further much less decided the Reference Case No. 11 of 1981 by the impugned award on 28th of April, 1993.



6. Mr. Rajiv Roy, learned counsel appearing on behalf of respondent no. 2, on the other hand has submitted that first of all the petitioner has failed to bring any document on record to show that its alleged application filed before the Presiding Officer was ever pressed and secondly even if it would be accepted that the said application was pressed the prayer made therein was confined to stay of the hearing till final decision in the Arbitration. He has gone to explain that as a matter of fact Late Hon'ble Mr. Justice Sarju Prasad Singh in capacity of Arbitrator has never decided the dispute within a period of six months as prescribed in the agreement between the petitioner-Bihar State Electricity Board, the Labour Union and therefore, the Labour Court had endlessly gone for determination of the award of Late Hon'ble Mr. Justice Sarju Prasad Singh to be given. He has also submitted that in any event the award of the year 1993 pertaining to a dispute of the year 1975, when the services of respondent no. 2 were



taken over cannot be now disturbed specially when respondent no. 2 is no longer alive and in fact the award in case of single person, respondent no. 2, even otherwise is factually correct and legally sustainable in the eye of law.

7. Having considered the aforementioned submission, the first and foremost question which would emerge for consideration is as to whether the reference made by the Labour Court in the case of respondent no. 2 will be deemed to have been withdrawn, stayed or rescinded?

8. Let it be noted that the State Government in exercise of power under Section-10 (1) (c) of the Act by specific notification no. 111/d1- 18075/81 L& E 1413 dated 14th August, 1981, referred the matter to Labour Court for adjudication on the following dispute:-

“Whether Sri Sudarshan Rai, Bill Collector is entitled for fitment to the post and scale (320-490) from the date of take over i.e. 17.7.75 or not?”

9. The Reference Case No. 11 of 1981 instituted



in view of the aforementioned reference by the State Government had remained pending for a period of over 8 years when the under alleged agreement between the petitioner and labour union had allegedly been referred to arbitration of Late Hon'ble Mr. Justice Sarju Prasad Singh as would be evident from the perusal of the notification dated 3rd May, 1989. This notification had been in terms of the compromise petition which had recorded that Hon'ble Mr. Justice Sarju Prasad Singh a retired Judge of this Court and since dead shall give his award within a period of six months from the date of reference. Thus, when the date of reference as notified by the State Government dated 3rd of May, 1989 was to be taken into consideration, such award had to be given by Late Hon'ble Mr. Justice Sarju Prasad Singh on 3rd of May, 1989.

10. That however was never been done and in fact nothing has been brought on record by learned counsel for the petitioner to show that Hon'ble Mr.



Justice Sarju Prasad Singh in his life time had ever given such award. On the other hand, this Court would find that in the application which was filed by the petitioner before the Labour Court on 15.04.1991 i.e., after almost expiry of the period of one and a half year of the scheduled date of giving of award by Justice S.P. Singh, all that was said that the matter was still pending before Late Hon'ble Mr. Justice Sarju Prasad Singh and decision was likely to be taken shortly. On the basis of that the petitioner made a prayer for staying the hearing of Reference Case No. 11 of 1981.

11. Unfortunately, again the petitioner has not brought on record to show that as to whether any order was passed by Labour Court on the application filed on 15.04.1991 and if so what order was actually passed by the Labour Court. To top it all nothing has also been brought on record by the petitioner as to whether the Labour Court was whether apprised that Late Hon'ble Mr. Justice Sarju Prasad Singh had never given any



award. In such a situation, if the first reference made by the State Government was not stayed by specific order of the State Government, it will have to be held that the dispute which was referred in the case of respondent no. 2 way back in the year 1981 could not have remained pending or kept pending for over only awaiting the alleged award of Late Hon'ble Mr. Justice Sarju Prasad Singh.

12. In any event, today the petitioner-Bihar State Electricity Board has not been able to explain that any award was ever given by Late Hon'ble Mr. Justice Sarju Prasad Singh which would run contrary or more beneficial to respondent no. 2 in the monetary terms.

13. The last submission of Mr. Singh, learned counsel for the petitioner, that the petitioner was already given benefit of fitment and therefore, the Labour Court has exceeded its jurisdiction in revising such fitment benefit has to be noted for its being rejected. This Court under Article 226 of the



Constitution of India is not going to re-determine the merit after there is a gap of 10 years or allow the petitioner to lead evidence to support its case against respondent no. 2.

14. The award of the Labour Court therefore cannot be interfered specially when it is an admitted position that respondent no. 2 was working as an employee of private supply company and the supply company was taken over by the Bihar State Electricity Board in the year 1975. The Respondent no. 2 therefore, was definitely entitled to protection of all his service conditions in view of take over Act, if that was denied to him, the Labour Court was the best forum to decide his entitlement. That having been done on the basis of evidence led by the parties before the Labour Court, this Court would find it difficult to sit over appeal on such award of Labour Court.

15. Be that as it may now when the respondent no. 2 has died, this Court would not find any reason for

exercising its discretionary power and disturb the award of the Labour Court in favour of Respondent no. 2.

16. That being so, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

