

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2204 of 1997

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M/S National Jute Manufactures Corporation Ltd., Unit R.B.H.M., Katihar through
its Unit Head, Shailendra Kr. Pande, resident of Jute Mill Campus, Katihar, PS &
District-Katihar.

.... Petitioner/s

Versus

1. Umesh Prasad Singh son of Nagendra Singh, R.B.H.M. Jute Mill, Katihar, PS &
District-Katihar
2. The Presiding Officer, Labour Court, Purnea, District-Purnea
3. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sushmita Mishra, Adv.

For the Respondent/s : Mr. Kinkar Kumar, SC-27

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-02-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

In this case, the petitioner is challenging the award dated
26th July 1994 passed by Presiding Officer, Labour Court, Purnea in
Industrial Dispute Reference Case No. 2 of 1990.

The short fact of this case is, Umesh Prasad Singh,
Respondent no. 1, as per his claim, was appointed on muster roll as
daily wages employee and he worked in the petitioner's Jute Mill
from December 1983 to August 1988. Claim has been made that he
was terminated from service illegally though some of the juniors,
namely, Subhash Yadav, Raghubansh Yadav, Bashishta Tiwari,
Narendra Jha, Uday Singh, Girish Singh and Sri Ram Pandey were

kept in service but his service has been dispensed with without giving one month notice and fifteen days' wages for each completed year of service. On termination, he raised an industrial dispute. The Government of Bihar referred his case before Labour Court, Purnea vide Notification No. 3/01-9024/90 E&T. 495 dated 7.6.90 which is as follows:-

“Whether the dismissal of Sri Umesh Prasad Singh of R.B.H.M., New Jute Mill, Katihar is justified? If not, whether he has been entitled to reinstatement or any other relief?”

On notice, both parties appeared and filed their respective written statements and the workman claimed that he was illegally terminated from service whereas the management-petitioner took a plea that reference itself was incompetent, before the Conciliation Officer proper opportunity was not given to place its case and also claimed that Bashishta Tiwari and Uday Singh were not its employees. Subhash Yadav, Raghubansh Yadav and Narendra Jha have claimed to be senior to him whereas Girish Singh and Sri Ram Pandey were juniors to Umesh Prasad Singh but they were trained skill workmen whereas the private respondent was unskilled and, as such, he cannot claim parity with them. It has further been stated that he was granted experience certificate by one Suresh Ghosh who was



already retired on 1st January 1990. On that strength, claim was made that the workman was not entitled to any relief. In support of his claim, the workman examined himself as W.W. 1 and claimed that he performed his duty as daily wager from December 1983 to August 1988 as an Electric Mistry and he was terminated from his service from September 1988, also claimed that no one month notice or one month notice pay in lieu of notice was served on him before his termination, so much so that the management did not hold any domestic enquiry before his termination and also proved his experience certificate Exh.-1 which was marked through the oral evidence. The written statement has been filed by the management-petitioner and in paragraph 5 it has been stated, is as follows:-

“It is a fact that Sri Singh worked under the management as a daily wage earner very off and on as and when his services were required but it is not correct to say that Sri Singh worked continuously for five years.”

But the management did not dispute the certificate granted by Mr. Ghosh and the management did not mention in the written statement the number of actual days performed by the workmen and vague and uncorroborated statement has been mentioned having no value in the eye of law, so much so that muster



roll of the aforesaid period indicating the number of days performed by him was with the management-petitioner but utterly failed to bring the same before the Labour Court leads to adverse inference is drawn against the petitioner in absence of any positive statement. When the workman has made a statement on oath before the Labour Court, the onus shifted to the management to contradict the statement made by the workman but in the present case, the petitioner-management has not discharged its onus which was required to do it.

The Labour Court, after discussion, has held that as the management has not given one month notice or notice pay in lieu of notice and the compensation in terms of Section 25-F of the Industrial Disputes Act, the order of termination is illegal, as has been given the relief of reinstatement with full back wages. Claim has been made by the petitioner that the Government has wrongly referred the matter for adjudication, as the petitioner-company has taken plea before the Labour Court, so far it is not in dispute that Umesh Prasad Singh was a workman, after termination, he approached the Conciliation Officer has given notice to participate therein, claim has been made that the Conciliation Officer had not given proper opportunity at the time of conciliation, cannot be said, the Government has no jurisdiction to refer the matter, as the conciliation stage, the Conciliation Officer has a duty to bring the parties for



settlement. In failure, the Conciliation Officer is statutory required to submit a report as provided under Section 12 of the Industrial Disputes Act and the Government in its statutory power has a duty to refer the dispute for adjudication. The Labour Court has no jurisdiction to adjudicate competency of reference, which could have been challenged under the proceeding of judicial review only. If the management was so serious and was of the view that the reference was not maintainable, the management ought to have challenged the reference before this Court under Article 226 of the Constitution of India. Admittedly the workman has proved his period of employment by making statement in the written as well as making deposition in the dock before the Labour Court whereas the management has made a vague statement in paragraph 5 of the written statement without any material facts.

In such view of the matter, without compliance of Section 25-F of the Act, the action of the management to terminate the service of Umesh Kumar Singh is completely illegal.

As it appears from the award that the respondent No. 1 was reinstated in service on 23rd November 1993, in such view of the matter, the award is modified to the extent that in place of giving relief of full back wages, the workman would be paid the compensation Rs. 10,000/-(ten thousand), if already

not compensated earlier.

Accordingly, this petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

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