

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4877 of 1999

Ram Sharan Prasad son of Sri Jageshwar Prasad, R/o village Shankar Bigha P.S. Wazirganj District Gaya.

.... Petitioner/s

Versus

- 1. The State of Bihar.
- 2. The Deputy Labour Commissioner, Magadh Division, Gaya.
- 3. Daya Engineering Works (Sleeper) Ltd.
- 4. The Chief Accountant, Daya Engineering Works (Sleeper).

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 4878 of 1999

Kali Prasad Yadav son of Nanhku Prasad Yadav, R/o village Manpur, P.S. Manpur District Gaya.

.... Petitioner/s

Versus

- 1. The State of Bihar.
- 2The Deputy Labour Commissioner, Magadh Division, Gaya.
- 3Daya Engineering Works (Sleeper) Ltd.
- 4The Chief Accountant, Daya Engineering Works (Sleeper).

.... Respondent/s

Appearance :
(In CWJC No. 4877 of 1999)

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Adv.
For the State : Mr. Abhinay Raju, AC to AAG-2
For the Respondent/s : Mr. Utsav Kumar, Adv.
M/s A. Rajpal, Priyanka Singh, Anuj Kumar and Salma, Adv.

(In CWJC No. 4878 of 1999)

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Adv.
For the State : Mr. Abhinay Raju, AC to AAG-2
For the Respondent/s : Mr. Utsav Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 10-03-2015

Heard counsel for the petitioners and the respondents.

In both the cases, common issues have been raised for

consideration and, as such, both the cases are being disposed of by common order.

In both the cases, the order under challenge is dated 21st December 1998 contained in letter No. 4358 whereby and whereunder the Deputy Labour Commissioner, Gaya, respondent no.2 held that petitioners' were manager and their pay scales were more than the prescribed limit and, as such, they do not fall under the definition of 'workman' with regard to petitioner Ram Sharan Prasad ground has been taken that he had accepted that he was Manager, refused to refer the dispute for adjudication.

As it appears from the record, Ram Sharan Prasad was appointed as casual labour in 1979 on Muster roll later on he was made a permanent labour in the year 1980, whereas Kali Prasad Yadav was initially appointed as casual labour and made permanent in the year 1984 and subsequently Kali Prasad Yadav was made the Manager.

Ram Sharan Prasad in the writ application has narrated, his nature of work was to maintain quality control internal inspection and dispatch. He had neither managerial powers nor was head of the department nor the Chief Executive Officer of the Unit. The Unit was/is handled by the Managing Director, General Manager and the work discharged by the petitioner was not managerial at all.

So far Kali Prasad Yadav is concerned, he has narrated his nature of work i.e. duty was confined to the In-charge of the dispatch of concrete sleepers. He had neither managerial powers nor was head of department nor the Chief Executive Officer of the Unit. The Unit was handled by the Managing Director, General Manager. The work discharged by the petitioner was not managerial at all. The duty chart would show that duty allotted to him would

never fall in the category of managerial function.

Both the petitioners were terminated from service with effect from 29th July 1998. They raised their grievance against the order of termination when the management did not redress their grievances, both petitioners, raised the industrial dispute vide letter dated 11th December 1998, requesting the Deputy Labour Commissioner to start conciliation proceeding for settlement of dispute. The Conciliation Officer vide letter dated 21st September 1998 dropped the conciliation proceeding assigned the reasons are outside the purview of definition of workman.

The question that has been raised by the counsel for the petitioners the Conciliation Officer while discharging the administrative function has gone beyond jurisdiction as he had no adjudicatory power at best he has power to make effort to settle the dispute in exercise of power under Section 12 of the Industrial Disputes Act (for short, the 'Act'). The power of adjudication lies either with the Labour Court or the Tribunal.

Counsel for the State as well as the Management has supported the action of the Deputy Labour Commissioner cum-Conciliation Officer and submitted that the Conciliation Officer dropped the conciliation proceeding when he was satisfied that the petitioners are not workmen in such view of the matter, the question of raising industrial dispute does not arise.

In case of Kali Prasad Yadav additional ground has been taken that he himself in his letter has mentioned that he was the Manager and his basic scale was Rs.4,500/- in such a situation the action of the Conciliation Officer cannot be said to be bad in law.

Having considered the rival contention of the parties, the workman has been defined u/s 2(s) of the Act, basically depends on dominant functions



discharged by person , the person only because he has been shown to be holding the post of Manager deviant from fundamental work of Manager, rather discharging duty of workman cannot be said to be outsider whether the person is workman or outside the definition of workman depends on the nature of job, can be arrived into by adjudicatory process and that power lies with the Labour Court and the Tribunal. Under Section 12 of the Act power has been conferred upon the Conciliation Officer of bringing both parties for conciliation table and try to sort out their difference. In case the dispute is not sorted out the Conciliation Officer has to give a report under Section 12(4) of the Act and the Government has jurisdiction to refer the dispute to Labour Court or Industrial Tribunal for adjudication, in case, the Government does not refer the dispute, the Government would record and communicate the reason by assigning reason under Section 12(5) of the Act.

This issue had come up for consideration on many occasions before the Hon'ble Supreme Court. In the case of TELCO Convoy Drivers' Mazdoor Sangh v. State of Bihar, reported in Lab. IC 1989 page 1547 identical issue was raised in that case the Government/Conciliation Officer refused to refer the dispute holding that they are not workmen, the Hon'ble Supreme Court held that the issue can be settled by adjudicatory process and power lies with the Labour Court and Tribunal, conciliation Officer discharges only administrative function and directed to refer. It will be appropriate to quote Para-11, 12 and 13 of the judgment which is as follows:

“Para- It is true that in considering the question of making a reference under S.10(1), the Government is entitled to form an opinion as to whether an industrial dispute “exists or is apprehended”, as argued by Mr. Shanti Bhushan.



The formation of opinion as to whether an industrial dispute “exists or is apprehended” is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workman of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is, undoubtedly, not permissible.

Para-12 : It is, however, submitted on behalf of TELCO that unless there is relationship of employer and employees or, in other words, unless those who are raising the disputes are workmen, there cannot be any existence of industrial dispute within the meaning of the term as defined in S.2(k) of the Act. It is argued that in order to form an opinion as to whether an industrial dispute exists or is apprehended, one of the factors that has to be considered by the Government is whether the persons who are raising the disputes are workmen or not within the meaning of the definition as contained in S.2(k) of the Act.

Para-13: Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under S.10(1) of the Act,

the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by S.10 of the Act. See *Ram Avtar Sharma v. State of Haryana*, (1985) 3 SCR 1019: (AIR 1985 SC 860); *Shambu Nath Goyal v. Bank of Baroda, Jullundur*, (1978) 2 SCR 793: (AIR 1978 SC 1088).”

1987 SC 695 (*V. Veerajan and others v. Government of T.N and others*)

1964 SC 1617 (*Bombay Union of Journalists and others v. The State of Bombay and another*) and 1985 (1)LIJ 93.

In all the aforesaid cases, thrust has been given that power of adjudication lies with the Labour Court or the Tribunal and the Conciliation Officer cannot be said to have powers and duty to discharge the adjudicatory function.

In the present case, the respondents have acceded to the proposition but submitted rightly refused to proceed with for conciliation as they do not fall under the category of workman but this issue can only be decided by adjudicatory authority, i.e. the labour court or Industrial Tribunal as Conciliation Officer does discharge the administrative function. In such view of the matter, the order dated 21st December 1998 passed by the Deputy Labour Commissioner in both the cases, are quashed and the matter is remanded back to the Conciliation

Officer to initiate a fresh proceeding and take action in accordance with law.

Accordingly, both the writ petitions are allowed.

(Shivaji Pandey, J)

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