

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1444 of 2012

IN

Civil Writ Jurisdiction Case No. 14736 of 2005

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Vishnukant Jha, S/O Vijaykant Jha, R/O Vill-Sabour, P.O. & P.S.-Sabour, Distt-Bhagalpur

.... Appellant/s

Versus

1. The Union of India represented through the Secretary to the Govt. of India Ministry of Labour, New Delhi
2. The Presiding Officer, Industrial Tribunal Patna (Bailey Road, Patna)
3. The Management of UCO Bank represented through the Regional Manager UCO Bank Regional Office Bhagalpur, Sabour Road, Bhagalpur (Bihar) 812001
4. The Regional Manager UCO Bank, Regional Office, Bhagalpur, Sabour Road, Bhagalpur
5. The Labour Enforcement Officer (Central) Bhagalpur, AT and P.O.-Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant : Mr. Birendra Kumar Jha, Advocate

For the UOI : Mr. Awadesh Kumar Pandey, S.C.G.C.

Mr. Ravinder Kumar Sharma, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 24-07-2015

Heard learned counsel for the parties.

2. Appellant claimed himself to be the workman serving in the Currency Chest of UCO Bank Branch, Tilkamanjhi, Bhagalpur for more than 365 days and has been retrenched without following the condition precedent for retrenchment as provided under Section 25-F of the Industrial Disputes Act, 1947. In this connection, appellant has placed reliance on the evidence led by the management

i.e. MW3 officers serving in the currency chest of the said Branch.

3. In the light of the evidence of MW3 it is submitted by the learned counsel for the appellant that to dispute the contention that appellant served in the currency chest of the Branch the Bank as per its case that appellant was serving as a generator operator engaged by a private person who lent his generator to the Bank, the management was required to have examined the generator owner and in absence of evidence of the generator owner that appellant is his employee the Tribunal ought to have relied on the evidence of MW3, the officer of the Bank serving in the currency chest. In this connection, learned counsel for the appellant also relied on the findings recorded by the Tribunal in paragraph 9 that the management witnesses have fairly admitted that the worker (appellant) sometimes performed miscellaneous works of the Bank for which payment was made. It is submitted that to dispute the aforesaid contention of the appellant the Bank was required to have examined the generator owner, who is said to have engaged the appellant and while remaining under his engagement appellant is said to have performed the odd jobs of the Bank and in absence of generator owner no such presumption can be drawn.

4. From the evidence led on behalf of the management, it does not appear that any attempt was made to examine the generator owner, who was very much available. In the

circumstances, we deem it expedient to remand the case to the Tribunal so that the management may examine the two generator owners, namely, M/s. Amarnath Choudhary and Irshad Alam to establish that appellant was their employee and while under management of generator owner he was also performing odd jobs of the Bank for which he was being paid from the contingency fund of the Branch.

5. For the limited purpose of examining the aforesaid two generator owners the impugned award is set aside and consequently the order of the learned Single Judge is also set aside with direction to the Tribunal to issue Dasti summon for examination of the two generator owners and hand over Dasti summon to the counsel for the workman so that the two generator owners may be served, examined as early as possible, in any case, within two months from the date of receipt/ production of a copy of this order before the Tribunal. Setting aside of the award will not entitle the workman to claim reinstatement until a fresh award is passed reinstating him.

6. The appeal is, accordingly, disposed of.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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