

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1506 of 2010
In
Civil Writ Jurisdiction Case No. 13468 of 2002**

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1. M/S Dharampal Satyapal Ltd. B-1, Sector-3, Noida, Uttar Pradesh-221301 Through Its Depot Manager, Patna Namely Anil Kumar Srivastava
2. Deputy General Manager M/S Dharampal Satyapal Ltd., B-1, Sector-3, Noida, Uttar Pradesh-221301

.... Appellant/s

Versus

1. The Presiding Officer, Labour Court, Patna
2. Onkar Srivastava @ Onkar Nath Srivastava S/O Late Rajendra Prasad R/O F/145, S.K. Puri, Boring Road, Patna And At Present Residing At Ashokpuri, Khajpura, P.S.-L.B. Shastrinagar, Distt.- Patna-800014

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shekhar Singh, Advocate
Mr. Shantanu Kumar, Advocate
For the Respondent/s : Mr. Madhuresh Prasad, advocate
Mr. Abhay Shankar, Advocate
For the State (Respondent No.1) Mr. Raj Nandan Prasad, S.C.-9
Mr. Pankaj Majorwar, A.C.to S.C. 9

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**CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

9 22-06-2015 Heard Mr. Shekhar singh, learned counsel for the appellants and Mr. Madhuresh Prasad for the respondents.

2. Appellant employer has assailed the order dated 04.05.2010 passed by the learned Single Judge in C.W.J.C. No. 13468 of 2002, whereunder the learned Single Judge found return of the complaint petition by the Labour Court to the writ petitioner for re-presentation before proper Court in Ghaziabad wholly unjustified as there was no such provision in U.P. Shops and Establishments Act.

3. It is submitted on behalf of the appellant that the aforesaid order of the learned Single Judge is contrary to clause 10 of the appointment letter whereunder parties agreed to confine litigation within the jurisdiction of Gaziabad Courts alone.

4. From perusal of the impugned order, it is clear that the learned Single Judge had discussed the case in view of Clause 10 of the appointment letter. Relevant paragraph of the said judgement dated 04.05.2010 is quoted below for ready reference:-

“ Having considered the submissions of learned counsels for the parties and the materials on the record, it is evident that there is no dispute with regard to the finding of the Labour Court that the establishment of the respondent no. 2 at Patna was covered under the provisions of the Bihar Shops and Establishment Act. The only point to be considered is whether the Labour Court was right in holding that in terms of Clause 10 of the letter of appointment, the jurisdiction of the Labour Court to hear the matter under Section 26 (2) of the BSE Act was ousted. In this regard the law has been clearly laid down by the various decisions of the Supreme Court as considered in the cases cited on behalf of the petitioner that where more than one Court has jurisdiction in the facts of a given case

then it is open to the parties to agree to limit the jurisdiction to one of the two or more Courts but the parties can not confer jurisdiction upon a Court by their agreement if it otherwise does not have jurisdiction to deal with the matters.”

5. In the U.P. Shops and Establishment Act there being no corresponding provision similar to that of Section 26 (2) of Bihar Shops & Establishments Act, petitioner had no option but to present complaint petition before the Labour Court under the Bihar Shops & Establishment Act, 1953. The proceeding before the Civil Court is likely to take a long time. By then, the employee will have to suffer which can not be countenanced.

6. In the circumstances, we see no illegality in the impugned order.

7. The appeal is, accordingly, dismissed.

(V.N. Sinha, J)

(Nilu Agrawal, J)

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