

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.301 of 1994

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1. Action For Food Production (AFPRO) Through Mr. Raymond M. Myles,
Executive Director, 25/1a, Institutional Area, Pankha Road, D. Block,
Janakpuri, New Delhi- 110050

2. Mr. Anwar Kamal, Officer-In-Charge, Afpro, Field Unit, Iv, Ic-262,
Ashoknagar, Ranchi- 834012

3. Mr. Vijay Kumar Vaidya, Afpro, Field Unit-I Rose Cottage, Station
Road, Ahmadnagar- 414001 Maharashtra.

.... Petitioners

Versus

1. The State Of Bihar.
2. Presiding Officer, Labour Court, Patna
3. Prabhawati Kuer Wife Of Late Rishikesh Singh
4. Achhaibar Yadav
5. Ajay Yadav
6. Sanjay Yadav All Sons Of Rishikesh Singh Resident Of Village
Durgawati, P.O. Durgawati, Dist. Rohtas, At Present Residing At Patliputra
Colony, Patna- 13.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Satish Kumar Agrawal
Mr. Shanti Pratap
For the Respondent/s : Mr. A.G.
Mr. Rakesh Garg

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

12 29-01-2015

Heard learned counsel for the parties.

This writ application has been filed assailing an order of the Labour Court, Patna dated 17th June, 1993 in Case no. 23/1981, whereby and whereunder the complaint filed by the employee under section 26(2) of the Bihar Shops and Establishment Act has been allowed while setting aside the order of termination of respondent no.3 dated 1st September, 1981. The Labour Court after considering the case of both the parties i.e. petitioners and respondent no.3 had not only set aside the order of



termination of respondent no.3 but had also directed for his reinstatement with full back wages. Such an order was passed in the year 1993 and now after 22 years when this Court has to go into the correctness of the order passed by the Labour Court it must exercise its jurisdiction under Article 226 of the Constitution of India on the settled norms of judicial review of such order.

In the present case from reading of the averments made in the writ application it is found that the petitioners had sought to assail the order of the Labour Court primarily on two grounds. Firstly, that the petitioner was not an establishment within the meaning of Section 3 of the Bihar Shops and Establishment Act. Secondly, that the termination of services of respondent no.3 was in accordance with the terms and conditions of his employment in which the Labour Court was not required to enter on merits.

Let it be noted that the first issue with regard to the petitioner being not covered by the definition and expression of 'establishment' was specifically assailed by the petitioner in a writ petition, C.W.J.C.No. 3725/1983, at a point of time when the petitioner having raised this issue before the Labour court had become unsuccessful in view of the order of the Labour Court dated 13.4.1983 holding the petitioner to be covered by the expression 'establishment'. This Court would find that the said order dated 13.04.1983 despite being assailed by the petitioner



was not interfered by this Court. In fact the writ application was dismissed as not pressed. Dismissal of the aforesaid writ application, therefore, will now come in the way of the petitioner in now raising that question again especially when no leave was sought for from this Court to file a fresh writ application if ultimately final order by the Labour Court could have gone against the petitioner. In that view of the matter, the first issued raised by the petitioner in the writ application must fail.

As with regard to the second aspect the Labour Court has gone into the detail and has recorded that respondent no.3 was working as a Typist and his services were terminated under the order of the Executive Director dated 1.9.1981. The Labour Court after full discussion of the issue relating to the terms and conditions of the employment of respondent no.3 had gone to hold that respondent no.3 was a confirmed employee and therefore, his services could not have been dispensed with without compliance of the provisions of section 26(1) of the Act which lays down that an employee who has been in continuous employment for a year and more and whose services has been dispensed with otherwise than on a charge of misconduct shall also be paid compensation equivalent to fifteen days of service and any part thereof in excess of six months before his discharge. To that extent the finding of the Labour Court in paragraph no.8 of the impugned order has not

been questioned. The issue, therefore, will be that if the Labour Court after full discussion had held respondent no.3 to be confirmed employee can this Court sit in appeal on such findings?

In that view of the matter, this Court does not find any error in the order of the Labour Court.

Let it be noted that respondent no.3 is already dead and the order of reinstatement with back wages in the year 1993 having been not stayed by this Court the presumption will be that respondent no.3 had continued in service till his death. Thus, today this Court does not find any reason to interfere even with that past order of the Labour Court.

At this stage, Mr. Agrawal submits that whatever amount was payable in terms of impugned order of Labour Court has already been paid to respondent no.3. This Court however is not expected to do the job of accounting and therefore it will be for the concerned labour court to examine this aspect and ensure compliance of its order in letter and spirit.

With the aforesaid observations this writ application is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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