

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18347 of 2012

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Punjab National Bank, Circle Office Muzaffarpur, at Muzaffarpur through Waris Minz S/o F.B. Minz, the Manager, HRD, Punjab National Bank, Circle Office Muzaffarpur at Muzaffarpur.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Labour, Union of India, New Delhi
2. The Under Secretary, Ministry of Labour, Union of India, New Delhi
3. The Vice Chairman, Central Industrial Tribunal Patna Bench, Patna
4. The Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad
5. Rajesh Kumar S/o Kamta Prasad, Resident of Mohalla-Dhelwan, P.S. Fulwarisharif, Distt.- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Prasad Singh No. 1

For the Respondent No. IV: Mr. Raj Ballabh Pd. Yadav, Adv.

Mr. Jitendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

8 05-01-2015 Heard learned counsel for the petitioner and learned counsel for the State.

In this case, the petitioner is challenging the award passed in Reference Case No. 84 of 2005 by which the Industrial Tribunal, Dhanbad has granted the relief of reinstatement to Rajesh Kumar (Respondent No. 5) along with 25% back wages and also passed the award for regularisation to the post of Peon.

From the pleadings of the parties it appears that Rajesh Kumar, respondent No. 5 was engaged on daily wages basis in the Extension Counter Office of Bela of Industrial Area,

Muzaffarpur as sub-staff and he was discharging the duty of Peon as well as Sweeper with effect from 20th August 2001.

As per the petitioner, respondent No. 5 has discharged his duty upto 14/01/2004 and was made payment upto October 2003 in his name but thereafter, though he discharged the duty but was paid salary in different names, in this manner the Bank used to get his signature on the voucher of different headings and names. He has claimed that he had worked 240 days preceding 12 calendar months from the date of termination of service but without following the provisions of Section 25-F of the Industrial Dispute Act and as such, his termination of service which is retrenchment within the meaning of Section 2 (00) of the Industrial Disputes Act, 1947 is not sustainable in law. It has further been submitted as before termination of his service, the Management was required to give one month notice or one month notice pay in lieu of notice and 15 days' wages for each completed year of service etc. which was not followed and as such, order of termination is completely nullity.

It appears from the order sheet that the Management appeared on different dates but did not participate in the proceeding either by cross-examining the witnesses of the workman or by examining its witnesses. The Tribunal by its

impugned order granted the relief of reinstatement along with 25% back wages as well as regularisation of service.

The Bank has raised grievance, as nature of employment of the Respondent No. 5 was purely of daily wages, the Tribunal could not have passed the award of regularisation, as respondent no. 5 had never worked in the regular service and had always worked for few hours as a daily wages employee. He was not engaged/employed following due process of law and as such the relief granted to workman is not sustainable. Even if the person is entitled to reinstatement does not mean regularisation, the Tribunal could not have passed the order of regularisation as Tribunal has gone beyond the terms of reference which is not permissible in law to enlarge the scope of terms of reference as there was/is no reference for regularisation and as such did not have jurisdiction to grant such relief. If the reference was for termination of service, the Tribunal does not have jurisdiction to pass any order of regularisation. The Management has taken plea that the workmen cannot take benefit of regularisation, as respondent No. 5.

The counsel for the workman has submitted that the Tribunal has passed the order in terms of the reference and the Tribunal has all power to pass such order of regularisation.



Having considered the rival contentions of the parties, as the Tribunal arrived to a conclusion that respondent No. 5 has discharged his duty for 240 days in preceding 12 months from the date of termination of service and order of termination was passed without following the provisions of Section 25-F of the Industrial Disputes Act, in such view of the matter in case of non-compliance of Section 25-F of the Industrial Dispute Act, the order of termination cannot be sustained.

In this view of the matter, the order of termination is illegal and award cannot be said to be illegal to the extent of reinstatement as well as the order granting relief of 25% back wages. With regard to regularisation, this Court is of the view that the Government has not referred any dispute of regularisation of service of respondent No 5. If there was no reference for regularisation of service of respondent No. 5, the Tribunal should have not entertained such plea and relief given for regularisation of service of respondent No. 5 is illegal and not sustainable in law as the Tribunal does not have jurisdiction to enlarge the terms of reference, reliance can be placed on the decision of F.C.I. vs. Industrial Tribunal, 1996 (2) P.L.J.R. 520.

Accordingly, the award for regularisation as Peon with effect from the date of termination is set aside. Rest portion

of the award is legal and justified. Accordingly, this petition is partly allowed.

(Shivaji Pandey, J)

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