

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5588 of 2014

=====

State Bank of India, Local Head Office, West of Gandhi Maidan, Patna-800001,
Bihar, through its Chief General Manager

.... Petitioner

Versus

1. The Union of India through Secretary, Ministry of Labour, Govt. of India, New Delhi
2. Sri Mukesh Pandey, son of Sri Shivadhar Pandey, Village-Jagatpur Pakri, Post - Krishnagarh, P.S. - Krishnagarh, District - Bhojpur

.... Respondents

=====

Appearance :

For the Petitioner/s : Sri Alok Kumar Sinha, Adv.
Sri Binod Bihari Sinha, Adv.

For the Respondent/s : Sri Y.C.Verma, Sr. Advocate
Sri Chiranjiva Ranjan, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 20-07-2015

Heard Sri Alok Kumar Sinha, learned counsel, who has appeared on behalf of the petitioner and Sri Y.C.Verma, learned Senior Counsel, who was assisted by Sri Chiranjiva Ranjan, learned counsel for Respondent no.2/ workman.

2. The petitioner, invoking writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, has prayed for setting aside the Award dated 19.04.2013 passed in Reference Case no.117 of 2001. By the said Award, the learned Presiding Officer, Industrial Tribunal-cum- Labour Court no.1, Dhanbad has directed the Bank to absorb the workman in the Bank without back wages.

3. Short fact of the case is that a dispute was referred by the Central Government, Ministry of Labour under Section 10(1) (d) (2A) of the Industrial Dispute Act to the Tribunal for adjudication of the dispute, which is quoted herein below:

“Whether the action of the management of State Bank of India, Patna is not considering the workman Shri Mukesh Pandey for re-employment, while making appointment of fresh hand i.e. S/Sh Rabindra Kr., Kaushal Kr., Sujit Kr. , Awadesh Kr. Singh, Mahendra Roy, Kumar Murlidhar, Bindeshwar Paswan, Sanjal Pandit and Jai Prakash Ojha , is justified, if not what relief the workman is entitled ?”

4. After the dispute was referred, it was numbered as Reference Case no.117 of 2001, in which the workman filed his written statement. It was also answered by the Bank by filing its written statement. The learned Tribunal after hearing the parties, examining the evidences brought on record, concluded that termination of the workman was illegal and, as such, direction was given to absorb him in the Bank service by its award dated 19.04.2013, which has been assailed in the present writ petition.

5. Sri Alok Kumar Sinha, learned counsel for the petitioner assailing the award has firstly argued that on the plea of illegal termination, earlier dispute was referred to the Industrial Tribunal under Section 10(1)(d) of the Industrial Dispute Act, in

which reference was as follows:

Whether the action of the management of State Bank of India in terminating the services of Sri Mukesh Kumar Pandey in the year 1993 is justified? If not to what the workman is entitled?

6. Sri Sinha submits that the said dispute was contested by Respondent no.2 through State Bank of India Employees Union. However, in the dispute, the Tribunal held that no dispute exists in between the parties. He submits that once the issue regarding termination of the workman was already adjudicated in negative, at subsequent stage same issue was not required to be adjudicated, that too beyond the reference being made by the Central Government. He emphasized that the Tribunal was required to answer the reference only and beyond that, action of the Tribunal was not permissible. On this issue, he has placed reliance on 2014 (1) PLJR 122(SC); M/S Tata Iron & Steel Co. Ltd. Vs. State of Jharkhand. He has particularly referred to paragraph-18 of the said Judgment, which is quoted herein below:

“18. The Industrial Tribunal/ Labour Court constituted under the Industrial Dispute Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject matter of reference and cannot travel beyond the same. This is the view taken by this Court in number of cases

including in the case of **National Engineering Industries Limited Vs. State of Rajasthan & Ors., (2000)1 SCC 371.**”

7. He further submits that even if for the time being it is assumed that the Tribunal has rightly passed order for reinstatement, the workman had never continued for 240 days and there was no order for termination whether oral or written. He submits that before the Tribunal, certain relevant documents were brought on record on behalf of the management to establish that only on contractual basis, the workman was allowed to work for particular period. He submits that at the first instance, the workman was employed on contractual basis for 30 days on payment of Rs.815/-. After some time, he was again engaged on contractual basis for a period of three months. He further submits that to this extent, certificate issued by the competent authority were also got exhibited before the Industrial Tribunal. Further, he accepts that in the cross-examination, management witness had said that the workman was retrenched in the year 1993, but in his entire examination-in-chief, he made categorical statement that beyond the period as mentioned, the workman has never worked nor on record there was any document to establish that the workman continued for 240 days continuously and, as such, there was no question of application of Section 25(f) of the Industrial Dispute

Act. In sum and substance, he has argued that since the Award is completely beyond the terms of reference, same is liable to be set aside.

8. Sri Y.C. Verma, learned Senior counsel, who has appeared on behalf of Respondent no.2/workman, has vehemently opposed the prayer of the petitioner. He submits that it is true that in paragraph-7 of the Award, the learned Tribunal has observed that prior to termination, no notice was given and, as such, the termination of the workman was illegal. Fact remains that in concluding paragraph, the learned Tribunal has observed that direction was given in view of facts and circumstances of the case. Taking the plea the word ‘ facts and circumstances’ Sri Verma, learned Senior Counsel submits that the observation given in paragraph-7 may not be examined in isolation, but after going through the entire Award , it is evident that only for reference purposes, such observation was made. He further submits that direction for absorbing the workman without back wages can be considered as re-employment and, as such, he submits that the Award has been prepared in terms of reference. Accordingly, he makes a prayer for rejection of the writ petition.

9. Besides hearing learned counsel for the parties, I have also examined the materials available on record. On



examination of the material available on record, it is evident that terms of reference was only to examine the action of management in not considering the case of petitioner for re-employment while making appointment of fresh hand, whose names were mentioned in the reference. On perusal of award it is evident that right from the very beginning, the Tribunal had persuaded to examine the matter, as if the termination of the workman was done without due process of law, which is evident from paragraph-2 of the Award, which is quoted herein below:

“2. The case is received from the Ministry of Labour on 04.06.2001. After receipt of reference, both parties are noticed, the workman files their written statement and document. And the management files their written statement-cum-rejoinder on 13.02.2002. The point involved in the reference is to workman has been terminated from his services without due process of law, whereas the claim of the management is the workman was not the regular workman as such the action of the Bank management was justified.”

10. Besides this, nothing has been indicated by the Tribunal as to whether ignoring the case of the workman/ Respondent no.2, whether any other person similarly situated like Respondent no.2 were considered for employment or not. The plea regarding employment of such persons was taken by the workman



in paragraph-13 in its written statement. The same has replied by the petitioner Bank in paragraph-13 of the written statement, wherein it has indicated that those persons were appointed in terms of rules and instruction of the Bank. Though the plea of Respondent no.2 was refuted before the Tribunal, no any other evidence was brought on record. From the impugned order/ Award, it is evident that nothing has been discussed by the Tribunal. On perusal of paragraph-7 of the Award, it is evident that direction for absorption of the workman was given only on the ground that termination of Respondent no.2 was treated as illegal. Same fact is evident from perusal of paragraph-7 of the Award, which is quoted herein below:

“7. Moreover in this case Sec.25 F and I.D. Central Rules 77 and 78, has not been complied i.e. 7 days prior notice of termination was not given. Therefore, termination of the workman is illegal. Since termination is illegal he is to be absorbed in the bank management.”

11. In view of the fact that reference contemplates in clear terms regarding re-employment on the ground of fresh appointment of certain persons without, discussing any such evidence and deciding the reference on the ground that termination of Respondent no.2 without notice was violative of Section 25(f)

of the Industrial Dispute Act and his termination was illegal and direction to absorb the workman is categorical in contravention of the terms of reference, which is not permissible in the eye of law, as has been held by the Apex Court in the case of “M/S Tata & Iron Steel Co. Ltd. (supra).

12. In view of the facts and circumstances, the Court is of the considered opinion that the Award is in contravention of the reference and, as such, same is required to be interfered with. Accordingly, the impugned Award dated 19.04.2013 passed by the Industrial Tribunal-cum- Labour Court no.1, Dhanbad in Reference Case no.117 of 2001 is hereby set aside.

13. The writ petition stands allowed.

(Rakesh Kumar, J)

NKS/-

U			
---	--	--	--