

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1594 of 2012

IN

Civil Writ Jurisdiction Case No 1828 of 2010

=====

Surendra Kumar S/O Rajendra Kumar R/O Vill-Raghunath Tola, P.O.-Anisabad,
P.S.-Gardanibagh, Distt-Patna-1

.... Appellant/s

Versus

1. The Chief Post Master General, GPO Patna Bihar
2. The Senior Superintendent of Railway Mail Services PT Division, Patna-800004
3. Regional Labour Commissioner(C) Patna
4. The Assistant Director IR (Imp-I) M/O Labour, Government Of India, New Delhi
5. The Chief Labour Commissioner (Central) New Delhi
6. The Assistant Labour Commissioner(C), Patna
7. Industrial Tribunal, Sharam Bhawan, Bailey Road, Patna-1

.... Respondent/s

=====

Appearance :

For the Appellant/s : M/s Vijoy Nandan Sahay & Arun Sristav, Advocates

For the Respondent/s : Mr Anshuman Singh, CGC

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 10-12-2015

The appellant was respondent No 6 in the writ petition filed by the Postal Department challenging the award of the Industrial Tribunal.

2 Heard the parties and with their consent, this intra-Court appeal is being disposed of at this stage itself.

3 The appellant is undoubtedly workman within the



meaning of the Industrial Disputes Act. It is also not in dispute that he was a casual worker on daily wages. In exchange of work, he used to be engaged. Having intermittently worked for a period of two and half years, no further work was taken from him and some others were engaged for work as and when required. The appellant pleads that either it was unlawful termination of service or an unauthorized retrenchment and initiated an industrial dispute which ultimately resulted in the award directing that the termination was bad in law inasmuch as there was no notice or payment in lieu of notice. Accordingly, the arbitral Tribunal directed reinstatement with back wages. It is that award that was challenged before the learned Single Judge by the Postal Department. The learned Single Judge, though did not interfere with the award in substance, but altered the last part, that is reinstatement with full back wages, to compensation of Rs 50,000/- considering the period in respect of which dispute had arisen.

4 In appeal, learned counsel for the workman submits that the award was legal and valid for the purposes of reinstatement with full back wages. Alternatively, the compensation is grossly inadequate. On behalf of the Department, reliance has been placed on the case of *Assistant Engineer, Rajasthan Development Corporation & Another –Versus- Gitam Singh* since reported in (2013) 5 *Supreme Court Cases* 136 which decision has considered a large number of

decisions including the case of *Devinder Singh –Versus- Municipal Council, Sanaur* since reported in (2011) 6 Supreme Court Cases 584 and explained. The reference to the latter case is necessitated by us because the learned Single Judge has made reference to that decision.

5 Having considered the matter, in our view, even if the Tribunal was to hold that the termination was not in accordance with law, to which also we have certain reservations, it is well settled that it does not automatically follow that there would be reinstatement with full back wages. All this, that is termination of service not in accordance with law, reinstatement in service with full back wages presupposes a regular and continuous relationship of master-servant. This assumption is totally unfounded inasmuch as on admission by the workman himself, he was a casual need based worker who was paid on daily wages basis. There was no monthly remuneration because there was no certainty of monthly employment. Let us assume, for the time being, if the Department had said that there is no work required, could the workman insist upon the work being given and wages being paid. The answer would be no. If that be so, then it cannot follow that there could be an order or an award for reinstatement with full back wages. His employment was itself vicarious on day-to-day basis.

6 Thus, we see no wrong in the order of the learned

Single Judge in awarding compensation in lieu of reinstatement which is a settled principle. Reinstatement would have created a chaos in the sense, others, who had been working, would have to be removed or surplus staff retained, neither of which the law obliges.

7 Thus, we are not inclined to interfere in the matter.
This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Anjana Mishra, J)

U			
---	--	--	--