

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1546 of 2015

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Rajan Tripathi @ Rajan Kumar Tripathi Son of Sri Girja Kishore Tripathi ,
Resident of Village- Kaparpura, P.S. Kanti, District - Muzaffarpur, At
Present working on daily wages basis as Peon under Branch
Manager, Central Bank of India , Branch - Pupri , District - Sitamarhi.

.... Petitioner/s

Versus

1. The Central Bank of India , a Body Corporate constituted under the
Banking Companies (Acquisition & Transfer of Undertakings) Act, having
its Central Office at Chandramukhi , Nariman Point, Mumbai- 400021,
through its Regional Manager , Muzaffarpur.
2. The Regional Manager , Central Bank of India, Muzaffarpur.
3. The Branch Manager , Central Bank of India , Branch _ Pupri , Distt-
Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma, Adv & Mr. Santosh
Kumar Chauhan, Adv.

For the Respondent/s : Mr. Rajeev Ranjan Prasad, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 26-02-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ
application reads as follows:-

“That this is an application for issuance of an appropriate writ/writs, order/orders, and direction/directions, in the nature of mandamus for commanding and directing to the respondent authorities to pay to the petitioner minimum basic pay with D.A. as that has been paid and are being paid to the regular and permanent Class-IV grade employees of the Bank employed to do and discharge identical duties with similar responsibilities on the principle of “EQUAL PAY FOR EQUAL WORK” granted under Article 39(d) of the constitution of India and be further pleased to grant such other reliefs to the petitioner for which he is legally entitled in law.”



3. Learned counsel for the petitioner in support of the aforementioned prayer has firstly submitted that the petitioner was working as a daily wager in Central Bank of India (hereinafter referred to as the Bank), since, September 1999 and his such daily wage engagement was terminated in the year 2004, whereafter he has moved the Labour Court by raising Industrial Dispute and the Labour Court had held the termination of the service of the petitioner to be bad and therefore, while directing for his reinstatement without back wages had directed for his being taken back in the subordinate cadre of the Bank.

4. According, to learned counsel this judgment of Labour Court on being assailed before this Court, by the Bank in C.W.J.C No. 5717 of 2008 was partly modified by holding the award of the Labour Court to be bad to the extent where the petitioner was directed to be taken back in subordinate service instead of reinstatement on daily wages. Learned counsel for the



petitioner submits that as the petitioner has been continuing after the judgment of the Labour Court of reinstatement on daily wages, now he would be entitled for at least payment of salary and emoluments of class-IV employee by applying the doctrine of equal pay for equal work. In this regard, he is also relying on a judgment of the Apex Court in the case of Bhagwati Prasad vs Bihar State Mineral Development Corporation, AIR 1990 SC 371.

5. On the other hand, Mr. Rajeev Ranjan Prasad, learned counsel appearing on behalf of the Bank has raised a preliminary objection as with regard to maintainability of the writ application because according to him if the petitioner could have gone to Labour Court against his termination of service, any remedy for him in respect of wages also can be raised before the competent Labour Court by seeking reference under Section-10 of the Industrial Disputes Act. His next submission is that the petitioner virtually



is seeking that very relief which was denied by this Court while partly modifying the award passed by the Labour Court, inasmuch as, petitioner being a daily wage employee was not entitled to get anything except daily wage and therefore, even when it was directed by the Labour Court in its award for the petitioner to be taken into the cadre of subordinate service that portion of order of Labour Court was held to be bad by this Court. According to him the petitioner's appointment was/is out and out on daily wages till it is regularized under any policy of the Bank. According to him, even the principle of equal pay for equal work cannot be extended to any other person without looking into the source of recruitment, qualification and other relevant things.

6. This Court however would not like to go into the question whether the petitioner is entitled for equal pay for equal work because the petitioner had definitely knocked the doors of the Labour Court while seeking



earlier remedy against termination of his service. Thus, if the petitioner was in any way aggrieved by the decision of the Bank of not paying the wages equal to class-IV employee while continuing on daily wages, the remedy for him was to again seek industrial dispute and to approach the Labour Court where both he and the Bank could have led their evidence.

7. That having been not done, this Court is not inclined to entertain this writ application because the petitioner admittedly is a workman and for him remedy will be only under Industrial Disputes Act. Reference in this connection may be usefully made to the judgment of the Division Bench of this Court in the case of ***Abdul Khalique Vs. H.E.C. Ltd. & Ors.*** reported in ***1985 BBCJ 114*** and again reiterated in the case of ***Sidheshwar Prasad Vs. Bihar State Road Transport Corporation & Ors.*** reported in ***2003(2) PLJR 841***, wherein, it was held as follows:-

“10. Having appreciated the rival submission, I do not have the slightest hesitation in accepting the broad submission of Mr. Mukhopadhyaya that existence of an alternative remedy does not bar the jurisdiction of this



*Court. This is a rule of discretion and not of jurisdiction. In fact no fetter has been placed by the Constitution on this Court for exercise of power and one of the well known limitations put by this Court upon itself is that in the face of alternative efficacious remedy, jurisdiction under Article 226 of the Constitution is not fit to be exercised, except in grave and exceptional cases. In the present case, the allegation against the petitioner is of misconduct in relation to carrying passengers without ticket. He has been found guilty of said misconduct and dismissed from service. I am of the opinion that the matter of dismissal of a workman employed by the Corporation can appropriately be adjudicated in accordance with the mechanism provided under the Act. The view which I have taken is in conformity with the decision of this Court in the case of **Abdul Khalique vs. H.E.C. Ltd. and others** (1985 BBCJ 114) in which it has been held as follows:-*

“Where a right or liability is created by statute, if that statute provides a remedy, the remedy provided by that statute alone must be followed. The rights and liabilities have been created by the certified Standing Orders. Whether the Standing Orders Act provides any remedy. The only relevant section of that Act is section 13A which provides that if any question arises as to the application or interpretation of a Standing Order certified under that Act, any employer or workman may refer the question to any of the Labour Courts constituted under the I.D. Act and specified for the disposal of such proceeding by the appropriate Government by notification in the official Gazettee and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.”

11. Further in the case of **Rajasthan State Road Transport Corporation and another etc., vs. Krishna Kant etc. etc.** (AIR 1995 SC 1715) the Supreme Court in paragraph 32(4)(6) of judgment, held as follows:-

“32(4) (6). We may no summarise the principles flowing from the above discussion:

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be

exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(6) The Certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein."(Underlining Mine).

12. On my finding that the petitioner has alternative efficacious remedy under the Industrial Disputes Act, jurisdiction under Article 226 of the Constitution is not fit to be exercised and on that account alone I am not inclined to enter into the merits of the case. Further in my opinion, in case respondent-Corporation in some of the cases had not taken this plea, same shall not preclude it from taking this plea in the present case. Petitioner, if so advised, may take recourse to the remedy available to him under the Act."

8. Thus, this writ application is held to be not maintainable because the petitioner has an alternative remedy under Industrial Disputes Act.

9. Having regard to the fact that this Court has found writ application to be not maintainable it has not gone into the merits of case of the petitioner as with regard to applicability of equal pay for equal work

which will have to be gone into and decided by the competent Labour Court on the basis of evidence led by both the parties.

10. When such an observation has been made learned counsel for the petitioner seeks permission to withdraw this application in order to enable the petitioner to seek remedy under Industrial Disputes Act.

11. That being so, this writ application is permitted to be withdrawn with the aforementioned liberty.

(Mihir Kumar Jha, J)

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