IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1899 of 2013

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Akhilesh Kumar Jha son of Sri Nagendra Jha , resident of Village- Bhander, P.S.- Dhaka, District- East Champaran, Bihar

.... Petitioner/s

Versus

1. Central Bank Of India, Through Its Chairman Central Office, Raj Bhasa Bibhag, Maker Tower, E/4 Ling, 21st Floor, Cuff Parade, Colaba, Mumbai- 400 005
2. Chairman, Central Bank Of India Maker Tower, E/4 Ling, 21st Floor, Cuff Parade, Colaba, Mumbai- 400 005
3. Chief Manager, HRD, Maker Tower E/4 Ling, 21st Floor, Cuff Parade, Colaba, Mumbai-400005
4. Zonal Manager, Central Bank Of India, Zonal Office Muzaffarpur
5. Manager, Central Bank Of India, Devapur Branch, East Champaran, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. V.N. Sahay

For the Respondent/s : Mr. Ajay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV ORDER

13 29-03-2016 The sole petitioner, invoking writ jurisdiction of this court, has prayed to quash an award dated 29.6.2012 passed by the Central Government Industrial Tribunal No. 2, Dhanbad (hereinafter referred to as 'Industrial Tribunal') in Reference Case No. 21 of 2007. By the said award it was held that petitioner had not worked for 240 days in any calendar year and reference was rejected. The Industrial Tribunal held the termination of the services of the petitioner as legal and justified.

Short fact of the case is that the petitioner had raised a dispute under the Industrial Dispute Act, 1947 (hereafter referred to as the "I.D. Act") and after failure of conciliation proceeding, Government of India vide order dated 1.5.2007 made a Reference to the Industrial Tribunal. The reference was as follows:-

> ***"Whether the action of the management of Central Bank of India, Zonal Office, Muzaffarpur in terminating the service of Shri Akhilesh Kumar Jha, casual worker and not paying the terminal benefits and not reinstating into the service in a regular post is legal and or justified? If not, what relief Shri Akhilesh Kumar Jha is entitled to".***

After reference was made to the Industrial Tribunal the petitioner / workman submitted a written statement in Reference Case No. 21 of 2007 before the Industrial Tribunal with specific assertion that the petitioner was orally appointed by the management of the Central Bank of India , Devapur Branch under the district of East Champaran to discharge duties of a Peon from 1.12.1997. The petitioner worked at Devapur Branch from 1.12.1997 to 8.8.1998 uninterruptedly and discharged various types of duties. He claimed that he discharged his duties from 10 A.M. to 6 P.M. and sometimes even beyond as per requirement. He was being paid wages through vouchers on weekly basis. However, on 8th August 1998 he was informed that his service stood terminated with effect from 9.8.1998. This information was given to him in the evening of 8.8.1998 and thereafter he was stopped to attend his duties. It was claimed that neither any notice nor any notice pay was given prior to termination. It is further claim of the petitioner that after termination the Regional Office of the Central Bank of India had asked for names of the workmen who worked for more than 240 days and thereafter the concerned Branch Manager forwarded his name for reinstatement and regularization and when his relief was not fulfilled he raised an industrial dispute before the appropriate authority and after failure of conciliation a report was sent to the appropriate Government for necessary action. The petitioner claimed before the Industrial Tribunal for reinstatement of his service as Peon, regularization of his service as Peon and payment of due wages for the period of his work before the Industrial Tribunal. The management i.e. the Central Bank of India filed its own written statement – cum- rejoinder raising number of objections particularly the point that though the petitioner had not worked after 8.8.1998 for the first time he raised dispute in the year 2005 i.e. about after about seven years. The management also took the plea that the petitioner was not engaged in accordance with the procedure for recruitment nor he was appointed by the competent person. A specific plea was taken that the petitioner had never worked for twelve calendar months since after 8.8.1998 being work as casual nature no job was subsequently required. Before the Industrial Tribunal from the petitioner's side he was examined as W.W. 1 and from the management side also one witness was examined as M.W. 1 namely, Sri Ravi Verma, Assistant Manager, Branch Office, Central Bank of India, Chakia, Motihari. From the petitioner's side besides his examination he also produced documents as Exhibit 'W-1, W/1-1 and W/2 to show that he had continuously worked for 240 days as permanent Peon as per the direction of the concerned Branch Manager from 1.12.1997 to 8.8.1998. He was paid daily wages at the rate of Rs. 30/- and subsequently at the rate of Rs. 35/- per day for performing his work for more than 240 days in a calendar year. However, he was removed without compliance of the provisions contained in Section 25F of the I.D. Act. After hearing the parties and examining the evidence on record the learned Industrial Tribunal held that the termination of service of the petitioner was legal and justified by its award dated 29th June 2012 in Reference Case No. 21 of 2007 which has been assailed in the present writ petition

Si V.N. Sahay, learned counsel for the petitioner, assailing the impugned award has argued that the learned Industrial

Tribunal has completely failed to appreciate the exhibits which were brought on record from the petitioner's side to show that petitioner had worked continuously for 251 days and as such before dispensing with the service of the petitioner the procedure prescribed under Section 25F of the I.D. Act was required to be complied with. However, in the present case he submits that neither any notice or pay in lieu of notice was given to the petitioner. Only orally in the evening of 8.8.1998 he was asked that from the next day he was discharged. He submits that though the Industrial Tribunal has discussed everything but the Industrial Tribunal has completely ignored the Exhibit – 'W/1' i.e. a certificate issued by the Branch Manager to show that the petitioner as casual worker had worked from 1.12.1997 to 8.8.1998 and he worked for 251 days. He has further placed reliance on exhibit W/1-1 i.e. an information given by the Branch Manager under Right to Information Act to the effect that from 1.12.1997 to 8.8.1998 the petitioner had worked continuously as casual labour. He has also placed reliance on exhibit W/2 i.e. a certificate to show that the petitioner was paid for his work through 35 vouchers. By way of referring to these annexures Sri Sahay has argued that the petitioner being casual labour was paid for the aforesaid period through 35 vouchers. In sum and substance it has been argued that since before the Industrial Tribunal oral as well as documentary evidence was brought on record on behalf of the petitioner/ workman to establish that he had continuously worked for about 251 days in any event termination of services without following the provision of Section 25F of the I.D. Act was illegal and petitioner is entitled to be reinstated with back wages. He further submits that from the management side save and except oral evidence no documentary evidence was brought to dis-establish the case nor the management had produced any voucher on record to show that petitioner had not worked regularly for more than 240 days in one calendar year and as such he has made a prayer for quashing of the award and directing the respondents to reinstate the petitioner with back wages.

Sri Ajay Kumar Sinha, learned counsel for the Central Bank Of India has opposed the prayer of the petitioner by making a submission that from the own pleading of the petitioner he had not worked for a total one calendar year i.e. twelve months but it is the case of the petitioner himself that he had worked from 1.12.1997 to 8.8.1998. Meaning thereby, that as per the case of the petitioner himself he had worked for about 8 months and 8 days not continuously for a calendar year i.e. 12 months and as such, the learned Industrial Tribunal has rightly rejected the claim of the petitioner. In this case the respondent /Central Bank Of India has filed a supplementary counter affidavit and along with the supplementary counter affidavit the Central Bank of India has brought on record a letter dated 12.8.2008 issued by the Branch Manager, Devapur Branch, Central Bank of India to show that even on the basis of 35 vouchers which is in relation to the period in between 1.12.1997 to 8.8.1998 the petitioner was paid and during that period he had actually worked only for 188 days not 251 days as was claimed by the petitioner on the strength of Exhibit W/1, W/1-1 and W/2. According to Sri Sinha's submission the petitioner had worked as casual labour as per requirement of the Central Bank of India and that too he had not continued to discharge his duties for one calendar year and as such, in this case there was no necessity to comply the provisions of Section 25 F of the Industrial Dispute Act 1947. Accordingly, he made a prayer for rejection of the present petition.

Besides hearing learned counsel for the parties I have also perused the materials available on record. On the basis of the material on record as well as in view of admission of the petitioner /workman himself that he had worked from 1.12.1997 to 8.8.1998 it is evident that he had not worked for one calendar year and as such, he was not entitled to be protected under Section 25 F of the I.D. Act. The Court is of the opinion that for claiming continuous working for 240 days one has to first establish that he continued to work for one calendar year. If a workman has worked for one calendar year and completed 240 days continuous services only then he would be entitled to be protected under Section 25 F of the I.D. Act. This point was long back settled by the Apex Court in a case reported in **A.I.R. 1963 Supreme Court 1914 (Sur Enamel and Stamping Works Ltd., v. The Workman)**. This court may not do better than the Apex Court which has decided the issue in paragraph no. 8 of the Sur Enamel and Stamping Works judgment (Supra) which is quoted hereinbelow:-

> ***"On the plain terms of the section only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit. "Continuous Service" is defined in S.2(eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal or a lock out or a cessation of work which is not due to any fault on the part of the workman. What is meant by "one year of continuous service" has been defined in S. 25-B. Under this section a workman who during a period of twelve calendar months has actually worked in an industry for not less than 240 days shall be deemed to have completed one year of completed service in the industry. Nagen Bora and Monoharan were both reappointed on 10th March 1959. Their services were terminated on 15th January 1960. Thus, their total period of employment was less than 11 months. It is not disputed that period of their former employment under the company prior to their reappointment on 10th March 1959 cannot be taken into consideration***

in computing the period of one year, because it is common ground that their reappointment on 10th March 1959 was a fresh appointment. The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that it would not satisfy the requirement of S.25-B. Before a workmen can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed , for a period of not less than 12 calendar months and , next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not all at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of S. 25-B would not be satisfied by the mere fact of the number of working days being not less than 240 days."

In view of the facts and circumstances particularly the admitted stand of the petitioner that he had not worked for one calendar year he may not be entitled to claim protection under Section 25F of the Industrial Disput Act. So far as documents i.e. Annexure – 'A' to the supplementary counter affidavit, which has been brought on record from the management side i.e. respondents is concerned, the court is of the opinion that while exercising power of judicial review this court may not examine such document which was not brought on record before the Industrial Tribunal. However even ignoring the document i.e. Annexure – 'A', on the admission of the petitioner himself regarding non completion of his work for one calendar year, he may not get any relief. After examining the impugned award, the

Court is of the considered opinion that the learned Industrial Tribunal has committed no error and as such, the writ petition stands dismissed.

(Rakesh Kumar, J)

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