

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.277 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 13312 of 2009

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Ramji Mahto Son of Late Ganauri Mahto Resident Of Village- Onda, P.O. Onda,
P.S. Sone, District- Nalanda

.... Appellant/s

Versus

1. Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna through its
Chairman
2. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Baily Road,
Patna- 800001 (Bihar)
3. State Of Bihar through The Secretary, Labour And Employment, New
Secretariat, Patna- 800001
4. Presiding Officer, Labour Court, Baily Road, Patna- 800001

.... Respondent/s

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Appearance :

For the Appellant/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 22-06-2016

Heard learned counsel for the parties.

The challenge in the present appeal under Clause X of
the Letters Patent of Patna High Court is to the order dated
04.09.2013 passed by the learned Single Bench in which C.W.J.C.
No. 13312 of 2009, filed by the respondents no. 1 and 2, has been

allowed and the order dated 06.04.2009 passed in B.S.E. Case No. 14 of 2001 by the Labour Court and the authority under the Bihar Shops and Establishments Act, Patna has been quashed.

The appellant was an employee under the Bihar State Electricity Board, as it then was (hereinafter referred to as the 'Board') on 13.11.1984 as a Muster Roll employee on the basis of representation made before the Board for his appointment on compassionate ground claiming that his father, who was in service of the Board, had died on 27.08.1983. The authorities directed him to submit the death certificate of his father along with fitness certificate and relationship certificate etc. for verification. The same was not submitted by the appellant and he continued in service. When the Board took a policy decision to regularize all Muster Roll Workmen, who had worked for more than a year, documents were called from all Area Board Offices for verification. During the said enquiry, it was found that the appellant had submitted a false affidavit, stating that his father died while being in service, for getting appointment on compassionate ground. The appellant was, thus, disengaged with effect from 23.08.2001. The appellant then filed an application under Section 26 (2) of the Bihar Shops and Establishments Act, 1953 (hereinafter referred to as the 'B.S.E. Act') challenging such disengagement/dismissal from the service of the Board before the



Labour Court, Patna. The case was finally decided in favour of the appellant by order dated 06.04.2009 which was impugned by the Board in C.W.J.C. No. 13312 of 2009. The writ petition having been allowed in favour of the Board, the appellant has preferred the present appeal.

Learned counsel for the appellant submits that the order of the Labour Court, in which it has been held that such disengagement of the appellant could not have been without a proper enquiry, is the correct view in law as the said disengagement was on the ground of there being a misrepresentation by the appellant, which amounts to misconduct, for which any penal action can be taken only after holding a duly constituted departmental proceeding. It is submitted that admittedly no departmental proceeding was held, which vitiates the action taken by the Board against the appellant and the Labour Court has rightly interfered in the matter. It is further submitted that the learned Single Bench has not considered the issue in its proper perspective.

Learned counsel for the Board submits that the appellant had filed an affidavit before the Board that his father had died while being in service. Based on the same, he was engaged by the Board and when such statement was found to be patently incorrect, he has been disengaged and, thus, there was no requirement of holding any



departmental proceeding as facts were admitted and there was an affidavit by the appellant wrongly stating that his father had died while being in service. When the same was found incorrect, the natural consequence was that of disengagement of the appellant. It is further submitted that the view taken by the learned Single Judge is sound both on facts as well as in law and does not require any interference.

Having considered the rival contentions, the Court does not find any merit in the present appeal. When the appellant had filed an affidavit before the Board to the effect that his father had died while being in service and his engagement was on the basis of such affidavit, it is very clear that when such fact was found to be incorrect, the very basis of appointment/engagement of the appellant by the Board stands washed away. Thus, the appellant had committed a fraud while submitting such affidavit which has been found to be patently false. Since the engagement/employment of the appellant under the Board was based on such false affidavit, in the considered opinion of the Court, there was no requirement for any disciplinary proceeding for any misconduct as the said conduct of the appellant was clearly an act of fraud and the law is settled that fraud vitiates all subsequent actions. Thus, the decision of the Board disengaging him cannot be faulted. The fact of the appellant having submitted an affidavit to the

effect that his father had died while being in service has been verified by the learned Single Bench, after going through the original file relating to the engagement of the appellant, has found that there was misrepresentation on his behalf based on which he got engagement on the ground of compassion. This basic fact has also not been controverted or denied by the appellant. For the reasons aforesaid, we do not find any error in the order passed by the learned Single Bench warranting interference by this Court.

Accordingly, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/-

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