

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.291 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 21595 of 2012
Along with
Interlocutory Application No.1261 of 2015

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Man Mohan Jha, S/o Late Anant Jha Ex-helper, Mechanical Division Koshi Project,
Birpur, Supaul, at present R/o Vill - Ghatpur, P.S. - Karjan Bazar, Distt - Supaul.

.... Workman-Petitioner-Appellant

Versus

1. The State of Bihar.
 2. The Presiding Officer, Labour Court, Purnea.
 3. The Secretary, Water Resources Department, Govt. of Bihar.
 4. The Executive Engineer (Mechanical), Division - II, Birpur, Supaul.
 5. The Management of Mechanical Birpur Division, Koshi Project, Birpur, Supaul.
- Employer-Opposite Parties- Respondents
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Appearance :

For the Appellant : Mr. N. Sharma, Advocate
Mr. Kritya Nand Jha, Advocate

For the Respondents : Mr. Ashok Kumar Keshri, A.A.G.XI
Mr. Ratandeep Prasad, A.C. to A.A.G. XI

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 29-04-2016

Re.: Interlocutory Application No.1261 of 2015

The application is for condonation of delay of 208 days in
filing of the appeal.

For the reasons mentioned in the application and explained
by the learned counsel for the appellant, we find that sufficient cause is
made out for condonation of delay. Consequently, the delay of 208 days
in filing of the appeal is condoned.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.291 of 2015

The order dated 19th February, 2014 passed by the learned Single Bench of this Court in C.W.J.C. No.21595 of 2012 is subject matter of challenge in the present Letters Patent Appeal whereby the learned Single Judge has dismissed the writ application directed against the award of the Labour Court dated 04.08.2012.

The facts, in brief, as per the appellant is that he worked from October, 1974 to June, 1976, but his services were terminated without paying any compensation or serving any notice. He raised an Industrial Dispute, but he was again asked to work vide letter dated 11th of March, 1981 for a period of 90 days. Thereafter, the workman could not work for 240 days in a year, though he performed his duties for 2 years and 3 days. The services of the workman were terminated on 22nd November, 1983 without any payment of compensation or show cause notice. It was on these facts, the appellant raised Industrial Dispute.

The Management denied that the workman worked for more than 240 days in a year. It was asserted that the workman worked only 179 days in a last preceding calendar year. It is also pointed out that the services were not retrenched, but since no work was extended by the Government, therefore, the services were not extended. The nature of the work was casual and seasonal in relation to Kosi Project.



The learned Labour Court initially answered the reference in favour of the appellant on 3rd of October, 2000 when it ordered reinstatement with continuity in service. However, such award was set aside by this Court in CWJC No.10676 of 2001 vide order dated 11.11.2009 and the matter was remitted back to the Labour Court. It is thereafter, the Labour Court has answered the reference against the appellant.

The star argument of learned counsel for the appellant is that Junior Engineer has issued a certificate dated 2nd December, 1978 to the effect that the appellant has worked for 240 days. Such certificate is on record as Ext.-9 wherein it has been asserted that the appellant worked from October 1974 to June, 1976 for more than 240 days continuously and that he be reinstated.

We do not find that such certificate provides any assistance to the arguments raised by learned counsel for the appellant. The certificate pertains to the period 1974 to 1976, i.e. much before the services of the appellant were re-engaged. No witness has been examined to prove such certificate. There is no evidence that who was the Junior Engineer who had given the certificate and whether such certificate was issued on the basis of the record or only to help the appellant. As per the appellant, he was again called to work on 11th of March, 1981 for 90 days. Still further, the appellant has not confronted

any of the witnesses of the Management in respect of the certificate so produced so as to elucidate information as to the fact that the appellant has worked 240 days between the years 1974 and 1976, when the dispute pertains to period after his re-engagement. Still further, the certificate is a certificate for reinstatement. The fact remains that there is a categorical finding of the Labour Court in the award dated 04.08.2012 that the appellant has not worked for 240 days in a calendar year immediately preceding his retrenchment, thus, the appellant was not entitled to any retrenchment compensation or notice. Such finding of the Labour Court has been affirmed by the learned Single Bench.

We do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal.

The Letters Patent Appeal, thus, stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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CAV DATE	N. A.
Uploading Date	05.05.2016
Transmission Date	