

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.55 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 7916 of 2007

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Tapti Ganguly, Daughter of Late Bhupendra Nath Ganguly, Resident of Bengali Tola, P.S. and District - Samastipur

.... Appellant/s

Versus

The Superintending Engineer, Drainage Circle, Samastipur

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Abhay Shanker Singh with
Mr. A.K. Mishra, Advocates.

For the Respondent/s : Mr. R.R.K. Pandey, SC 29 with
Mr. Nagendra Sharma, AC to SC 29.

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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: 31-03-2016

The present Letter Patent Appeal is directed against the order passed by the learned Single Judge on 27th September, 2012 whereby the award of the Labour Court dated 15th February, 2006 ordering reinstatement with full back wages was modified to that of compensation of Rupees one lac on account of termination of the services of the workman in violation of Section 25F of the Industrial Disputes Act, 1947 (for short “the Act”).

2. The appellant raised an industrial dispute in respect of termination of her services as a daily-wage-workman working with Water Drainage Circle, Samastipur. She worked from 15th June, 1981 on the post of Typist intermittently till 16th October, 1987. The learned Labour Court allowed the reference holding that in preceding one year to the date of her termination, she



has worked for more than 240 days and that her termination has been effected without payment of compensation or notice in violation of the provisions of Section 25F of the Act and ordered reinstatement with full back wages. In a Writ Petition, the management raised a dispute that the Irrigation Department is not an establishment to which the Act is applicable but relying upon the Full Bench judgment of this Court, reported as **1983 PLJR 667 – Bijay Kumar Bharti & Ors. v. State of Bihar & Ors.**, it was held that the employees of Irrigation Department are also workmen. However, the learned Single Bench substituted the order of reinstatement with full back wages to that of payment of compensation of Rupees one lac. It is the said order which is disputed by the workman in the present Letters Patent Appeal.

3. Learned counsel for the appellant points out that the appellant had not been paid any wages during the pendency of the Writ Application as contemplated under Section 17B of the Act. Therefore, the grant of compensation of Rupees one lac is wholly inadequate and unjust.

4. Learned counsel for the appellant refers to a judgment of the Hon'ble Supreme Court, reported as **(2011) 6 SCC 584 – Devendra Singh v. Municipal Council, Sanaur**. On the other hand, learned counsel for the respondent contends that the workman was a back-door entrant and has not completed 240 days in any calendar year. Therefore, there could not be any order of reinstatement or of payment of compensation.

5. The judgment, referred in the case of **Devendra Singh** (Supra), has been examined later by the Hon'ble Supreme Court, reported as **(2014) 7 SCC 177 – Bharat Sanchar Nigam Limited v. Bhurumal**, wherein it has been held that in case of violation of Section 25F of the Act, reinstatement with back wages is not the remedy; adequate amount of compensation can be awarded.

6. We have heard learned counsel for the parties and find that the compensation amount paid to the appellant is inadequate. The argument of the respondent that the workman was a back-door entrant and has not completed 240 days in a calendar year does not merit any consideration as it is a finding of fact recorded by the learned Labour Court and affirmed by the learned Single Bench that the workman has worked for 240 days in a preceding calendar year. Such finding cannot be disputed by the respondent in the present appeal preferred by the workmen. The said finding has not been challenged by the respondent by way of an appeal. Therefore, the finding that there is a violation of the provision of Section 25F of the Act cannot be permitted to be disputed by the respondent.

7. The fact remains that the workman has not been paid wages during the pendency of the Writ Petition as warranted by Section 17B of the Act. The Writ Petition remained pending for almost five years.

8. Taking into consideration the wages which would accrue to the workman during the said period and the fact that the order of reinstatement is not being passed, we deem it appropriate to enhance the compensation to Rupees two lacs. Except the said modification in respect of compensation, we do not find any error in the order passed by the learned Single Judge. The amount of compensation be paid to the workman within three months from today.

9. The Letters Patent Appeal stands disposed of in the above terms.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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