

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12651 of 2010

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Satish Chandra Jha son of Late Shri Narayan Jha, resident of village and P.O.- Prem Nagar, P.S.- Runisaidpur, District- Sitamarhi, Bihar

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources Department, Government of Bihar, Patna
2. The Engineer-In-Chief, Building Construction Department, Vishaishvarai Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Advocate

: Mr. Indrajeet Bhushan, Advocate

For the State : Mr. Ghanshyam Prasad Sinha, A.C. to G.A.-6

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-05-2017

In the present application the petitioner has prayed for setting aside the Award dated 27.03.2009 passed in Reference Case No.10 of 2002 by the learned Presiding Officer, Labour Court, Patna by which he has decided the reference case against the petitioner and has not granted any relief to the petitioner on the ground that he could not produce any documentary evidence to prove that he was in service for 240 days in one calendar year preceding the date of his termination from service i.e., 01.04.1990. The petitioner has also prayed for issuance of direction to the respondent no.2 for reinstating him in service with full back wages and other consequential benefits.

2. The case of the petitioner is that he was employed on daily wages by the Engineer-in-Chief-cum-Additional Commissioner



in the Building Construction Department on 15.03.1985 as Typist. He continued to work as Typist on daily wages till 31.03.1990. However, from 01.04.1990 he was orally removed from service.

3. Learned counsel for the petitioner contended that since prior to 01.04.1990 the petitioner had been in continuous service from 15.03.1985 and, therefore, he completed much more than 240 days in one calendar year preceding to the date of his oral termination from 01.04.1990 and was thus entitled to the protection of Section 25-F of the Industrial Disputes Act, 1947. He contended that despite the fact that the petitioner had rendered much more than 240 days service in one calendar year, the learned Presiding Officer, Labour Court, Patna erroneously rejected the reference made to him holding that there is no positive evidence to show that the petitioner was in continuous employment for 240 days.

4. Per contra, learned counsel for the State submitted that there is no truth in the contention of the petitioner that he continuously worked 240 days in the office of the Engineer-in-Chief-cum-Additional Commissioner, Building Construction Department with effect from 15.03.1985 to 31.03.1990. He contended that the petitioner was engaged on daily wages against emergency work for limited period as stop gap arrangement for which he was paid wages as and when work was taken from him. He contended that the Labour



Court has examined the evidence brought on record and has correctly held that there is no evidence to support the claim of the petitioner that he continuously worked for more than 240 days in one calendar year preceding the date of termination from service.

5. I have heard learned counsel for the parties and perused the record.

6. I find no error in the order of the Labour Court, as there is no material to support the claim that the petitioner has continuously worked for more than 240 days in one calendar year preceding the date of termination from service.

7. If the petitioner claimed to have worked for more than 240 days in one calendar year preceding the date of termination from service, the burden to prove such fact by leading cogent evidence during the proceeding was upon him.

8. In that view of the matter, the application being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.05.2017
Transmission Date	

