

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25712 of 2013

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1. Krishna Murari Mahto S/O Sri Kanhai Prasad Mahto Resident Of Janidihi, Post Ghogha, Police Station Kahalgaon In The District Of Bhagalpur.

.... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Labour Department, Government of Bihar, Patna.
2. M/S First Flight Couriers Ltd. Through Its Manager Personnel and Administration, Regional Head Office, 76-B, 4th Floor, Shrijee Arcade, Pennar Road, Sakchi, Jamshedpur 831001.
3. The Branch Manager, M/S First Flight Couriers Ltd. Super Market Complex, Patal Babu Road, Bhagalpur 812002.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv.
Mr. Sushant Kumar, Adv.
For the State : Mrs. Binita Singh, SC-28
Mr. Nishant Kumar Jha, A.C. to SC-28
For Respondent Nos.2&3 : Mr. Pankaj Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-04-2017

This writ application has been filed for setting aside the order dated 04.09.2013 passed by the learned Presiding Officer, Labour Court, Bhagalpur in Bihar Shop and Establishment Act Case No. 02 of 2008 whereby and whereunder the petitioner's application filed under Section 26(2) of the Bihar Shops and Establishment Act (for short 'the Act') for his reinstatement in service of the employer M/s First Flight Couriers Limited was rejected on the ground that the application was meritless.

2. Learned counsel for the petitioner submitted that without



appreciating the law the learned Presiding Officer of the Labour Court dismissed the application. It is contended that while on duty the petitioner had met with an accident on 17.10.2006 near Suryagarha in which both his legs got fractured. He had to be admitted in Rahman Clinic at Tatarpur from where he was discharged on 15.06.2007. Thereafter, he met the private respondents, who asked him to submit his joining on 1st August, 2007 at Sahebganj. Since the petitioner did not intend to join at Sahabganj, a legal notice was sent asking the private respondents to allow him to join at Bhagahlpur instead of Sahebganj. As no response was given to his request and legal notice, he caught a train in order to submit his joining at Sahabganj, but due to huge crowd at the railway station, he again met with an accident in which he sustained fracture injuries pursuant to which he was again taken to Rahman Nursing Home at Tatarpur on 31.08.2007. After recovery, he submitted an application for allowing him to join on 22.01.2008. Since the private respondents paid no heed to his application, a legal notice was sent to them on 23.02.2008, which was never responded. However, he was orally communicated that since there was no vacancy, he cannot be allowed to resume duty.

3. On the other hand, learned counsel appearing for the private respondents submitted that the Labour Court has correctly appreciated the facts and law involved in the case and on the basis of



evidence led before it. He submitted that the Labour Court rightly came a finding that there was no relationship of employer and employee between the parties as the petitioner had remained absent from service without information for sufficiently long time and hence, the application under Section 26(2) of the Act was not maintainable.

4. I have heard learned counsel for the parties and carefully perused the order passed by the Labour Court.

5. I find no error in the order passed by the Labour Court. On the basis of the evidence laid before it, the Labour Court came to a finding that there was no chit of paper to show that the petitioner met with an accident on 28.08.2007 or sustained any injury on his person. The Labour Court has recorded that after being asked to join at Sahabganj on 1st August, 2007, the petitioner never reported for duty. Hence, it was not a case of termination from job rather the petitioner had himself abandoned the job. Moreover, an employee is required to file his case within 90 days of the cause of action, but the petitioner after being out of job since 17.10.2006 approached the Labour Court for the first time in 2008. In the opinion of this Court since the petitioner failed to even prima facie satisfy the Labour Court that there was any existing employee and employer relationship between the parties, it rightly dismissed the application



holding the same to be meritless.

6. For the reasons stated above, the writ application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.04.2017
Transmission Date	

