

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14404 of 2003

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Managment of Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna,
through its Chairman.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Labour & Employment and Training, Government of Bihar, Patna.
2. Under Secretary, Department of Labour & Employment and Training, New Secretariat, Patna.-1.
3. The Labour Commissioner, Government of Bihar, Patna.
4. The Joint Labour Commissioner, Government of Bihar, Patna.
5. The Deputy Labour Commissioner, Patna.
6. The Presiding Officer, Industrial Tribunal, Patna.
7. Bihar State Electric Supply Workers Union, South Mandiri, Patna through its General Secretary, Sri Chakardhar Pd. Singh.
8. Bihar Rajya Vidyut Parishad Field Kamgar Union, Patna through its General Secretary, Sri Amrendra Pd. Mishra.
9. Kapildeo Yadav.
10. Srichand Prasad.
11. Mithilesh Kr. Lal.
12. Basant Kr. Khetan.

All C/o Bihar State Electric Supply Workers Union, South Mandiri, Patna through its General Secretary, Sri Chakardhar Pd. Singh and Bihar Rajya Vidyut Parishad Field Kamgar Union, Patna through its General Secretary, Sri Amrendra Pd. Mishra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. V.N.Sahay, Adv.
Mr. Arun Shrivastava, Adv.

For the Respondent-State : None.

For the Workman : None.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-02-2017

Heard Mr. V.N. Sahay, learned counsel appearing for the
petitioner. There is no representation on behalf of the respondents.

The petitioner is the Management of the Bihar State



Electricity Board (hereinafter referred to as 'the Management') and is aggrieved by the Notification No.III/DI-18072/92 L, E&T-1607 dated 6.10.1993, issued under the signature of the Under Secretary, Department of Labour, Employment and Training, Respondent no.2, whereby a reference under section 10(1) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') was made by the Government of Bihar in its Department of Labour, Employment and Training to the Industrial Tribunal Patna (hereinafter referred to as 'the Tribunal') giving rise to Reference Case No.2 of 1993, a copy of which is impugned at Annexure-1 to the writ petition.

The petitioner has also questioned the award passed by the Presiding Officer, Industrial Tribunal, Patna, in so far as:

- (a) It has held the termination order of the workmen to be bad, not proper and has directed for reinstatement in service from the date they were terminated with full back wages together with interest @ 8% per annum until the date of payment;.
- (b) 'The Tribunal' has quashed the withdrawal of 'the construction allowance' by 'the Management'; and
- (c) 'The Tribunal' has quashed the reduction in 'emergency allowance' by 'the Management', from 10% to 6%.



The 'Reference Order', has been enclosed at Annexure-1 and its English translation has been reproduced by the petitioner at paragraph 4 of the writ petition which is as under:

Item No.I

Whether the termination of services of 1. Sri Kapildeo Yadav, Electric Supply Sub-Division, Saharsa, 2. Sri Chand Prasad, Survey Foreman-2, construction Sub-Division, Muzaffarpur, 3. Sri Mithilesh Kumar Lal, Bill Clerk, Electric Supply Division, Katihar, 4. Sri Ashok Kumar Dutta, Bill Clerk, Electric Supply Division, Bhagalpur (Town), 5. Sri Basant Kumar Khetan, Correspondence Clerk, Electric Supply Sub-Division, Chaibasa (Town), 6. Sri Harun Raseed, Foreman Grade-1, Electric Supply Sub-Division, Samastipur, 7. Sri Udai Ram Verma, Correspondence Clerk, Electric Supply Sub-Division, Ranchi (Town), 8. Sri Ram Krishna Singh, Correspondence Clerk, Electric Supply Division, Dhanbad, 9. Sri G.D. Sinha, Bill Clerk, Electric Supply Sub-Division, Dhanbad and 11. Sri Ratneshwar Jha, "Ratan", Correspondence Clerk, Gaya Electric Circle (West), Gaya is proper? If not whether they should be reinstated and/or compensated?

Item No.II

Whether withdrawal of construction allowance which were being given from before vide permanent order no.13/M-1001/9-1401/E.B. dated 18.08.1992 by Bihar State Electricity Board is proper? If not what relief the workers are entitled to?

Item No.III

Whether to reduce the emergency allowance from 10% of basic pay to 6% of basic pay after revision of the pay of the workman under the permanent order no.13/PR/201/90/205/E.B. dated 10.01.1991 of Bihar State Electricity Board is proper? If not what should be the rate of emergency allowance?

Item No.IV

Whether the introduction of reduced rate of house rent allowance vide office order no.13/PR-201/90, 161/E.B. dated 10.01.1991 by Bihar State Electricity Board for the workman other than Class-A/B-1, B-2, cities with effect from 1.1.1991 is proper? If not what rate of house rent should be for the workman for said places



and since when?

Item no.V

Whether the Conveyance allowance should be provided to the working workman of different units of Bihar State Electricity Board viz Barauni Thermal Power Station, Muzaffarpur Thermal Power Station, Kanti, Patratu Thermal Power Station, Patratu, Swarnrekha Hydel Power Station, Sikidari, Kosi Hydel Power Station, Birpur? If so, as what rate?

Item No.VI

Whether more than two time bound promotion should be provided to the workmen of Bihar State Electricity Board? If so how many time bound promotion should be provided and at what intervals of the year?

Mr. Sahay, learned counsel appearing for the petitioner has fairly informed that while the Reference at Item Nos. IV to VI has been decided against the workmen and in favour of the petitioner, in so far as the reference at Item No.I is concerned, even when 'the Tribunal' has taken note of the fact that on advisory issued by the Chief Minister all the workmen were reinstated in service yet it is directed for payment of back wages with interest. He informs that the emoluments to which the workmen were found entitled as per the agreement has since been paid. According to Mr. Sahay learned counsel for the petitioner, the order of 'the Tribunal' in so far as Item No.-I is concerned, stands implemented.

Mr. Sahay, learned counsel for the petitioner while questioning the order of 'the Tribunal' at Item Nos.-II and III is concerned, submits that even when 'the Tribunal' has taken note of the nature of the allowance which was subject matter of Item Nos.-II



and III, yet 'the Tribunal' has proceeded at paragraph 60 to uphold the claim and to direct the Management to compensate the loss to the workmen on account of withdrawal of 'construction allowance'. He submits that the term 'construction allowance' itself describes its nature and this allowance is allowed to the workmen who are engaged in construction work. He submits that the moment the construction work is over that this allowance is withdrawn and thus there was no occasion for 'the Tribunal' to direct for compensating the loss suffered by the workers who were well aware as to the nature of allowance.

Advancing his argument in so far as Item No.III is concerned which is in connection with reduction of 'emergency allowance', Mr. Sahay has referred to the observation made by 'the Tribunal' at paragraph 61 to submit that even though 'the Tribunal' was made aware of the fact that the 'emergency allowance' was not a part of wage rather is an allowance paid to the emergency staff and that though the Pay Revision Committee had recommended for payment of such allowance @ 2% of the wages for retaining the staff in the emergency category and 4% for those who actually performed emergency duties but 'the Management' took liberal view to fix it @ 6% on the revised salary with no monetary loss to the workmen, yet mechanically directions have been issued. He submits



that 'the Tribunal' without appreciating the import of the allowance and the action taken has simply proceeded to uphold the claim treating it as a reduction in salary, to opine in favour of the workmen at paragraph 65 of the judgment.

Mr. Sahay next submits that since the finding of the Tribunal as regarding Item No.-IV to VI of the reference is in favour of 'the Management' he would not be contesting the same.

I have heard Mr. Sahay, learned counsel appearing for the petitioner and I have perused the records.

Perhaps the workmen are more than satisfied by the reinstatement and the action taken and that is why there is no representation on their behalf when the matter is taken up for consideration.

As advanced by Mr. Sahay learned counsel for the petitioner, practically the grievance of the workmen stands redressed by their reinstatement even if, at the intervention of the then Chief Minister. Nonetheless the very fact that even before this matter could be heard before 'the Tribunal' the workmen had been reinstated with all allowance to which they were found entitled under the agreement entered, the reference at Item No.-I ought to have been disposed of accordingly without issuing any further direction because the reinstatement was at the initiative of the then



Chief Minister and which by itself renders the termination order inoperative. It thus did not require Court's direction to hold as such rather it is the act itself which renders the termination order inoperative and non-est. Since the workmen had joined their respective post together with the emoluments as agreed upon, in such circumstances there was no occasion for any further direction as found at paragraph 50 of the award put to question herein.

Coming to the award in so far as Item Nos.-II and III are concerned, in my opinion, a grant or withdrawal of allowance which is not a part of wage, is at the discretion of 'the Management' and so long as its grant and withdrawal, is supported by an explanation, it would not require any interference by the courts. As rightly submitted by Mr. Sahay that the two allowances in question i.e. the 'construction allowance' and the 'emergency allowance' itself explains its nature and character and while 'construction allowance' is admissible to the workmen who are on construction duty, a similar allowance is allowed to those who are on emergency duty. It is not a case that a workman, who was posted in the conditions so explained, has been denied any such allowance rather it is specifically the case of the petitioner that the allowance was allowed to the workmen until the construction continued and has been withdrawn after the completion of the construction work. In such circumstances, and



even if there is an advisory by the Minister concerned to 'the Management' to explore the possibility of compensation, the discretion would vest in 'the Management' and cannot be forced upon. The opinion of the Tribunal in so far as it directs at paragraph 60 to make payment of 'construction allowance' at the rate at which it is being paid until such time that 'the Management' would make similar provision for compensating the worker for the loss, is illegal and in excess of jurisdiction for no such directions can be issued by an authority performing quasi-judicial function which creates the financial liability even in absence of any statutory obligation cast on the employer concerned. In the present case, in view of the explanation given by 'the Management' as to the nature of allowance there cannot be any illegality in their action if they have chosen to withdraw the construction allowance on completion of the construction work.

The finding of the Tribunal at paragraph 60 with reference to Item No.-II relatable to 'construction allowance' cannot be upheld and is accordingly quashed and set aside.

This brings this Court to the finding at item No.-III in relation to 'emergency allowance' and in view of the specific stand taken by the Board in reference to the opinion of the Pay Revision Committee that not only the fixation of the 'emergency allowance'



to the emergency staff is more than the recommendation by the Pay Revision Committee but it has been fixed on the revised salary and has not resulted to any monetary loss to the workers, in my opinion could not have been interfered by an opinion found at paragraph 65 of the award, whereby ‘the Tribunal’ has directed ‘the Management’ to pay ‘emergency allowance’ @ 10%. As I have observed it is not within the domain of quasi-judicial authority to comment upon the rate at which an allowance is to be paid for this is entirely an administrative function.

For the reasons aforementioned, the finding of the Tribunal in so far as Item No.III relatable to ‘emergency allowance’ is concerned as found at paragraph 65 cannot be upheld and is accordingly quashed and set aside.

The Award of ‘the Tribunal’ is modified to the aforementioned extent.

The writ petition is allowed to the extent indicated above.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21-02-2017
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