

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2053 of 2016

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1. The Chief General Manager, State Bank Of India, Local Head Office, West Gandhi Maidan, Patna- 800001.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Labour, Government of India, New Delhi.
2. The State of Bihar through the Principal Secretary, Labour Resources Department, Vikas Bhawan, New Secretariat Building, Bailey Road, Patna- 800001.
3. Shri Shashi Bhushan Prasad, Son of Late Bhola Mandal, resident of Village- Durha Asthan, Tilakpur, P.S.- Sultanganj, District- Bhagalpur, Bihar.
4. The Assistant Labour Commissioner (Central), Pakur, Ministry of Labour & Employment, office of the Assistant Labour Commissioner (Central), Haridanga Bazar, Pakur, Jharkhand.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Adv.
For the Union of India : Mrs. Nivedita Nirvikar, C.G.C.
Mr. Manoj Kumar, Adv.
For the State : Mrs. Meera Singh, A.C. to GP-23

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-11-2017

1. Whether the case directly filed by the respondent no.3 workman under Section 2A(1) and (2) of the Industrial Disputes Act, 1947 (for short 'I.D. Act') for deciding industrial disputes relating to his termination and regularization in service which fell in the domain of the Central Government in terms of Section 2(a) of the I.D. Act could have been instituted before the Industrial Tribunal, Patna, which is an Industrial Tribunal constituted under Section 7A of the I.D. Act by the State of Bihar for deciding disputes falling in the domain of the State Government is the issue involved in the present writ petition.

2. Heard Mr. Alok Kumar Sinha, learned counsel for the



petitioner, Mrs. Nivedita Nirvikar, learned counsel for the Union of India and Mrs. Meera Singh, learned Assistant Counsel to GP-23 for the State.

3. Though the respondent no.3 has appeared through counsel, on repeated calls, he did not turn up to contest the matter.

4. This writ petition has been filed by the petitioner for setting aside the award dated 22.06.2015 passed in Industrial Dispute Case No. 03(C) of 2011 by the Presiding Officer, Industrial Tribunal, Patna whereby and whereunder he has directed the management of the State Bank of India, Agriculture Development Branch, Ghogha to reinstate and regularize the service of the workman from 06.03.2009, the date on which he was removed from service and the management has been directed to give all consequential benefits to the workman and all due wages from the date of his removal from service upto the date he is reinstated.

5. The brief facts of the case are that the respondent no.3 being a daily wage worker in the State Bank of India, Agriculture Development Branch, Ghogha, Bhagalpur was removed from service with effect from 06.03.2009. Being aggrieved by his removal from service, initially, he filed a writ petition before this Court vide C.W.J.C. No. 5287 of 2009, which was dismissed as withdrawn on 27.04.2009 with liberty to pursue his remedy under the I.D. Act. Thereafter, on 19.06.2009, he raised an industrial dispute challenging



his termination from service before the Assistant Labour Commissioner (Central), Patna. The conciliation proceeding held between the management and the workman did not bear any fruitful result and ended in failure on 27.08.2010. A failure report, dated 28.11.2010, was prepared by the Assistant Labour Commissioner (Central), Patna in terms of Section 12(4) of the I.D. Act and was sent to the Secretary, Ministry of Labour, Government of India, New Delhi.

6. The Central Government, upon failure of the conciliation proceeding made a reference of the industrial dispute relating to termination of service of the workman by order of reference dated 26.05.2011 to the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad. The term of reference sent for adjudication was :-

“Whether the action of the management of the State Bank of India, Patna in terminating Shri Shashi Bhushan Prasad, Son of Shri Bholu Mandal from service with effect from 06.03.2009 is legal and justified? To what relief the workman is entitled?

7. The reference made by the Central Government was registered as Reference Case No.33 of 2011 by the Tribunal. The workman informed the Tribunal that he did not wish to contest the case and wanted to withdraw the case. Thus, the Central Government Industrial Tribunal delivered a ‘No Dispute Award’ on 30.11.2011.

8. Be it noted that while the matter was still pending before



the Central Government Industrial Tribunal, the workman directly filed an application as per Section 2-A(1) and (2) of the Industrial Disputes (Amendment) Act, 2010 before the Presiding Officer, Industrial Tribunal, Patna. By the aforesaid Industrial Disputes (Amendment) Act, 2010, the previous Section 2-A of the I.D. Act was amended with effect from 15.09.2010. Prior to amendment, there was no provision for direct filing of any application before the competent Industrial Tribunal or in the Labour Court in respect of disputes of discharge, dismissal or otherwise termination of service. The workman had to approach the Conciliation Officer and since on most of the occasions conciliation used to fail or consume lot of time before the dispute could be referred by the appropriate Government for adjudication, therefore, in order to ensure quick remedy to the workman, the legislature amended Section 2A and introduced sub-sections (2) and (3) by which it provided that the workman could make an application directly to the Labour Court or Industrial Tribunal for adjudication of the dispute after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute. Thus, after amendment, a workman has been given a choice of either taking recourse to the old process for getting his dispute referred or he could directly file an application in terms of Section 2A(2) of the Industrial Disputes (Amendment) Act, 2010.



9. However, in the present case, after the workman had participated in the conciliation proceeding before the Assistant Labour Commissioner (Central), which had ended in failure on 27.08.2010 and a failure report had been sent to the Central Government and the dispute was pending before the Central Government for reference before the competent Central Government Industrial Tribunal, the workman decided to file an application directly before the Industrial Tribunal, Patna constituted by the State Government under Section 2A(1) and (2) of the Industrial Disputes (Amendment) Act, 2010, which was registered as Industrial Disputes Case No. 03(C) of 2011. The workman himself framed the terms of reference as under :-

“Whether the action of the management of the State Bank of India, Ghogha Branch in denying regularization of service of Shri Shashi Bhushan Prasad as a messenger/peon and terminating his services in violation of Section 35F of the ‘I.D.Act’, is legal and justified ? If not, what relief the workman is entitled to?”

10. As far as knowledge about reference made by the Central Government is concerned, the said fact was brought to the notice of the Industrial Tribunal, Patna by the workman by filing a petition on 04.08.2014 and the Industrial Tribunal, Patna was fully aware of the fact that ‘No Dispute Award’ has been passed by the Central Government Industrial Tribunal in the matter of termination of service of the workman, but still proceeded ahead with the matter and adjudicated the same and delivered the impugned award.



11. Learned counsel for the petitioner submitted that the impugned award delivered by the Industrial Tribunal, Patna is patently illegal, arbitrary, erroneous, perverse and without jurisdiction. He submitted that under the I.D. Act appropriate Government is empowered to constitute Industrial Tribunal for adjudication of industrial disputes. According to him, in the present case relating to the workman, the appropriate Government was always the Central Government and that is why the workman had raised his dispute initially before the Assistant Labour Commissioner (Central), who is a functionary of the Central Labour Department. Since the workman had resorted to avail the old process of adjudication by participating in conciliation proceeding, which ended in failure on 27.08.2010, therefore, it was not open for him to resort to filing of an application under Section 2A(2) of the I.D. Act. He contended that on 18.03.2011 when the case was instituted by the workman before the Industrial Tribunal, Patna, there was no conciliation proceeding pending after expiry of 45 days and, therefore, he could not have instituted Industrial Dispute Case No.03(C) of 2011 before the Industrial Tribunal, Patna in terms of Section 2A(2) of the I.D. Act. He contended that when a "No Dispute Award" had already been delivered by the competent Central Government Industrial Tribunal on 30.11.2011 and it had been brought to the knowledge of the learned Presiding Officer, Industrial Tribunal, Patna, it was not proper



and competent for the Industrial Tribunal, Patna to decide the reference regarding termination of the workman by passing the impugned award.

12. Learned counsel for the Union of India and learned counsel for the State have supported the submissions made by the learned counsel for the petitioner.

13. In order to appreciate the arguments advanced before the Court, it would be necessary to refer to the provisions of the I.D. Act, which are relevant for the present case. They are Sections 2(a)(i), 2A(2), 7(1), 7A(1) and 10(1)(d), and read as under :-

“2. Definition.- In this Act, unless there is anything repugnant in the subject or context,-

(a) “appropriate Government” means-

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956), or the Employees’ State Insurance Corporation established under Section 3 of the Employees’ State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under



2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation



Provided further that where the dispute relates to a public utility service and a notice under Section



22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.”

14. Having noticed the aforesaid provision of the I.D. Act, when I look to the facts of the present case, I find that there is no dispute to the fact that the in relation to any industrial dispute concerning State Bank of India, the appropriate Government in terms of Section 2(a)(i) of the I.D. Act is the Central Government, which is competent to deal with the matter arising out of the I.D. Act.

15. Section 7(1) of the I.D. Act empowers the appropriate Government to constitute one or more Labour Courts in a State by notification in the Official Gazette for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the I.D. Act. Thus, the provision is prescribed under Section 7(1) of the I.D. Act to enable the appropriate Government to constitute more than one Industrial Tribunal/ Labour Court. Consequently, the Central Government may constitute Labour Courts in any State for adjudication of the matters in respect of which it is the appropriate



Government whereas the State Government may constitute Labour Courts in its territories for adjudication of the matter in relation to which it is appropriate Government.

16. Similarly, the “appropriate Government” as defined under Section 2(a)(i) of the I.D. Act has been empowered by Section 7-A(1) of the I.D. Act to constitute one or more Industrial Tribunals for adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under the I.D. Act.

17. Thus, it would be evident that the Central Government can appoint Tribunals for any State for adjudication of the industrial disputes in relation to which it is the “appropriate Government” whereas the State Government may constitute one or more Tribunals in its territory for adjudicating the matter in respect to which it is the “appropriate Government”.

18. From perusal of the aforesaid provisions prescribed under Sections 7(1) and 7-A(1) of the I.D. Act, it would be manifest that the intent of the legislature is that the dispute should be adjudicated by the concerned Labour Courts/ Tribunals constituted by the “appropriate Government” only.

19. Further, from perusal of Section 10(1)(d) of the I.D. Act, it would be evident that it vests an absolute and discretionary power



on the appropriate Government to refer or not to refer for adjudication an industrial dispute.

20. The third proviso to Section 10(1)(d) of the I.D. Act has been inserted by the Amending Act 46 of 1982. It empowers the Central Government to refer the industrial disputes in relations to which it is the “appropriate Government” to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government. It would, thus, mean that now it is not necessary that the Central Government where it is the “appropriate Government”, must refer the disputes only to the Labour Court or Industrial Tribunals constituted by the Central Government. This power is absolute as no other body or authority can refer an industrial dispute for adjudication under the I.D. Act. In exercise of its power under Section 10 of the I.D. Act, the Government has the discretion to refer existing and apprehended industrial disputes upon considering the failure report of the Conciliation Officer.

21. From perusal of the 3rd proviso of Section 10(1)(d) of the I.D. Act, by no stretch of imagination, it can be said that a workman can directly approach a Labour Court or an Industrial Tribunal constituted by the State Government in respect of an industrial dispute in relation to which the Central Government is the “appropriate Government”. Under the said provision, it is the Government alone, who is vested with the discretion to choose



anyone of the authorities, as specified for the purpose of investigation and settlement of industrial disputes.

22. As far as Section 2-A(2) of the I.D. Act is concerned, it was incorporated in section 2-A by virtue of Amendment Act, 24 of 2010, which came into force with effect from 15.09.2010. Sub-section (2) stipulates that notwithstanding anything contained in Section 10, a workman may make an application direct to the Labour Court or Tribunal for adjudication of the dispute after expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute as if it was a dispute referred to it by the “appropriate Government”. The aforesaid provision confers discretion to a workman, who has made conciliation application to directly invoke the jurisdiction of the Labour Court/Tribunal, if conciliation proceedings are not concluded within forty-five days.

23. The provision prescribed under Section 2-A(2) of the I.D. Act cannot be interpreted to mean that it gives a discretion to a workman engaged in a Public Sector Undertaking Bank to approach directly to an industrial Tribunal or Labour Court constituted by the State Government rather the workman in the given circumstance may directly invoke jurisdiction of the appropriate Labour Court/Tribunal.



24. It is not disputed that the State Bank of India is a Public Sector Undertaking Bank and thus in the present case the appropriate Government was the Central Government, that is why, the workman had raised his dispute initially before the Assistant Labour Commissioner, Patna, a functionary of the Central Government Labour Department. In such view of the matter, he could not have filed his case directly before the Industrial Tribunal, Patna, which is a State Industrial Tribunal. The Industrial Tribunal, Patna illegally exercised its jurisdiction as it had never the jurisdiction to decide the case on merit. Furthermore, since the workman had resorted to adjudication of his dispute by participating in conciliation proceeding, which ended in failure on 27.08.2010, it was not open for him to then resort to filing the case under Section 2-A(2) of the I.D. Act. On 18.03.2011 when the case was instituted by the workman before the Industrial Tribunal, Patna, there was no conciliation proceeding pending after expiry of 45 days and, therefore, he could not have instituted the industrial dispute case before the Industrial Tribunal, Patna in terms of Section 2-A(2) of the I.D. Act. The case instituted by the workman was patently illegal and not maintainable. Thus, the entire proceeding culminating in passing the impugned award is totally illegal and unsustainable in law.

25. Resultantly, the impugned order dated 22.06.2015 passed by the Presiding Officer, Industrial Tribunal, Patna in



Industrial Dispute Case No.03(C) of 2011 is set aside.

26. The writ petition stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05-12-2017
Transmission Date	

