

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2507 of 2014

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Gopalganj Zila Chini Mill Kamgar Union, Sidhawalia, Gopalganj at- Sugar Mill Gate, Sidhawalia, Gopalganj, District- Gopalganj through its Secretary General Krishna Bihari Prasad Yadav son of Late Khobhari Prasad Yadav, residing at- Sidhwalia Bazar, P.S.- Sidhwalia, District- Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna
4. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna
5. The Labour Commissioner, Patna
6. The Deputy Labour Commissioner, Saran Division, Chapra
7. The Labour Superintendent, Gopalganj
8. The Labour Welfare Officer, Gopalganj
9. Sri M.L. Singh, the Labour Welfare Officer, Gopalganj
10. Bharat Sugar Mills Limited (Prop. Upper Ganges Sugar & Industries Limited), P.O.-Sidhwalia, District- Gopalganj, through its Executive President
11. The Executive President, Bharat Sugar Mills Limited (Prop. Upper Ganges Sugar & Industries Limited), P.O.-Sidhwalia, District- Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey No-5, Advocate
For the State : Mr. Kumar Manglam, A.C. to S.C.-24
For the Respondents
No.10 and 11 : Mr. Ashish Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 06-12-2017

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing for respondent nos.10 and 11.

2. The petitioner has made the following prayers in this writ petition:-

“1.for the issuance of an appropriate writ, in the nature of Mandamus, commanding the



Respondent No.7 the Labour Superintendent,
Gopalganj:-

- i. To consider the Letter No. 4/13 dated 09.01.2013 (Annexure-1) submitted by Petitioner in its true prospective of matter.
- ii. And further for a direction to proceed with the Letter No.4/13 (Annexure-1), under the ambit of the powers vested in Respondent No.7, by virtue of Section 12 of the Industrial Disputes Act 1947, read with Part III of the Industrial Disputes (Central) Rules 1957.
- iii. And further for a direction to the Respondent No.7 to dispose of the Letter No.4/13 (Annexure-1), in view of section 12 of the Industrial Disputes Act, 1947, expeditiously by calling the Petitioner Union and Management for a Conciliation; and by discarding all the fraudulent and misdirected facts forwarded by the management of the Sugar Factory (Respondent No.10 & 11).”

3. It is submitted by the learned counsel for the petitioner that the petitioner being a registered Trade Union is a juristic person. The deponent Krishna Bihari Prasad Yadav is its Secretary General. The petitioner Union submitted a demand notice before the Management of the Bharat Sugar Mills, Sidhwalia (for short ‘Sugar Mill’) on 09.01.2013 raising a fifteen point proposal for the benefit of



the workmen. A copy of the demand notice was also served upon respondent no.7, the Labour Superintendent, Gopalganj on 10.01.2013. In pursuance of the said letter, the respondent no.7 issued letter on 19.01.2013 by which he invited the opinion of the Management fixing the date of conciliation on 29.01.2013. On 29.01.2013, the Management of the Sugar Mill prayed for fifteen days time to give its opinion over the matter and to participate in the proceeding. However, in the mean time, the Management of the Sugar Mill entered into an illegal agreement with the Bharat Sugar Mills Labour Union. He submitted that the petitioner submitted an objection against an illegal conciliation made with the Bharat Sugar Mills Labour Union and the matter was also brought to the notice of the Labour Superintendent, Gopalganj, but the respondent no.7 is sitting tight over the matter and the workmen of the Bharat Sugar Mills are suffering a lot due to the callous approach of respondent no.7.

4. On the basis of these submissions, the petitioner has prayed that a direction be issued to respondent no.7 to dispose of the demand notice dated 09.01.2013 taking into consideration Section 12 of the Industrial Disputes Act, 1947 (for short 'I.D.Act') expeditiously by calling the petitioner Union and the Management for conciliation.

5. Learned counsel for the State submitted that the demand notice raising a fifteen points proposal for the benefit of the workmen



by the petitioner Union was sent to the Executive President of the Sugar Mill on 09.01.2013. A copy of the notice was also served upon respondent no.7. In pursuance of the letter dated 09.01.2013, the Labour Superintendent, Gopalganj invited the option of the Management and the Management sought for fifteen days time to give its opinion, but, in the meantime the Management entered into a bi-partite agreement with other Union and it disclosed its stand to the Labour Superintendent, Gopalganj that as the desired agreement has been arrived at by a bi-partite agreement with the recognized Labour Union, the further negotiation of conciliation with the petitioner Union was not required.

6. Learned counsel appearing for respondents no.10 and 11, however, has raised a preliminary objection regarding maintainability of the writ petition. He submitted that the petitioner has an efficacious alternative remedy under Section 10(2) of the I.D.Act and without invoking the statutory remedied, a writ petition would not be maintainable. He submitted that the petitioner, though a registered Trade Union, is not a recognized Trade Union by the respondent nos.10 and 11. It is Bharat Sugar Mills Labour Union, which has been recognized by the respondent nos.10 and 11. Hence, it is the said recognized Trade Union alone, which has right under the law to represent the interest of the workers with whom the Management of



the Bharat Sugar Mills has already entered into settlement in relation to the grievances raised on behalf of the workmen.

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

8. I find force in the submissions made by the learned counsel appearing for the respondents no.10 and 11.

9. Section 10(2) of the I.D.Act reads as under:-

“(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.”

10. In view of the provisions prescribed under Section 10(2) of the I.D.Act, the parties to an industrial dispute may apply in the prescribed manner jointly or separately for a reference of the dispute to a Board, Court, Labour Court, Tribunal, or National Tribunal.

11. Hence, if the petitioner is aggrieved by the conduct of the respondent no.7, it has liberty to approach the appropriate government for reference of dispute to the Labour Court and, hence, efficacious alternative remedy is available to the



petitioner.

12. So far as the prayers of the petitioner in the writ petition are concerned, the petitioner has not made out any exceptional circumstance to approach this Court directly without availing effective alternative remedy available under the I.D. Act.

13. In *Uttaranchal Forest Development Corpn. and Another vs. Jabar Singh and Others* since reported in [(2007) 2 SCC 112)] in case of availability of equally efficacious alternative remedy, the Supreme Court observed as under:-

“43. We are unable to countenance the above submission of Mr. Mehta and Mr. Sangal insofar as it relates to the non-maintainability of the writ petition and the delay and laches. It is not in dispute that the effective alternative remedy was not availed of by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches. We have already referred to the



decision of this Court in U.P. State Spinning Co. Ltd. v. R.S. Pandey and Anr., [(2005) 8 SCC 264. This Court speaking through Arijit Pasyat, J. has held in categorical terms that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act unless exceptional circumstances are made out.

44. In the instant case, the workmen have not made out any exceptional circumstances to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Disputes Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute the High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure. There are several decisions to the same effect. The respondents have not made out any strong case for making a departure. Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition.

45. We are, therefore, of the opinion that the



writ petitioners (respondents herein) who have not invoked the jurisdiction of the Tribunal are not entitled to any relief in the writ petitions. They are not entitled for any benefits of reinstatement, back-wages and continuity of service.”

14. In view of the discussions made above and the ratio laid down by the Supreme Court in *Uttaranchal Forest Development Corpn. and Another vs. Jabar Singh and Others* (supra) as the writ petitioner has not invoked the jurisdiction of the Labour Court, I am not inclined to entertain the present writ petition.

15. The writ petition is dismissed accordingly.

16. There shall be no order as to costs.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.01.2018
Transmission Date	

