

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1225 of 2016

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1. The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna 800001
 2. The Regional Manager, State Bank of India, Regional Office, Muzaffarpur

.... Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of Labour, Government of India, New Delhi
2. Devanand Mishra Son of Sri Taranand Mishra Resident of village - Thalwara, P.O. Thalwara, P.S. Ashok Paper Mills, District - Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Bihari Sinha, Adv.
Mr. Ajay Dutt Mishra, Adv.
For Union of India : Mrs. Kanak Verma, C.G.C.
For Respondent No.2 : Mr. Vinay Kumar Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-11-2017

Heard learned counsel for the petitioners, learned counsel for the Union of India and learned counsel for respondent no.2.

2. This writ petition has been filed by the petitioners for setting aside the award dated 01.04.2015 passed by the Central Government Industrial Tribunal No.1, Dhanbad in Reference Case No. 10 of 2007.

3. By order dated 09.02.2007 the Central Government, in exercise of its powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947,



referred the following dispute for adjudication to the Central Government Industrial Tribunal (No.1), Dhanbad :-

SCHEDULE

“Whether the action of the management of State Bank of India, Regional Office, Muzaffarpur in terminating Sri Devanand Mishra, Workman w.e.f. December, 2004 and not paying the terminal benefits without complying Section 25-F of the I.D. Act, 1947 and not reinstating into the service in a regular post of subordinate cadre is legal and justified ? If not, what relief Shri Devanand Mishra is entitled to ?”

4. In the said reference case the workman examined himself as the sole witness and from the side of the management one Sri Devesh, Assistant Manager, State Bank of India, Dhanbad Branch was examined. After the evidence was adduced on behalf of the parties, the Tribunal passed the award on 01.04.2015. The operative part of the award reads as under :-

“4. Admittedly the workman was working in the Bank as a daily wager for a long period. It is stated by the Bank management that there was a scheme to regularize the suitable daily wager but the present workman could not come as per the norms for which he was asked not to continue. But the workman who rendered service for such a long period as daily wager should not suffer, he be taken as daily wager in the bank to save him from starvation and may be allowed



to appear for the test of regularization, in future, when vacancy occurs.”

5. Challenging the aforesaid award dated 01.04.2015, learned counsel appearing for the Bank submitted that the respondent no.2 was not engaged by the Bank in continuous service for one year and, hence, there was no requirement to give one month's notice in writing indicating the reasons for retrenchment or paying for the notice period in lieu of such notice by the Bank. He submitted that the respondent no.2 never worked in the Bank against any sanctioned post and was engaged time to time as a daily wager as and when need of the work arose. He submitted that the award passed by the Tribunal is cryptic and non-speaking. The learned Presiding Officer has passed the award without answering the first part of the reference and, thus, the award given by the Tribunal is perverse.

6. On the other hand, learned counsel appearing for the respondent no.2 submitted that the Tribunal has appreciated the facts and law correctly. He submitted that there was a scheme to regularize suitable daily wager by the Bank management and since the respondent no.2, who had rendered service for long period as daily wager, was not regularized by the Bank, the learned Presiding Officer has rightly held that the respondent no.2 may be allowed to appear in the test for regularization in future as and when vacancy occurs.



7. Learned counsel for the Union of India submitted that the Union of India is a formal party and the main contesting respondent is respondent no.2, who has already appeared in the case.

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

9. I find substance in the submission made by the learned counsel for the petitioner Bank. The entire award of the Tribunal is in four paragraphs. Para-1 of the award has simply incorporated the reference made by the Central Government. In para-2 it is stated that the parties were noticed and one witness was examined on behalf of each of the parties. Para-3 stated that the short point to be decided in the case is whether the workman is to be regularized in the Bank as regular employee or not and para -4 is the operative part of the award, which has been incorporated hereinabove.

10. From perusal of the award, it would be manifest that there is no finding of the Tribunal in respect of the reference made to it. The award is absolutely cryptic and non-speaking. The Tribunal has not answered the first part of the reference i.e. whether the action of the management of the State Bank of India, Regional Office Muzaffarpur in terminating Sri Devanand Mishra, workman with effect from December, 2004 and not paying the terminal benefits without complying Section 25-F of the I.D. Act, 1947 and not



reinstating into the service in a regular post of subordinate cadre is legal and justified? In absence of any finding to the reference made by the Central Government, the award passed by the Tribunal cannot be sustained in law. It is perverse and is based on misplaced sympathy. The mechanical order of regularization in future when the vacancy occurs passed by the learned Presiding Officer of the Tribunal is liable to be deprecated. The Tribunal has failed to assign any reason for arriving at any conclusion and has also failed to appreciate and discuss evidence brought before it.

11. Thus, the impugned award dated 01.04.2015 passed by the Central Government Industrial Tribunal No.1, Dhanbad in Reference Case No. 10 of 2007 is set aside and the matter is remanded back to the Tribunal for deciding the case afresh.

12. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07-11-2017
Transmission Date	

