

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6159 of 2015

=====

1. United India Insurance Company Ltd. Divisional Office, Muzaffarpur, Suraksha Bhawan, Akharaghat Road, Muzaffarpur, through its authorized signatory duly constituted attorney on companys behalf

.... Petitioner/s

Versus

1. The Union of India, Ministry of Labour and Employment, New Delhi
2. The Presiding Officer, Central Government Industrial Tribunal- cum- Labour Court- 1, DGMS Building, Dhanbad, No.- 1, 8260003
3. Ashok Kumar Jha S/o Late Lakshmeshwar Jha, Village- Nawalpur Maihraulia, P.O.- Siho, P.S.- Sakra, District- Muzaffarpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Adv.
Mr. Ram Chandra Lal Das, Adv.
For the Respondent/s : Mr. Anshay Bahadur Mathur, C.G.C.
Mr. Surendra Kishore Thakur, Adv.
Mr. Subodh Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 02-11-2017

By order dated 13.02.2007 the Central Government, in exercise of 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 United India Insurance Company, Divisional Office, Muzaffarpur in terminating and not reinstating and regularizing the services of Sh. Ashok Kumar Jha, S/o Late Lakshmeshwar Jha, Vill- Nawelpur, Mshihraulia, P.O.-Siho, P.S.- Sakra, Distt- Muzaffarpur without complying section 25F of the I.D. Act 1947 is legal or justified and expedient ? If



not, what relief Sh. Ashok Kumar Jha is entitled to ?”

2. After receiving reference of the aforesaid dispute, the Tribunal passed its award dated 21.07.2014 against the management of United India Insurance Co. Ltd. in the following manner :

“2. The case is received from the Ministry of Labour on 01.05.2007. After notice both parties appeared, the workman files their written statement on 19.10.2010. Thereafter the management files their written statement-cum-rejoinder on 13.07.2011. Only one witness is examined on behalf of the workman as WW-1.

3. The short point that involved in this reference is whether the workman will be regularized or not.

4. It is stated by the workman that he has been continuously working under the management and without being regularized, he was terminated. He has also filed the payment vouchers photocopy, before this Tribunal. The workman also submitted that he was neither regularized but was not given any grade under the management, though he represented several times. The workman also call for document from the management i.e. Attendance register, payment register, payment voucher from 1998 to 2001 but the management did not file any document.

5. In paragraph 8 of the written statement of the management virtually admitted regarding his engagement. The management also did not adduce any evidence to dislodge the stand of the workman.



Hence there is not reason to disbelieve the version and documents filed by the workman.

6. Considering the facts and circumstances of this case, I hold that the action of the management of United India Insurance Company in terminating and not regularizing the service of Shri Ashok Kumar Jha S/o Late Lakshmeshwar Jha is not legal and justified. Therefore the workman be regularized under the management in the lowest grade soon after the publication of the award in the official Gazette.”

3. Assailing the aforestated award dated 21.07.2014, learned counsel for the petitioner submitted that there is no determination of the dispute by the Tribunal. There is no finding of the Tribunal that the workman was employed in the United India Insurance Company for not less than one year. He contended that in absence of such finding, the award passed by the Tribunal is wholly illegal and untenable in law. He contended that the concerned workman was never included in the panel of staff of the Insurance Company or its Divisional Office at Muzaffarpur. The case placed by the workman against the Insurance Company is nothing but a pigment of imagination and in absence of any admissible evidence, the findings recorded by the Tribunal are erroneous in law.

4. Contesting the matter, learned counsel appearing for the respondent workman submitted that after being satisfied with the



claim of the workman, the Tribunal has rightly passed its award against the management. He submitted that in absence of any document having been filed by the management, the Tribunal had drawn adverse inference against it and held the action of the management in terminating and not regularizing the service of the private respondent Ashok Kumar Jha as illegal and unjustified.

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

6. Section 25F of the Industrial Disputes Act, 1947 provides the condition precedent to retrenchment of workmen. According to this Section, the employer must satisfy certain conditions before retrenching any employee, who has been in continuous employment for not less than one year. The burden of proving the condition precedent to retrenchment would fall upon the management only after the workman satisfies the conditions that he was in continuous employment for a period of not less than one year. From the award passed by the Tribunal, I do not find that there is any determination by the Tribunal on this aspect. There is no whisper in the award that the workman was employee of the petitioner management continuously for a period not less than one year. In absence of such finding, the impugned award dated 21.07.2014, which is quite cryptic, cannot be sustained in law whereby the



management of the Insurance company has been directed to regularize the workman in the lowest grade soon after publication of the award in the official Gazette. The Central Government Industrial Tribunal has neither given reasons nor discussed merits of the case. The mechanical order of regularization passed by the Presiding Officer of the Tribunal is liable to be deprecated. This Court in exercise of powers conferred under Article 226 of the Constitution of India cannot sit as an appellate authority over an award passed by the Tribunal. However, as the Tribunal is the final authority so far as appreciation of facts in an industrial dispute before it is concerned, a heavy burden lies upon it to examine the matter from all possible angle, appreciate the evidence brought before it and give reason for arriving at any conclusion.

7. Therefore, for the foregoing reasons, the impugned award dated 21.07.2014 is set aside. The matter is remitted to the Tribunal to dispose of the same afresh expeditiously.

(Ashwani Kumar Singh, J)

Pradeep/-

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

