

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15957 of 2015

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Pushpa Kumari, wife of Ramjee Singh, Resident of Mohalla- Hasse Chapra, Police
Station- Chapra, District- Saran.

.... Petitioner

Versus

1. The State of Bihar.
2. The Director Panchayati Raj Bihar, Patna.
3. The Deputy Development Commissioner cum Chief Executive Officer, Zila
Parishad, Chapra, District- Saran.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Nirmal Kumar, Advocate

For the Respondent/s : Mr. Sheo Shankar Prasad- SC10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-07-2017

By way of the present writ petition, the petitioner seeks a direction to be issued to the respondents not to interfere with her service in the light of the Award dated 02.02.1996 passed in Reference Case No. 12 of 1994. A prayer has also been made to issue a writ of *certiorari* to quash the order dated 13.08.2015 passed by the respondent no. 3 by which the claim of the petitioner regarding payment of her back wages as well as allowing her to join the service, have been denied.

2. The case of the petitioner, in short, is that she engaged



as Typist-cum-Clerk on 14.04.1992 by the respondent no. 3 in Zila Parishad, Saran, Chapra against a vacant post, but she was asked to work on daily wage basis. She was regularly being paid her wages since the date of her appointment as she had discharged her duty to the full satisfaction to the respondents and nothing adverse was reported against her. As payment of wages was stopped for quite some time and she was not being absorbed in permanent service, she filed a case under the Payment of Wages Act before the Presiding Officer, Labour Court, Chapra, which was numbered as Case No. 02 of 1993. The aforesaid case was decided in her favour, but in spite of that the respondent no. 3 did not pay any amount. Hence, the petitioner raised an industrial dispute through Zila Parishad Karamchari Sangh for her regularization and payment of back wages. The conciliation proceedings were held and after submission of report under Section 12(4) of the Industrial Disputes Act, 1947 (for short 'the Act'), the State Government referred the matter to the Labour Court, Chapra for adjudication. The said reference was registered as I. D. Reference Case No. 12 of 1994 before the Presiding Officer, Labour Court, Chapra. The Presiding Officer after hearing the parties and after considering the materials made available on records passed the Award dated 02.02.1996 holding that the petitioner deserves to be regularized in service and



is also entitled to get her back wages from 14.04.1992 till date. After pronouncement of the Award, the petitioner submitted her application annexing therewith a copy of the Award to the respondent no. 3 on 13.07.1996 stating therein that even after expiry of four months from the date of pronouncement of the Award, neither she is being regularized nor being paid her back wages. When the respondents failed to enforce the Award of the Labour Court, then she filed a writ petition vide CWJC No. 760 of 1997 before this Court, which was disposed of, vide order dated 05.02.2015 whereby the petitioner was directed to file an application before the respondent no. 2 about non-implementation of Award by the Zila Parishad. The respondent no. 3 was also directed to take necessary steps for implementation of the Award as it had arrived finality. However, the Deputy Development Commissioner was given liberty to dispose of the representation by a reasoned order within six months if he would arrive at a different conclusion.

3. Learned counsel for the petitioner has contended that after the order dated 05.02.2015 passed by this Court, respondent no. 3 passed the impugned order dated 13.08.2015 rejecting the claim of the petitioner on the ground that no order for appointment was passed in the case of the petitioner and no amount was ever



paid to her. He has contended that by passing the aforesaid order dated 13.08.2015, the respondent no. 3 has clearly violated the Award passed by the Presiding Officer of the Labour Court in Reference Case No. 12 of 1994. He has contended that Award dated 02.02.1996 has attained finality and it was not open to the respondent no. 3 to re-appreciate the whole issue in order to upset the Award passed by the Labour Court. He has contended that by passing the aforesaid order, the respondent no. 3 has committed contempt of Labour Court by not implementing the Award dated 02.02.1996.

4. On the contrary, learned counsel for the State has submitted that by filling the present writ petition, as a matter of fact, the petitioner has prayed for execution of an Award passed by the Labour Court. He has submitted that Labour Court is not a subordinate court of the High Court in the sense of Contempt of Courts Act. He has contended that a writ proceeding is not intended to be a substitute of the execution process and, therefore, the present writ petition is fit to be dismissed.

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

6. Chapter VI of 'the Act' stipulates the penalties for the different acts of omission and commission mentioned in Section 26



to 31 appearing under the said Chapter. The breach of settlement or Award has been made punishable under Section 29 of 'the Act' with imprisonment for a term which may extend to six months, or with fine, or with both and where the breach is a continuing one, with a further fine, which may extend to two hundred rupees for every day during which the breach continues after the conviction of the first offence.

7. For beach of Award under 'the Act', remedy lies under Section 33-C of 'the Act', which provides the machinery for recovery of money due from an employer under any settlement or an Award under the provisions of Chapter V-A and V-B of 'the Act'. 'The Act' is a complete Code in itself. It not only creates a right but also provides effective machinery for adjudication of the disputes relating to such rights and enforcement of Award passed by the Labour Court and the Tribunal.

8. In view of the discussions made above, I see no reason why the petitioner cannot complain of the alleged violation of the Award by the respondents in a proceeding under Section 29 and 33-C of 'the Act'. Learned counsel for the State has rightly submitted that the writ proceeding ought not to be made a substitute to an execution process.

9. I, accordingly, hold that the present writ petition is not



maintainable. The writ petition stands dismissed.

10. However, the dismissal of this writ petition would not come in the way of the petitioner in seeking relief under the provisions of ‘the Act’ before the Labour Court.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.08.2017
Transmission Date	NA

