

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.808 of 1997

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Bihar Rajya Vidyut Parishad Field Kamgar Union through its Central Secretary
Amrendra Prasad Mishra, Khas Mahal, Pani Tanki, Chiraiyantn, Patna.

..... Petitioner

Versus

1. Presiding Officer, Industrial Tribunal, Patna.
2. Bihar State Electricity Board through its Chairman
Vidyut Bhawan, Bailey Road, Patna.
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road,
Patna.
4. The Commissioner of Labour, Bihar, Patna

..... Respondents

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Appearance :

For the Petitioner : Mr. Uma Kant Shukla, Advocate
Mr. Amrendra Kumar Sinha No. 1, Advocate
Mr. Shailendra Kumar Singh, Advocate

For the Board : Mr. V. N. Sahay, Advocate
Mr. Arun Srivastava Advocate

For respondent no. 4 : Mr. S. S. P. Yadav, SC-14

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-02-2018

In the present writ petition, the petitioner has made the
following prayers :-

“(i) For quashing of the award dated 2nd



September, 1995 passed in Reference No. 16 of 1994 by the Presiding Officer, Industrial Tribunal, Patna (for short 'Tribunal') whereby he has answered Item No. 1 of the terms of reference against the Union and in favour of the management by holding that the workmen in Schedule 'K' are not entitled to be taken in Board's services.

(ii) For declaring that the workmen in Schedule 'K' of the reference were working against the permanent and perennial nature of job and are entitled to be taken in Board's Services.

(iii) For commanding the Bihar State Electricity Board (for short 'Board') for taking steps to take contract labours engaged in Muzaffarpur Thermal Power Station, Kanti (for short 'MTPS') whose names are mentioned in Schedule 'K' of the terms of reference in regular service of the Board and to pay them salary, allowances, etc. as regular employees of the Board."



2. The brief facts of the case are that the petitioner Union had raised the industrial dispute with appropriate Government in respect of taking 616 contract labours working in MTPS against different posts. On dispute having been raised by the petitioner Union, the Labour Authority of the Government initiated conciliation proceeding, which felt necessity of the reference of the matter before the Tribunal for adjudication and determination of the issue. Hence, the Government of Bihar, Department of Labour, Employment & Training, Patna by notification dated 13th June, 1994 made a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short 'Act, 1947') to the Tribunal for adjudication. The disputes so referred for adjudication read as under :-

“(1) Whether the workman in Schedule 'K' of MTPS who are engaged in perennial nature of works and Govt. has prohibited to engage contract Labour in such work, should be taken in service of Electricity Board ? If so, since when.

(2) Whether the Meter-Readers in Schedule 'Kha' of Patna Electric Supply Undertaking should be given additional allowance for double works of 'Reading' and 'Billing'? If so,



since when and in what form ?

(3) Whether the drivers in Schedule 'ga' of Patna Electric Supply undertaking are entitled to get pay and other facilities similar to the drivers of security Deptt. of Head Quarter? If so, since when ?

(4) Whether the workman in Schedule 'Gha' of Patna Electric Circle, who were on duty on 10.06.73 are entitled to return back in service in accordance with the agreement dated 10.06.73?"

3. Be it noted that this writ petition is confined to item no. 1 of the terms of reference only. Mr. Uma Kant Shukla, learned counsel for the petitioner submitted that the petitioner is not pressing the writ petition so far as other items of term of reference adjudicated by the Tribunal.

4. The Tribunal after having received the terms of reference issued notices to the Board and the petitioner Union. Pursuant to receipt of the notice, the Union as well as the Board filed their respective written statements. The petitioner Union examined General Secretary of the Union, Mr. Amrendra Prasad Mishra as the sole witness (WW-1) whereas on behalf of the



Board, three witnesses were examined. They are Mr. Mithleshwar Prasad Sinha, Accounts Assistant PESU, Mr. D. N. Modi, General Manager-cum-Chief Engineer, MTPS and Mr. Rameshwar Prasad Sinha, Deputy Director Personnel.

5. The Tribunal after hearing the parties passed an award on 2nd September, 1995 answering all the points referred to it by the appropriate Government in negative against the Union and in favour of the management. The Tribunal held that the workmen of Schedule 'K' are not entitled to be taken in the Board's services mainly on the following grounds; (a) there is no evidence that the concerned workmen are doing perennial nature of job nor they are attached with some permanent department of MTPS nor to assist the regular workers; (b) there is no evidence that the concerned workmen were given training at the cost of the Board for any particular nature of perennial nature of work; (c) there is no evidence that on the letter of the General Manager, the Board sanctioned posts and rejected the claim of the Union in respect of availability of vacant posts; and (d) the concerned workmen cannot be straightway directed to be absorbed in services of the Board. The Tribunal in its award observed:-

“In the instant case (a) there is want of evidence that all the concerned workmen are



doing permanent/perennial nature of work; (b) they are qualified for the job which they have been doing; (c) their services have been found to be satisfactory; (d) there were adequate vacancies to absorb them; (e) there was actual requirement for engaging them and (f) they are indispensable. In the circumstances, even if, it is assumed that they are doing perennial nature, they cannot straightway be directed to be absorbed. It has specifically come in the evidence of the General Manager that the sanctioned posts of workman cadre to MTPS are 575 and out of the sanctioned posts, 540 or so are working and the remaining vacant posts are mostly of highly technical nature, i.e. operators and Assistant Operators. Thus, if the claim of the workmen is accepted on its face value, the result would be to direct the Board to create 600 and more posts to absorb them in Board's service, which is already running in heavy loss."

6. Assailing the award, Mr. Uma Kant Shukla, learned counsel for the petitioner submitted that the Tribunal has failed to



appreciate the evidences adduced in right perspective. The documents furnished by the Union and exhibited are strong proof that the concerned workmen whose names were mentioned in schedule 'K' of the notification of the reference were working in MTPS as contract labours against permanent and perennial nature of job. In such circumstances, it was incumbent upon the Tribunal to pass award in favour of the workmen. He submitted that the impugned award is beyond the terms of reference so far as item no. 1 of the reference is concerned, as the State had fixed terms to be answered only in respect of whether the workmen in Schedule 'K' of MTPS, who are engaged in perennial nature of works and Govt. have prohibited to engage contract labour in such work should be taken in service of the Board? However, the Tribunal has fixed desirability of proving as to whether workmen in Schedule 'K' are engaged in perennial nature of work or not. He submitted that sanctioned strength could not have been a ground for denying the rightful claim to the workmen under the facts and circumstances.

7. On the other hand, Mr. V. N. Sahay, learned counsel appearing for the Board submitted that the findings arrived at by the Tribunal are based on correct appreciation of facts and law involved in the case. He submitted that no workman has come forward to depose and prove that he was working on perennial



nature of job prohibited by the appropriate Government to engage contract labour on such job. The Tribunal has recorded its finding after considering all the documents exhibited by the Union and the Board and the Union completely failed to establish that the workmen were working on perennial nature of job. He submitted that there were certain temporary and casual nature of works and the General Manager of the MTPS had categorically stated in his evidence that jobs of the labours engaged from time to time were purely of temporary in nature. The number varied from time to time and they were engaged according to requirement. They were not engaged in regular jobs. The deposition of the General Manager-cum-Chief Engineer could not be contradicted in cross-examination by the petitioner Union. He submitted that there is no error apparent on the face of the record in the award passed.

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

9. The scope of inference with an award passed by the statutory Tribunal is limited. The writ court while exercising the power of judicial review does not sit in appeal. It has to confine itself to see as to whether there is any error apparent on the face of the record in appreciation of evidence or whether the Tribunal has



acted without jurisdiction or the principle of natural justice has been violated.

10. In the present case, I find that the Tribunal has neither passed the award without jurisdiction nor the principle of natural justice has been violated nor the evidences adduced on behalf of the parties have been ignored in arriving at the finding. The decision making process is also not vitiated in any respect. The findings arrived at are neither erroneous nor perverse. Thus, there is no scope for this Court to interfere with the award passed by the Tribunal.

11. I am of the opinion that only on the ground that the Board had engaged contract labours in spite of the fact that the same had been prohibited, it cannot be directed to create large number of additional posts absorbing more than 600 workmen and the contract labours cannot be deemed to be employees of the Board only because of the alleged non-compliance with the prohibition of employment of contract labours as provided under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. Moreover, there is lack of evidence with regard to engagement of contract labours in violation of the aforesaid Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970.



12. The writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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