

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2239 of 2017

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Mithlesh Kumar Singh S/o Late Maheshwar Prasad Singh, Resident of Village-
Nisihara, Post Sonihar, P.S.- Bakhri, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Bihar, Patna.
2. The Secretary, Department of Water Resources cum Chairman, Bihar State Construction Corporation Limited, Patna.
3. The Bihar State Construction Corporation Limited through its Managing Director and its Headquarter at Khwaja Imli, Anisabad, Patna.
4. The Managing Director, Bihar State Construction Corporation Limited, Office at Khawaja Imli, Anisabad, Patna.
5. The Secretary, Administration, Bihar State Construction Corporation Limited, Office at Khawaja Imli, Anisabad, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Anil Kumar Choudhary

For the Respondent/s : Mr. VINAY KIRTI SINGH, GA-2

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 03-04-2018

The present writ petition has been filed for setting aside the order dated 14.10.2015 passed by the respondent no. 5, whereby and whereunder the petitioner services has been terminated along with 167 other persons.

The short facts of the case are that the petitioner was employed as a 04th grade employee after due interview and selection by the respondent Bihar State Construction Corporation Limited (hereinafter referred to as the 'Corporation').

It is the case of the petitioner that after working for more than 30 years all of a sudden the respondent no. 5 issued a notice under Section 25F



of the Industrial Disputes Act on 07.05.2015 to the petitioner herein informing the petitioner that on account of the financial condition of the Corporation, the Council of Directors has taken a decision to remove the daily wage employees. The petitioner had failed to reply to the said notice, hence he along with others was removed from service by the impugned order dated 14.10.2015.

The learned counsel for the petitioner has argued that without any laches on the part of the petitioner, the services of the petitioner has been terminated and moreover there is total non-compliance of the procedure required to be followed under Section 25F of the I.D. Act.

Per contra, the learned counsel for the respondent Corporation has submitted, by referring to the counter affidavit filed on behalf of the respondent nos. 2 to 5, that on account of poor financial condition of the Corporation, a total number of 169 daily wage employees have been retrenched. It has been further submitted that the respondent Corporation had filed a Company Petition before this Court for winding up of the Corporation which had a chequered history but nonetheless at present the winding up petition of the respondent company is pending before the National Company Law Tribunal, Calcutta bearing Company Petition No. 303/KB/2017.

The learned counsel for the respondent Corporation has also relied upon an order dated 14.03.2018 passed by this Court in CWJC No. 16370 of 2016 to contend that the employees of the Corporation have been



relegated to the remedy of filing intervention / appropriate petition before the learned Tribunal, where the winding up proceeding regarding the respondent Corporation is going on.

In reply, the learned counsel for the petitioner has relied upon a judgment of this Court dated 05.05.2017 passed in CWJC No. 612 of 2017 to contend that in an exactly similar case, this Court has quashed the impugned letter no. 28 dated 14.10.2015.

I have heard the learned counsel for the parties and perused the materials on record. Admittedly the procedure required to be followed under Section 25F of the Industrial Disputes Act, 1947 has not been followed in case of the petitioner herein, before passing the order of retrenchment regarding the petitioner herein. Neither any argument in defence, on the issue of non-compliance of the requirements of Section 25F of the Industrial Disputes Act, has been advanced by the learned counsel for the respondents Corporation nor the counter affidavit filed by the respondent Corporation addresses the said issue.

As far as the order dated 14.03.2018 passed in CWJC No. 16370 of 2016 is concerned, the same pertains to payment of the retiral benefits of the petitioner therein, hence the petitioner of the said case was relegated to the remedy of approaching the learned Tribunal where the winding up proceeding of the respondent Corporation is pending since the payment of retiral benefits is a liability of the Corporation. However, in the present case, the validity of the retrenchment order dated 14.10.2015 is under



consideration and on this issue this Court has already passed an order dated 05.05.2017 in CWJC No. 612 of 2017 wherein the very same and similar order passed in the present case has been quashed on the ground of non-fulfillment of the requisites of section 25F of the Industrial Disputes Act prior to retrenchment of the employees.

Having regard to the aforesaid facts and circumstances of the present case and in view of the order dated 05.05.2017 passed by this Court in CWJC No. 612 of 2017 as well as in view of the uncontested position regarding non-compliance of the procedure required to be followed under Section 25F of the Industrial Disputes Act, this Court is left with no option but to quash letter no. 28 dated 14.10.2015 issued by the respondent no. 5, as far as the petitioner herein is concerned.

It is made clear that the present order would not preclude the respondent no. 5 to proceed afresh in accordance with law.

The writ petition is allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	22.03.2018
Uploading Date	05.04.2018
Transmission Date	

