

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8790 of 2008

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G.M., Barauni Thermal Power Station at & P.O. Barauni District- Begusarai

.... Petitioner

Versus

1. State of Bihar through the Secretary, Department of Labour and Employment,
New Secretariat, Patna-1
2. The Presiding Officer, Labour Court, Begusarai
3. The General Secretary, Bihar Vidyut Kamgar Sangh, Patel Nagar, Patna-3
4. Bibhu Shankar Sharma @ Vibhu Shnakar Sharma son of Sardha Nand Sharma,
resident of village Chintamani Chak, P.S.- Mokama, District- Patna.
5. Mahendra Mallick son of Late Bipat Mallick, resident of village Dih, P.S.-
Birpur, District- Begusarai.

...Intervenor.... Respondents

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Appearance :

For the Petitioner : Mr. V.N.Sahay, Advocate
Mr. Arun Shrivastava, Advocate

For the Respondent/s : Dr. Kumar Binode Bariar, Advocate
Mr. Pramod Manbash, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-03-2018

In the instant writ petition, the petitioner has challenged the award dated 18.12.2007 passed by the Presiding Officer, Labour Court, Begusarai in Reference Case No. 23 of 1994 by which termination of service of respondent nos. 4 and 5, namely, Bibhu Shankar Sharma and Mahendra Mallick has been held to be improper and unjustified and it has been held that both the workmen are fit to



be adjusted with all consequential benefits in any other branch of the Management.

2. An industrial dispute regarding termination of services of seven workmen had been referred by the Government of Bihar vide Notification dated 13.06.1994 in exercise of power conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'I.D. Act') for adjudication to the Labour Court. The terms of reference was "whether the termination of services of Sarbshri Bibhu Shankar, Mahendra Mallick, Upendra Mahto, Gona Prasad Yadav, Md. Akhlakh, Mahesh Mahto and Mantupal is proper and justified ? If not, then what relief, they are entitled to ?"

3. It would be evident from the award passed by the Labour Court, Begusarai that five of the workmen, namely, Upendra Mahto, Gona Prasad Yadav, Md. Akhlakh, Mahesh Mahto and Mantupal left pairavi and did not contest before the Labour Court and, thus, the Labour Court held that their termination was justified and they are not entitled to any relief. So far as the remaining two workmen Bibhu Shankar and Mahendra Mallick are concerned, the Labour Court held their termination to be unjustified and found them fit for adjustment in any of the running branch of the Management of Barauni Thermal Power Station (for short 'BTPS') with all consequential benefits.



4. The case of the workmen respondent nos. 4 and 5 before the Labour Court was that respondent no. 4 Bibhu Shankar was engaged in December, 1983 by the Management of BTPS and was terminated in June, 1991 whereas respondent no. 5 Mahendra Mallick was engaged in 1982 and was terminated in July, 1992. Their contention was that they were working as contingent workers and were directly controlled by the BTPS and paid directly at the departmental cash counter. The matter of their regularization was taken up with the Chairman of the BTPS, but their claim was never resolved. Thereafter, their claim for regularization was taken up with the General Manager of the BTPS. A representation in this regard was also given to the Deputy Labour Commissioner, Begusarai. During discussion, the local Management assured to regularize their services in conciliation proceeding held on 17.10.1989 before the Deputy Labour Commissioner, Begusarai and it was agreed by the Management that the issue of regularization would be finalized within a month, but when the matter still remained pending, conciliation proceeding was held by the Labour Superintendent, Begusarai on 13.05.1991. However, instead of regularizing the services of respondent nos. 4 and 5, the Management terminated their services during pendency of the conciliation proceeding. They contended that the termination was wholly illegal, unjustified and



unsustainable as no notice in terms of Section 25-F of the I.D. Act was given to them prior to order of termination.

5. On the other hand, the case of the Management was that the workmen had no valid cause of action because no industrial dispute existed between the workmen and the Management of the BTPS prior to the date of reference and, thus, the notification made by the Government of Bihar to the Labour Court was incompetent and bad in law. It was also denied that the workmen were disengaged from their job during the pendency of any conciliation proceeding. It was contended that respondent nos. 4 and 5 were never workmen of Bihar State Electricity Board or BTPS and there was no relationship of employee or employer and as such their claim being entirely incorrect was brought with a view to take undue, uncalled for and undesired advantage. The Management contended that respondent nos. 4 and 5 were contractual workers of the contractor and they did not fall in the category of workmen as classified in standing orders of the Bihar State Electricity Board as it then was. They were working in Intermediate College being run at BTPS which was wound up as back as in 1991 and the contractual arrangement made with respondent nos. 4 and 5 came to an end with the closer of the college.

6. It is submitted by the learned counsel for the petitioner



that the Labour Court failed to appreciate the facts and law involved in the case and came to an erroneous conclusion that the termination order of respondent nos. 4 and 5 was unjustified. He submitted that even otherwise, the award passed by the Labour Court cannot be termed to be an award as no final determination has been made by the Presiding Officer of the Labour Court and he has left the matter open to the discretion of the parties for determination. He submitted that the award passed by the Labour Court is neither sustainable nor executable nor the same can be termed as a valid award.

7. Countering the submission made on behalf of the petitioner, learned counsel appearing for respondent nos. 4 and 5 submitted that there is no error apparent on the face of the record in the award passed by the Labour Court. He submitted that the Labour Court has appreciated the evidences led on behalf of the parties and has come to a definite conclusion that the termination of services of respondent nos. 4 and 5 was unjustified and has rightly held that the respondent nos. 4 and 5 are fit to be absorbed in any other branch of the Management with all consequential benefits.

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

9. Without going into merits of the submissions made on behalf of the parties, I would straightway come to the operative part



of the impugned award dated 18.12.2007 passed by the learned Presiding Officer of the Labour Court, Begusarai. The first part of the award states that the termination of the workmen, namely, Bibhu Shankar Sharma and Mahendra Mallick by the Management was unjustified and illegal. The second part of the award is that both the workmen are fit to be taken back into services but because the college run by the Management in which they were employed has been closed, they were fit to be employed with all consequential benefits in any other branch of the Management.

10. The question is as to whether the award passed by the Labour Court can be termed to be a valid award. In order to find out the answer, it would be essential to see what an award is ? The award in a quasi judicial proceeding is the end product of the adjudication process.

11. Section 2(b) of the I.D. Act stipulates “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A.

12. Thus, an order shall be deemed to be an award in terms of Section 2(b) of the I.D. Act under the following circumstances:-
(a) it is an interim or final determination of an industrial dispute or



(b) it is an interim or final determination of any question relating to such dispute and (c) such interim or final determination is made by a Labour Court, an Industrial Tribunal or a National Tribunal, or (d) it is an arbitration award under Section 10-A.

13. The first part of the definition of the award specifies the determination final or interim. The second part pertains to determination of any question relating to dispute.

14. Leaving some issues to be settled by the parties themselves without determination by the Labour Court cannot be termed to be a valid award. The expression 'determination of any dispute' means an adjudication of the dispute on relevant materials.

15. The Supreme Court in **Cox and Kings Ltd. vs. Workmen** [1977(1) LLJ 471 SC] laid down twofold tests for a decision of the tribunal to fall within the definition of award. First, it must be adjudication of a question or point relating to industrial dispute, which has been specified in the order of reference or is incidental thereto; and secondly, such adjudication must be on merits.

16. The determination also implies that the adjudicator has to adjudicate upon the whole dispute as referred to him. An adjudicator cannot determine only the part of the dispute by leaving rest to be determined by the parties. The award must be certain, in



the sense that the parties must know what they are required to do in terms of the award. In an award, there should finally be directions necessary for proper implementation of the award.

17. In the present case, as seen above, two issues were referred before the Labour Court. The first was as to whether the termination of services of the respondent nos. 4 and 5 was proper and justified and the second was if termination of services of the respondent nos. 4 and 5 was not proper and justified, then what relief they were entitled to. So far as the first issue is concerned, the Labour Court had definitely held that the termination of respondent nos. 4 and 5 was improper and unjustified, but so far as the second issue regarding the relief to which they were entitled to is concerned, the Labour Court had left the matter open to the discretion of the parties after holding that they are fit to be engaged in any other running branch of the Management.

18. In the opinion of this Court, such an award cannot be termed to be a valid award. There is no final determination of the second issue referred to the Labour Court. The Labour Court could not have determined only part of the dispute by leaving the rest to be determined by the parties themselves. The error committed by the Labour Court is certainly an apparent error of law.

19. In that view of the matter, the award dated 18.12.2007



passed by the learned Presiding Officer, Labour Court, Begusarai in Reference Case No. 23 of 1994 is set aside. The matter is remanded back to the Labour Court, Begusarai to decide the case afresh on the basis of the evidences already led before it after hearing the oral and written submissions which may be made on behalf of the parties.

20. Registry is directed to send back the record to the Labour Court forthwith through special messenger along with a copy of this judgment. Since the parties are being represented through their respective counsel, no notice shall be required to be issued by the Labour Court. The Labour Court shall fix a date of hearing on 16th April 2018 and shall decide the reference made to it within two months from the date of first hearing.

21. With the aforesaid observations and directions, the writ petition stands disposed of.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.03.2018
Transmission Date	NA

