

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21074 of 2013

1. Satya Narayan Mishra Son Of Late Bechan Lal Mishra, General Secretary Of Bhagalpur Zila Silk Mills Worker'S Union Resident Of Pani Tanki, Ghanta Ghar, Police Station Kotwali, District - Bhagalpur
2. Md. Maqsood Ali Son Of Late Musharaf Ali Ansari Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
3. Nisar @ Md. Nisar Son Of Late Ali Hasan Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
4. Samsad @ Md. Shamshad Son Of Md. Khalil Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
5. Md. Azim @ Azim Son Of Noor Mohammad Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
6. Quyam Son Of Md. Moti Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
7. Mateen Son Of Noor Mohammad Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
8. Md. Afroz Ansari Son Of Taffazul Ansari Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
9. Zahir @ Md. Zahir Son Of Md. Sultan Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
10. Ghani @ Md. Ghani Son Of Gaffar Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
11. Mannan @ Md. Mannam Son Of Md. Peer Ali Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
12. Md. Jahangir Son Of Khalil Ansari Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
13. Anil Jha Son Of Ramchandra Jha Resident Of Village - Salehpur, Police Station Jagdishpur, District - Bhagalpur
14. Md. Haleem Son Of Md. Kaleem Resident Of Mohalla Momintola, Habibpur, Police Station Habibpur, District - Bhagalpur
15. Md. Shahbaz @ Shahbaz Son Of Md. Ashfaque Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
16. Md. Tajuddin @ Taj Son Of Seraj Ansari Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
17. Islam Son Of Mulay Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
18. Md. Zainul Abdin Son Of Md. Muslim Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
19. Shakil @ Md. Shakil Son Of Md. Kabir Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
20. Iqbal @ Md. Iqbal Son Of Late Md. Ghani Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur
21. Mahesh Goswami Son Of Late Brahmdeo Goswami Resident Of Village - Salehpur (Ambayee), Police Station Jagdishpur, District - Bhagalpur
22. Md. Bablu @ Bablu Son Of Salahuddin Resident Of Mohalla Momin Tola, Habibpur, Police Station Habibpur, District - Bhagalpur

.... Petitioner/s

Versus



1. The State Of Bihar through the Secretary Department Of Labour Resources, Bihar, Patna
2. The Secretary, Department Of Industries, Bihar, Patna
3. The Joint Secretary of the Department of Labour Resources, Government Of Bihar, Patna
4. The Deputy Labour Commissioner, Bhagalpur
5. The District Magistrate, Bhagalpur
6. The Assistant Labour Commissioner, Bhagalpur
7. The Chief Inspector of Factories, Bihar, Patna
8. The Inspector of Factories, Bhagalpur, Anchal Bhagalpur
9. The Labour Enforcement Officer, Bhagalpur
10. The Convener, M/S Modern Fibotex India Limited, Ljra Street, 14 - 1b - Kolkatta
11. The Management, M/S Modern Fibotex India Limited, Bhagalpur through its Manager namely Sushil Khandolia, Shiv Gauri Flour Mill, Baunsi Road, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Khatim Reza, Adv.
For the Respondent/s : Mr. Md. N. Hoda khan, Adv.
For Respondent Nos.10 & 11 : Mr. Alok Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-01-2018

Heard learned counsel for the petitioners and learned counsel appearing for the respondent nos.10 and 11.

2. This writ petition has been filed by the petitioner for quashing the award dated 18.02.2013 passed by the learned Presiding Officer, Labour Court, Bhagalpur in Reference Case No. 01 of 2002 whereby it has been held that the workmen are not the employees of the management and they are not entitled to any relief as the question of termination does not arise.

3. The reference case before the Labour Court, Bhagalpur originated on the basis of letter of demand dated 04.09.2001



submitted by the Bhagalpur Zila Silk Mill Workers Union, who claimed that the workers employed by the suppliers for manufacturing silk clothes were the workers of the respondent no.11 and they had been illegally retrenched from service.

4. The stand of the respondent no.11 before the Labour Court was that the persons, who are named in the list attached with the letter of demand in regard to whom reference has been made were never the workers of the respondent and there had never been any employer employee relationship. Hence, the question of retrenching them from service did not arise.

5. In view of the stand taken by the respondent no.11, the State Government, while referring the dispute under Section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication to the Labour Court wanted the Labour Court, Bhagalpur to first decide whether there exist relationship of employer and employee between the persons named in the list and the management.

6. It would be relevant to note the findings of the Labour Court while passing the award, which read as under :-

“This Ref. is with regard to relationship of employee and employer between the workman and management. If the relationship of workman and management is established than the issue of termination and relief has to be looked into. It is



well settled that workman himself has to prove that he has worked under the employment of management. In this case management has denied the relationship. In such circumstances the evidence of the workman has to be appreciated. This case is with regard to 73 workmen. The list of which is annexed with demand letter, neither in demand letter nor in the w/s of the workmen, date of appointment in the employment of management has been mentioned. It has only been stated that workmen has worked for more than 240 days in a calendar year without disclosing the date of appointment in the employment of management this statement regarding 240 days of work in a calendar year is vague. Even the specific calendar year has not been mentioned. This is the state of pleading of the workmen. If this pleading itself is considered to be the gospel truth than also it does not prove the relationship of employer and employee between the management and workmen. Oral evidence of the workman is in support of above pleading, two of the workman namely Suneel Kumar Gupta and Md. Makhdum Ali have only stated regarding their appointment in the employment of management but they to have not specified their days of work in employment of management. Workmen have also adduced documentary evidence but these documents are not with regard to their employment. There is no document on record to show the relationship of



workmen with management. These documents are mainly the letter of union that too of year 2001 regarding the demands of the workmen which does not establish the relationship of employer and employee between the management and workmen. Workmen have also filed certain photographs. Though these photographs are not exhibited yet. The counsel of the workman has pressed much. On perusal of these photographs it is clear that these photographs also failed to connect any relationship with management. From above discussion it is clear that workmen could not established the relationship of employer and employee between the management and workmen. As such this issue is decided against the workmen. Other issues are regarding legality of termination and reliefs. As relationship of employer and employee between management and workman has not been established. The question of termination does not arise. Unless and until one is employee of the management, he can not be terminated and no relief thereon.

Considering the fact and circumstances of this case and material available on record, this Reference is fit to be dismissed. Hence this award.”

7. Learned counsel appearing for the petitioners submitted that the findings of the Labour Court are perverse. He submitted that one Sunil Kumar Gupta was examined as witness no.2 and he had



stated that he worked for more than 300 days in a year and was paid Rs.56/- per day between the period 1995 and 11.08.2001. He deposed that the management did not give any certificate to show that he was employee of the company. He also submitted that one Md. Maqsood Ali also appeared before the Labour Court as a witness and stated that he had worked in the said Company since February, 1993 at the rate of Rs.72/- per day. However, these vital evidences were not taken into account by the Labour Court and an erroneous award was passed. He submitted that once two of the workmen clearly stated that they had worked for more than 240 days in a calendar year, the Labour Court ought to have held the award in favour of the workmen and against the management.

8. On the other hand, Mr. Alok Kumar Sinha, learned counsel appearing for the respondent no.11 submitted that the petitioner no.1, who claims to be General Secretary of the Bhagalpur Zila Silk Mill Workers Union and has filed this writ petition in representative capacity does not have any locus to file case as he failed to establish before the Labour Court that the persons whom he was representing were its bonafide members. According to him, his representation before the Labour Court was illegal and improper. He further submitted that there are 22 petitioners in this case out of whom petitioner no.1, who is Union leader, has never claimed



himself to be workman of the respondent. Out of the remaining 21 petitioners, only petitioner no.2, namely, Md. Maqsood Ali gave his evidence and contested the reference case before the Labour Court. The petitioner nos. 3 to 22 never turned up to give evidence and did not contest the reference case. He submitted before the Labour Court that the petitioners completely failed to produce any evidence to establish relationship of employee and employer between the persons named in the list and the management and in absence of any cogent evidence, the Labour Court rightly decided the reference against the petitioners.

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

10. The scope for challenging an industrial award is very narrow and limited. It would be manifest from the pleading of the petitioners that only a vague statement has been made by one of the petitioners before the Labour Court that he had worked for more than 240 days in a calendar year without disclosing the year in which he worked for 240 days. No documentary evidence was produced by the witnesses in this regard. I do not see any legal infirmity or perversity in the impugned award. Apart from the demand letter, no other evidence was produced before the Labour Court to establish employer employee relationship. In a case of this nature, the onus is always



upon the workmen to establish their relationship as employee with the employer, which they failed to establish. Neither in the written statement of the workmen nor in the demand letter the date of appointment of the workmen in the employment of the management was mentioned. Mere statement by one of the petitioners that he worked for more than 240 days in a calendar year without disclosing the date of employment would be of no consequence. The documentary evidences adduced by the workmen are not with regard to their employment. The Labour Court has appreciated the facts and law in correct perspective. I see no illegality in the findings of the Labour Court as no tangible evidence had been produced in support of the oral claim made by one of the petitioners before the Labour Court.

11. In view of the discussions made above, I see no merit in this writ petition. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11-01-2018
Transmission Date	

