

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3337 of 2008

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M/S Bata India Limited, through its General Manager, At and P.O.-Bataganj,
Digha, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Labour & Employment, New Secretariat, Patna-1
2. The Presiding Officer, Labour Court, Baily Road, Patna-1
- 3 (i) Shila Devi, wife of Late Rama Prasad Gupta
(ii) Kanhaiya Prasad Gupta, S/o Late Rama Prasad Gupta
(iii) Mohan Sah, S/o Late Rama Prasad Gupta
All residents of Village + Post-Parmannandpur, P.S.-Sonepur, District-Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Advocate

Mr. Indrajeet Bhushan, Advocate

For the Respondent/s : Mr. Sunil Pandey, Advocate

Mr. Manoj Kumar Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-06-2018

The instant writ petition has been filed by the petitioner for quashing the award dated 02.08.2007 pronounced on 25.09.2007 by the Labour Court, Patna in Reference Case No. 17 of 1999 by which the termination order of the services of original respondent no. 3 dated 13.11.1995 has been held to be perverse and indefensible



and, thus, set aside and the petitioner has been directed to reinstate respondent no. 3 with full back wages and other consequential benefits.

2. The undisputed facts of the case are that the original respondent no. 3 late Rama Prasad (for short 'the workman') was appointed on 12.01.1969 as permanent worker at Bataganj Digha Factory. He started remaining absent from the year 1990 on one pretext or other and, in the year 1991, he remained absent for 362 days out of 365 days in that calendar year. Again he absented for 239 days in the 1992 and 122 days in the year 1993 up-to October and thereafter he went on sick leave on recommendation of the Medical Officer of the ESI hospital from 01.11.1993. Thereafter, he remained absent continuously on the ground of sickness on the recommendation of the Medical Officer of ESI Hospital. At last, petitioner issued a show cause notice to him on 04.07.1995 stating therein that in view of his protracted illness for more than 20 months continuously he had become incapable for industrial employment and, therefore, why he should not be discharged under Regulation 98 (iii) of the Employees State Insurance (General) Regulations, 1950 (for short 'the Regulations'). The registered letter dated 04.07.1995 sent on the workman's address was returned with the peon's remark that the recipient has refused to receive the letter. Again, another



registered letter dated 18.07.1995 was issued enclosing the copy of the earlier letter which was received by the workman on the same address. Subsequently, he filed his reply dated 21.07.1995 stating therein that he was on sick leave with effect from 01.11.1993 for tuberculosis and submitted medical fitness certificate dated 21.07.1995 along with a copy of his reply with a doctor's note that he is fit to resume duty with effect from 24.07.1995. On receipt of the reply to the explanation of the show-cause and the report of Enquiry Officer dated 18.10.1995, the personal Manager of the petitioner company discharged the workman vide order dated 13.11.1995 from service under Regulation 98(iii) of the Regulations with effect from the date of issuance of the order.

3. Being aggrieved with the order of discharge, the workman raised an Industrial Dispute, which was referred u/s 10(1)(c) of the Industrial Disputes Act, 1947 by the Government of Bihar on 03.11.1999 to the Labour Court, Patna for adjudication. The term of reference reads as under:-

“Whether the termination of services of Shri Rama Prasad Gupta, workman of M/s Bata India Ltd, Bataganj, Digha, Patna is justified? If not, what relief the workman is entitled to?”

4. After hearing the parties, the Labour Court vide impugned award dated 02.08.2007 answered the reference in the



following words:-.

“In view of the facts & circumstances I find and hold that the termination order 12.11.1995 is perverse and indefensible in the eye of law. Hence the impugned order dt-12.11.1995 is hereby set aside. Management is directed to reinstate the workman with full back wages and other consequential benefits.”

5. Challenging the aforestated award dated 02.08.2007, Mr. Alok Kumar Sinha, learned counsel appearing for the petitioner submitted that there is neither any finding in the impugned award holding the domestic inquiry to be unfair or improper on any count nor there is any finding that the inquiry report is perverse and unsustainable. He contended that the Labour Court has pronounced the award in the most illegal and arbitrary manner considering fresh evidence brought before it for the first time. He submitted that the workman was discharged from service with effect from 13.11.1995 in terms of Regulation 98 (iii) of the Regulations read with clause 19 (b) of the Standing Orders of the petitioner-company. He was never terminated from services. Hence the reference sent by the State Government pertaining to subject matter of termination was illegal, improper, erroneous, incorrect and invalid.

6. On the other hand, Mr. Manoj Kumar Gupta, learned



counsel appearing for the substituted legal heirs of the workman submitted that the findings on fact given by the Labour Court are based on correct appreciation of facts and law and, thus, they do not warrant any interference. He submitted that neither the reference was bad nor the termination of workman was in accordance with law. As the workman was member of E.S.I and was also entitled to avail the benefit laid down under the E.S.I Scheme and was suffering from illness between 01.11.1993 and 21.07.1995, initially he got himself treated by the doctor of the E.S.I. Hospital and, later on, when it was detected that he was suffering from tuberculosis, he was referred to the T.B. centre for specialized treatment. Under such compelling circumstance, he remained absent from duty for about 20 months. He contended that since the disease with which the workman was suffering demanded long treatment, no fault can be found with the continuous absence of the workman. He contended that no sooner the workman was found fit for work and fitness certificate was granted by the doctor, he submitted his joining, but he was not allowed to resume his duty and, subsequently, in the most fanciful and arbitrary manner he was terminated from service.

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

8. From perusal of the impugned award dated



02.08.2007, I find that oral and documentary evidences were led by the parties before the Labour Court and on appreciation of the evidences led before it, the Labour Court recorded its finding in following words:-

“From perusal of Section 98(iii) of the E.S.I (General) Regulation, 1950 and standing order 19 (b), I find that it is quite manifest that if after the 18 months the workman will remain under medical treatment only then the management has jurisdiction to discharge the workman under the E.S.I (General) Regulation Act and under standing order on the score of protracted illness unless no intimation has been given. Workman has been terminated on 12.11.1995 when the fitness certificate dated 10.08.1995 was in the knowledge of the management. It means before discharge, the workman was not suffering from Tuberculosis. During the absence period, intimation from time to time was also given to the management by the workman. Hence decision of the workman does not stand to reason. On the basis of the above, I find that management cannot exercise its power u/s 98(iii) E.S.I (General) Regulation, 1950 and 19 (b) of the Standing Order. So, the exercise of power 98(iii) and 19(b) is illegal and unjustified. IT has also been in evidence that the delinquent worker has served the Bata for a considerable time and he has remained unemployed after removal. This has not been demolished by the management.”



9. At this stage, it would be relevant to take note of clause 19 of the Standing Orders and Rules certified under the Industrial Employment (Standing Orders) Act, 1946 of the petitioner-company which governs the conditions of employment of all permanent workmen on piece rates or on fixed salaries, who are employed at the factory of Bata India Ltd, Bataganj, Patna, which reads as under:-

“19. Termination of service:-

The Company reserves the right to terminate the services of any workman, provided:

- (a) No workman employed in the establishment who has been in continuous service for not less than one year under the employer shall have his service terminated on medical grounds on being deemed mentally or physically unfit in the opinion of the Medical Board or for any other good and sufficient cause until the workman has been given one month's notice in writing indicating the reasons for termination and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice.

Provided that in case of those permanent workmen who have not completed one year of continuous service, the workman will not have his service terminated until the workman has been given 2 weeks notice and the period of notice has expired or the workman has been paid in lieu of



such notice wages for the period of notice.

No workman employed in the establishment who has been in continuous service for not less than one year shall leave the employment except after giving one month's notice in writing and the period of notice has expired, or paying the employer an amount equal to one month's wages in lieu of such notice; provided that in case of permanent workman who has not completed one year of continuous service the period of such notice shall be 2 weeks only.

Provided that the provisions of above clause shall not apply to cases of retrenchment within the meaning of section 2(00) of the I.D. Act, 1947.

- (b) Protracted Illness: No workman will be discharged for protracted illness unless his absence on this account exceeds six months and provided that he workman has from time to time obtained leave from the company.
- (c) Retiring Age: Retiring age will be 60 (Sixty) years.”

10. From a reading of sub-clause (b) of clause 19 of the standing order it would be manifest that a workman under the petitioner company is protected from being discharged for protracted illness unless his absence on this account exceeds six months and provided that he has from time to time obtained leave



from the company.

11. The relevant Regulation 98(iii) of the Regulations reads as under:-

“98. Discharge, etc., of employee under certain conditions.- If the conditions of service of any employee so allow, an employer may discharge or reduce on due notice an employee-

(i) xxx xxx xxx

(ii)xxx xxx xxx

(iii) who has been under medical treatment for any of the following diseases, duly certified in accordance with these regulations, after the employee has been under such treatment for a continuous period of 18 months or more, notwithstanding provisions of clauses (i) and (ii):

Diseases

I. Infectious Diseases

1. Tuberculosis

2. xxx xxx xxx

3. xxx xxx xxx

4. xxx xxx xxx

5. xxx xxx xxx

6. xxx xxx xxx”

12. Thus, from a reading of Regulation 98(iii) of the Regulations, it would be evident that in case an employee, who suffers from tuberculosis and continues to be in treatment for a



continuous period of 18 months or more, the employer has a discretion to discharge him on due notice.

13. Coming back to the facts of the case, it was an admitted case of the workman before the Tribunal that he was suffering from tuberculosis between the period 01.11.1993 and 21.07.1995 and, thus absented from duty. Under such circumstance, the employer was well within its right to discharge the workman from services in terms of Regulation 98(iii) of the Regulations. The fitness certificate granted by the doctor to the workman as on the date of discharge would not be a relevant factor while exercising power in terms of the above Regulation.

14. The finding on interpretation of Regulation 98(iii) of the Regulations given by the Labour Court is unsustainable, as the Labour Court has failed to appreciate that the aforestated Regulation 98(iii) of the Regulations gives power to discharge a workman, who is ill for more than 18 months and not whether he is fit on the date of discharge from his service. The Labour Court has also committed a serious error of law in reinstating the workman and allowing him back wages for the period he was on leave from 1990 to 12.11.1995.

15. Learned counsel for the petitioner has rightly submitted that there is neither any finding in the impugned award holding the domestic inquiry to be either unfair or improper on any



count nor there is any finding holding the finding given in the enquiry report to be perverse or unsustainable on any count.

16. In such circumstance, the Labour Court ought not to have held the order of discharge, which was passed on finding of inquiry report in terms of the aforestated Regulation 98(iii) of the Regulations and Clause 19(b) of the Standing Order to be perverse and indefensible. Further, the relief of reinstatement of the workman with full back wages and other consequential benefit has been granted by the Labour Court in mechanical manner without giving reasons for granting such relief.

17. Regard being had to the discussions made hereinabove, the impugned award dated 2nd August, 2007 in Reference Case No.17 of 1999 by the Labour Court, Patna is set aside.

18. The writ application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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