

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11129 of 2016

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The Regional Manager-cum-Assistant General Manager, State Bank of India,
Region-II, Regional Business Office, Bhagat Singh Chowk, Munger-811201

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Labour, Government of India, New Delhi.
2. Manju Devi, widow of Late Priyadarshi Ashok, resident of Sheodih 02, P.O. & Thana-Sikandra, Distt.-Jamui.
3. The Asstt. General Secretary, State Bank of India Employees Union (Bihar State), 215-Ashok Place, Exhibition Road, Patna-80001.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Binod Bihari Sinha, Advocate
Mr. Ajay Dutt Mishra, Advocate
Mr. Anirudh Prasad Sinha, Advocate
Mr. Amarjeet Choudhary, Advocate

For the Respondent-U.O.I. : Mr. Rajesh Kumar Verma, CGC

For the Respondent No.2 : Mr. Devendra Kumar Sinha, Senior Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-04-2018

Heard Mr. Binod Bihari Sinha, learned counsel for the petitioner, Mr. Rajesh Kumar Verma, learned Central Government Counsel for the Union of India and Mr. Devendra Kumar Sinha, learned Senior Advocate for respondent no.2. Despite valid service of notice, nobody appeared on behalf of the



respondent no.3 to contest the matter.

2. In the instant writ petition, the petitioner has prayed for setting aside the award dated 17.08.2015 passed by the Central Government Industrial Tribunal No.1, Dhanbad (for short 'Tribunal') by which the widow of the workman has been directed to be given work as casual employee.

3. Learned counsel for the petitioner submitted that Priyadarshi Ashok, husband of the petitioner no.2 died on 30.12.2000 during pendency of conciliation proceeding but the conciliation officer submitted failure of conciliation report to the Ministry of Labour after the death of Priyadarshi Ashok. He submitted that there is no provision in the Industrial Disputes Act, 1947 (for short 'ID Act') empowering the conciliation officer to continue a conciliation proceeding after death of an individual workman. He submitted that even without substituting the legal heirs of late Priyadarshi Ashok, the conciliation officer submitted failure report as if he was alive and the Ministry of Labour had made reference to the Tribunal for adjudication as if the workman was alive. He submitted that the submission of application through Union of India was in complete contravention of the statutory provisions contained in Rule-10-A of the Industrial Disputes (Central) Rules, 1957 (for short 'Rules 1955') which provide that in



case of an individual workman, the workman shall forward a statement claim to the conciliation officer for conciliation. He submitted that the very initiation of the reference was bad as the same was forwarded by the respondent no.3. He submitted that the issue raised by the petitioner before the Tribunal regarding maintainability of the reference before it has not been answered while passing the award. Thus, the impugned award is completely illegal without jurisdiction and a nullity in the eye of law and the same is also beyond the terms of reference. The dispute referred to the Tribunal for adjudication was whether the workman Priyadarshi Ashok had worked with State Bank of India, Sikandra Branch, Dist.-Jamui between 1.7.1985 and 25th August, 1999 as messenger and, if so, the action of the Management in terminating his services with effect from 25th August, 1999 was justified and, if not, what relief the workman is entitled to but the Tribunal did not answer the reference at all and directed that the widow of the workman be given work as casual employee with the prevalent wage structure, which is completely erroneous. He submitted that the Tribunal has not assigned any reason in its order for passing the award and, thus, there is no link between the reference before the Tribunal and the award passed by it.

4. On the other hand, learned counsel appearing for



the Union of India submitted that the dispute is primarily between the respondent no.2 and the petitioner and facts of the case are admitted, he has not to argue anything beyond that the reference made by it to the Tribunal was legal and justified.

5. Mr. D.K. Sinha, learned Senior Advocate appearing on behalf of the respondent no.2, however, submitted that the husband of respondent no.2 was appointed on the post of Messenger in sub-ordinate cadre in State Bank of India, Sikandra Branch, Jamui in the month of July, 1985, his services were utilized for long time, but he was being arbitrarily paid daily wages at the rate of Rs.35/- per day till 25.08.1999. He submitted that he was entitled to be reinstated in service in permanent sub-ordinate cadre of the bank with retrospective effect, as he had completed 280 days regular service after the date of his initial appointment in July, 1985. He contended that he was illegally and arbitrarily terminated from service in utter violation of Section 25-F of the ID Act. He contended that the Tribunal has rightly passed the award in favour of the respondent as her husband had died on 30.12.2000 and, in view of that, he could not have been reinstated in service.

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

7. In exercise of powers conferred by clause (d) of



sub-section (1) and sub-section (2A) of Section 10 of the ID Act, the Central Government referred the following dispute vide order dated 26.11.2011 as under:-

“Whether the workman Sri Priyadarshi Ashok had worked with State Bank of India, Sikandra Branch, Distt.-Jamui between 01.07.1985 to 25th August 1999 as Messenger? If so the action of the management in terminating the service of the applicant w.e.f. 25th August 1999 is justified? If not what relief the workman is entitled?”

8. From perusal of the impugned award dated 17.08.2015 passed by the Tribunal, it would be manifest that in para 1 and 2, the reference of award from the Central Government has been recorded, in para 3, the case of the workman in three sentences have been recorded, in para 4, the stand of the petitioner has been recorded only in two sentences, in para 5, 6, 7 and 8, in a very cryptic and vague manner the Tribunal has recorded its finding as under:-

“5. The workman was engaged by the Branch Manager of S.B.I. as a messenger. There is enough material to show the workman worked under the completed 240 days, in a calendar year and prays for regularization. But when the workman prays for regularization, the management did not to regularize him and terminate the service of workman.



Subsequently the workman is died soon after losing the service.

6. For the regularization of the workman the Branch manager has written several times to the higher officer and the same is regretted without any reason.

7. As per Ext W-2 the workman worked 277 days in 1986, which is the certificate of temporary service on daily wages issued by the S.B.I. Management.

8. As per Ext. W-12, which is also management document, in which management is submitted that he is used as permanent employee and he has access to all books. He has paid wages for every Sunday and holiday. Many document marked which is issued by the management, in which management has instructed, that he is an assets of the bank, not to be retrenched.”

9. In para 9 even without giving any finding that the husband of the respondent no.2 had completed 240 days of service in preceding 12 months, it has recorded that the petitioner did not comply with Section 25-F of the ID Act prior to terminating the workman and after saying so, the conclusion and answer to the reference has been recorded by the Tribunal whereby it has directed that the widow of the workman be given work as casual employee with the prevalent wage structure.

10. The findings of the Tribunal in para 9 and 10



have been recorded as under :-

“9. Considering the facts and circumstances it is revealed, that the management even not complied 25 F which ought to be complied prior to retrenching the workman. In the meantime, the workman concerned has died and his wife is substituted.

10. The wife of the deceased urged for relief. Since the workman rendered service of the Bank for a long period as well as more than 240 day in a year. The widow of the workman be given work as a casual employee, as his husband was working in the bank, with the prevalent wage structure soon after the publication of this award in the official Gazette.”

11. Apparently, the Tribunal recorded *ipse dixit* while passing the award without looking into and discussing the evidence and materials on record.

12. The Tribunal has clearly erred in law in granting relief of reinstatement to the widow of the deceased as the same was not permissible in law and was also beyond the terms of reference.

13. Further, no finding has been given by the Tribunal that the workman had completed 240 days of service in preceding 12 months before termination and even without such



finding, the Tribunal recorded that the provisions prescribed under Section 25-F was not complied before terminating the workman. There is also no finding on the point of reference that the workman Priyadarshi Ashok had worked with State Bank of India between 01.07.1985 and 25th August 1995 as messenger. The finding in respect of non-compliance with Section 25F of the ID Act is also erroneous and the relief granted while passing the award is also not in consonance with the reference made by the Tribunal. Learned counsel for the petitioner has rightly submitted that the Tribunal has failed to assign any reason in its order.

14. It is settled position in law that if a workman dies during pendency of the reference before the Tribunal, an order of compensation may be passed in favour of his legal heirs, but the Tribunal could not have passed an award directing the widow of the workman to be engaged as a casual employee.

15. In view of the discussions made above, the impugned award dated 17.08.2015 passed in Reference Case No.266 of 2001 by the Tribunal is set aside. The matter is remitted back to the Tribunal for hearing the parties afresh on the basis of materials already on record. Since the matter is quite old the Tribunal should make endeavour to dispose of the reference made to it in accordance with law as early as possible preferably within



three months from the date of receipt/production of a copy of the order.

16. With the aforesaid observations and direction, the application is allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.05.2018
Transmission Date	NA

