

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18545 of 2016

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1. Sri Suresh Ram, son of Sri Janak Ram

2. Smt Sarswati Devi, wife of Sri Suresh Ram

Both resident of Mohalla-Dahiyawa (within the compound of Ram Jaipal College,
Chapra), P.S.- Nagar Thana, District -Saran (Chapra).

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Labour Resource Department,
Government of Bihar, Patna.

2. The Presiding Officer, Labour Court, Chapra

3. The Vice Chancellor, J.P. University, Chapra

4. The Registrar, J.P. University, Chapra

5. The Deputy Labour Commissioner, Chapra

6. The Principal, Ram Jaipal College, Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Syed Qaisar Hasan, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-09-2018

Heard learned counsel for the petitioners. No one
appears for the respondents.

2. This writ petition has been filed by the petitioners
for quashing the award dated 01.07.2016 passed by the Presiding
Officer, Labour Court, Chapra in Reference Case No.2 of 2010



whereby he has decided the reference against the petitioners.

3. The case of the petitioners is that the petitioner no.2 was appointed on verbal order of the then Principal (respondent no.6) which was also approved by the then Development Committee in its meeting dated 20.11.2007 of the college on daily wages as a cleaner/sweeper in the said college. He started working in the college since September, 2007. Similarly, petitioner no.2, who happens to be the wife of petitioner no.1, was also appointed by then Principal on daily wage basis as sweeper and was also entrusted the cleaning work at principal's residence. They were working upto the satisfaction of the respondents. They were paid remuneration from September, 2007 by the order of the Principal at a consolidated rate of Rs.200/- each and, thereafter, it was enhanced to Rs.300/- each. The payments were made through cheques by the college. The petitioners regularly requested the then Principal to regularize their services, as they had worked continuously for more than 240 days in continuation since 2007, but since April, 2009, the college stopped making payment of wages to them. They were removed without any show cause. Thereafter, they filed an application for regularization of services before the Deputy Labour Commissioner (respondent no.5), Saran Division at Chapra narrating all the facts, who vide his letter dated 15.07.2009 asked



the Principal of the college to submit his reply by 24.07.2009 on the points raised by the petitioners. Since the Principal of the college did not submit his reply even after grant of extended time by the Deputy Labour Commissioner, he referred the dispute to the State Government. Thereafter, the State Government referred the dispute to the Labour Court at Chapra and the Labour Court vide impugned award dated 01.07.2016 answered the reference against the petitioners.

4. Assailing the aforesaid award dated 01.07.2016, learned counsel appearing for the petitioners submitted that the Labour Court has not appreciated the facts and law in correct perspective. The order impugned reflects total non-application of mind. There was evidence before the Labour Court that the petitioners had worked for more than 240 days in a calendar year. Hence, notice was mandatory under Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') indicating the reasons for retrenchment or in lieu of such notice wages for the period of the notice. He pleaded that the documentary evidences adduced before the Labour Court were also not considered properly.

5. Despite copies of the petition having been served upon the State, no one appears on its behalf.

6. Having heard learned counsel for the petitioners



and perused the record, I find that on failure of conciliation proceeding the dispute was referred to the State Government by the Deputy Labour Commissioner, Chapra. After receipt of the dispute, the State Government, in exercise of its power conferred by clause (c) of sub-section (1) of Section 10 of the Act referred the dispute for adjudication to the Labour Court, Saran at Chapra. The term of reference reads as under:-

“Whether denial to regularization of service of Smt. Sarswati Devi and Suresh Ram is justified? If not what relief they are entitled to?”

7. From a perusal of the order impugned, it would appear that in support of the claim, the petitioners had adduced in all 13 witnesses. The Labour Court has categorically held in para 5 of its judgment that no documentary evidence has been adduced by the workmen. After discussing the evidences adduced before it, the Labour Court recorded its findings and passed the impugned award.

8. At this stage, I think it apt to reproduce the findings of the Labour Court for appreciation of the submissions made on behalf of the petitioners. The same reads as under:-

“22. On careful consideration and adequate scrutiny of the evidence of witnesses examined by workmen, witness no.W-1 to



W-11 who are employees of Ram Jaipal College, the management in the instant case, I find that they all have not supported the claim of the workmen and have not supported their employment in the said college, the management witness no.9 of workman namely Prashant Kumar, who is an assistant Professor at Ram Jaipal College, the management in the case have flatly denied the working of the workman with the management. All these witnesses although have not been cross-examined by the management but nothing has come in their evidence which could be said corroborative to the claim of the workman and thus it can be said that their evidence is of no use to the workman's claim so far as evidence of W-12 Suresh Ram who is the workman in the case is concerned, I find that he in his evidence have stated that he had been employed since 2007 in the Ram Jaipal College by oral order of Principal and they (husband and wife) were paid Rs.400/- through cheque and subsequently it was enhanced upto Rs.600/- per month including Rs.300/0 to each workman and his termination was done on 21.05.2009. In his entire evidence, he has not deposed that on which year his wife Sarswati Devi another workman in this case has been



appointed in the college nor it has been stated in their W.S. He has further deposed during court question that he never made his Hazri in the college. Witness No.W-13 namely Sarswati Devi who is another workman in the case has nowhere in her evidence has deposed that since when she had been working as cleaner in the college nor it has been stated in their W.S. Workman have not brought into evidence any documentary evidence with regard to their appointment, payment, renewal order, attendance register in support of their claim. No any master roll has been brought into evidence nor case record show that all the documents have been called for from the management by the workman and Management has failed to do so. **Workmen have not adduced any documentary evidence with regard to continuous service of 240 days during one calendar year. It is essential for the workman to establish that they were in continuous service of the employer for 240 days within the terms of Section 25-B of the I.D. Act.** It is also not worthy, back wages are not to be mechanically granted. It needs to be established that workmen had made proper efforts for seeking alternative employment and despite their efforts could



not secure such employment. It is also pertinent to note that the qualification for relief under section 25-F of the Industrial Dispute Act is that he should be a workman employed in any industry and has been in continuous service for not less than one year under the employer and continuous service has been defined in Section 25-B of the Industrial Dispute Act.

23. Thus, taking into consideration aforesaid discussion, appreciation of evidence available on case record as well as the facts and circumstances of the case I come to conclusion and find and hold that workman have failed miserably to prove their case and therefore it is hereby ordered that denial to regularization of service of Smt. Sarswati Devi and Sri Suresh Ram is justified and they are not entitled to any relief”.

(emphasis mine)

9. Thus, from perusal of the findings of the Labour Court, it is apparent that there was nothing on record on the basis of which it could have reached to the conclusion that the workmen were under employment in continuous service for not less than one year under the establishment prior to their retrenchment. An employment for 240 days of service in preceding 12 months is a condition precedent for giving notice of compensation in lieu of it in



terms of Section 25-F of the Act.

10. Here, in the present case, the claim of the petitioners was that they had worked between September, 2007 and June, 2009 continuously, but they could not produce a chit of paper in support of their claim. The witnesses examined in their support also did not utter a word regarding their continuous employment in service of the college in question for 240 days in preceding 12 months of their retrenchment.

11. The findings of fact recorded by the Labour Court constituted under the Act are based upon relevant materials. It is well settled position in law that reappraisal of evidence without sufficient reason to arrive at a finding contrary to the award passed by a Labour Court/Tribunal is not permissible while exercising the power of judicial review. An interference with the award passed by the Labour Court/Tribunal is permissible only if the award suffers from an error of jurisdiction or breach of principles of natural justice or is vitiated by error of law.

12. In the present case, I find that the impugned award neither suffers from an error of jurisdiction nor breach of principles of natural justice. The same is also not vitiated by an error of law.

13. Hence, no ground for interference with the



impugned award is made out. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2018
Transmission Date	NA

