

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4292 of 2013

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The Bihar State Road Transport Corporation, through the Administrator, Birchand
Patel Marg, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Transport Department, Bihar, Patna.
2. The Presiding Officer, Labour Court, Patna.
3. Gaya Nath Thakur S/O Late Jadunandan Thakur Ex-Driver, Bihar State Road
Transport Corporation, Bankipur Depot., Patna, premanent resident of Village-
Taiyabpur, P.O.- Nayaganj, P.S.- Deshri, District- Vaishali.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Lakshmi Kant Tiwary, Advocate
Mr. Nitesh Kumar, Advocate

For the State : Mr. Sushil Kumar Mallick, AC to SC-4

For the Respondent No.3 : Mr. Satya Prakash Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-03-2018

Heard learned counsel for the petitioner and learned
counsel appearing for the respondent no.3.

2. This writ petition has been filed by the petitioner
for quashing the award dated 23.06.2011 passed in Reference Case
No.6 of 2002 whereby the learned Presiding Officer, Labour Court,
Patna has set aside the dismissal order of respondent no.3, Gaya



Nath Thakur, dated 20.07.2001 and has directed the petitioner to reinstate him with full back wages since 01.04.1996.

3. Respondent no.3 had been working as driver in the petitioner corporation and while being posted at Phulwarisharif depot, Patna he had taken leave upto 31.03.1996. He remained absent from duty between 01.04.1996 to 08.08.1996. While submitting joining on 09.08.1996, he filed copies of the postal certificates (UPC) in order to show that he had sent applications for leave with medical certificate on health ground. The Depot Superintendent, Phulwarisharif forwarded the application for joining of respondent no.3 to the Divisional Manager seeking direction for further action in the matter. Thereafter, the Divisional Manager, Phulwarisharif directed the Depot Superintendent vide Letter No.3811 dated 15.12.1997 to accept his joining. Since respondent no.3 failed to submit joining pursuant to the aforestated Letter dated 15.12.1997, a proceeding was initiated against him and charges were framed for his unauthorized absence from duty and non-compliance with the direction to join vide order dated 15.12.1997. Respondent no.3 neither participated in the proceeding nor any witness was examined on his behalf. Ultimately, the Conducting Officer after examining one witness namely, M. Alam from the side of the Management submitted his inquiry report on 22.07.2001 with



finding that respondent no.3 was unauthorisedly absent since long time and, thus, the charge against him was proved. On receipt of the inquiry report, the Divisional Manager, Patna issued second show cause notice to respondent no. 3 vide Memo No.2648 dated 20.06.2001. Respondent no.3 submitted his explanation to the second show cause notice before the Divisional Manager of the Corporation, which was received on 03.07.2001. In his explanation, he submitted that the enquiry was conducted behind his back and no notice was ever served upon him in this regard. However, the Divisional Manager accepted the inquiry report submitted by the conducting officer and dismissed respondent no.3 from services vide order dated 21.07.2001.

4. Being aggrieved by the order of dismissal, respondent no.3 raised a dispute under the Industrial Disputes Act, 1947. The State Government vide its notification dated 13.04.2002 referred the dispute under Section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication to the Labour Court. The term of reference in Reference Case No. 6 of 2002 was as under:-

“Whether dismissal of service of Sri Gaya Nath Thakur, Driver by Managing Director, Bihar State Road Transport Corporation is justified? If not, what relief he is entitled to”.



5. The Labour Court after issuance of notice to the parties framed two issues for determination as under:-

“(i) Whether the charges have been proved against the worker by adducing evidence on the merit by the management?

(ii) Whether dismissal of service of Sri Gaya nath Thakur, Driver by Managing Director, B.S.R.T.C. is justified? If not what relief he is entitled to?”

6. Before the Labour Court, on behalf of Management, one Ashok Kumar, a clerk in the petitioner Corporation was examined as a witness. Certain documents were also brought on record, which were marked as exhibits. So far as respondent no.3 is concerned, he got himself examined and also got proved several documents, which were also marked as exhibits.

7. After hearing the parties and appreciating the evidences laid in the proceeding, vide award dated 23rd June, 2011, the Presiding Officer, Labour Court came to the finding that the petitioner had failed to prove the charges against the respondent no.3 by adducing evidence on merit and, therefore, the first issue was decided in favour of the workman and against the management. The second issue was also decided against the management and in favour of the workman. It held that the dismissal of service of the workman was not justified and he is entitled to be reinstated with full back



wages.

8. Assailing the impugned award dated 23rd June, 2011, learned counsel for the petitioner submitted that the Labour Court has not assigned cogent and sufficient reason for arriving at the conclusion against the petitioner. He submitted that the Presiding Officer failed to appreciate that the management had proved its case beyond all reasonable doubts and the order of dismissal was passed only after giving adequate opportunity of hearing to respondent no.3. He submitted that the relief granted in favour of respondent no.3 was without appreciating the law and facts in correct perspective.

9. *Per contra*, learned counsel appearing for respondent no.3 submitted that the order of dismissal was passed in complete violation of the principles of natural justice. No opportunity of hearing was given to the petitioner in the disciplinary proceeding initiated against him. He contended that neither the charges were supplied to the petitioner nor at any point of time any notice was issued to him prior to the stage of second show cause notice. According to him, even in the proceeding before the Labour Court, the management completely failed to establish any justification for dismissal of the petitioner from service. The sole witness examined on behalf of the management has not uttered a word in respect to the charges for which the disciplinary proceeding



was initiated against respondent no.3. He submitted that since the respondent no.3 had been able to satisfy the Labour Court that the charges levelled against him were not proved by the management, the Labour Court rightly passed the award in favour of the workman and against the management.

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

11. It is rightly submitted on behalf of the respondent no. 3 that the sole witness examined on behalf of petitioner has simply proved certain documents before the Labour Court. He has not uttered a word in respect of justification of the order of termination of the petitioner. To the contrary, respondent no. 3 got himself examined before the Labour Court and stated that he was appointed at Head Office in 1978 by the Managing Director and his service became permanent in 1979. In March, 1996, he went to his village after taking leave, but as he fell ill and the doctor advised him for complete bed rest, he sent his applications for extension of leave through six communications made under postal certificate. He also proved receipts of those postal certificates. He stated that after recovery from ailment, he returned on duty and filed joining along with medical certificate on 09.08.1996 at Phulwarisharif depot, but was not allowed to join and put his signature on the attendance



register. He was communicated that his appointment for joining had been sent to the Divisional Manager for sanction and after the Divisional Manager would take a decision he would be allowed to submit his joining. Since then, no communication was made to him and all of a sudden, he received the second show-cause notice, which was duly replied by him on 30.06.2001. He categorically stated that no notice was served to him regarding the charge framed against him and he was not afforded any opportunity of hearing in the domestic inquiry. He stated that after submitting his reply to second show-cause notice, he received the order of dismissal.

12. The witness was not confronted with any question in cross-examination. Thus, his testimony went unrebutted.

13. After appreciating the evidences led on behalf of the parties, the Labour Court found the assertions made by respondent no. 3 in his deposition to be reliable and, thus, it held the dismissal of service of respondent no. 3 by the Managing Director of the petitioner Corporation to be not justified and he has been directed to be reinstated with full back wages.

14. Having regard to the nature of the dispute raised and the evidences led before the Labour Court, I find no reason to interfere with the award because an interference would be permissible only if the order of the Labour Court suffers from an



error of jurisdiction or breach of principle of natural justice or is vitiated by an error of law apparent on the face of the record. In the opinion of this Court, the award passed by the Labour Court does not suffer from any error of jurisdiction or breach of principle of natural justice or vitiated by any error of law apparent on the face of the record. The findings of fact recorded by the Labour Court are based upon material relevant for the purpose led before it in course of the proceedings. Hence, I do not find any merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2018
Transmission Date	NA

