

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13662 of 2009

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1. Ramesh Kumar S/O Nathun Ram Moh- Shah Arzaam Colony, Sultanganj, Patna
 2. Raimat S/O Md. Shamim R/O Shah Arzaan Colony, P.S- Sultanganj, Patna

.... Petitioners

Versus

1. The State Of Bihar
2. The General Manager Steel Authority of India Ltd. Bokaro Steel Plant, Bokaro Steel City, Dhanbad
3. The Assistant General Manager, Steel Authority Of India Ltd. Bokaro Steel Plant, Liasion Office, Sekhpura, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rohit Kishore Prasad, Advocate
Mr. Ratan Kumar Sinha, Advocate

For the Respondent/s : Mr. Rajeev Ranjan Pd.
Mr. Ranjan Kumar Dubey
Mr. Rajiv Shankar Dwivedi
Ms. Sangeeta Sharma

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-06-2018

Heard learned counsel for the petitioners and learned counsel appearing for respondent nos. 2 and 3.

2. The instant writ petition has been filed by the petitioners for quashing the order passed by the Presiding Officer, Labour Court, an authority under the Bihar Shops and Establishment Act, 1953 (for short 'Act of 1953') dated 21.01.2009



by which the application filed by the petitioners under Section 26(2) of the Act of 1953 seeking reinstatement with full back wages and consequential benefits has been dismissed.

3. Learned counsel appearing for the petitioners submitted that the petitioners were employed in the office of the Assistant General Manager, Bokaro Steel Plant, Sekhpura, Patna. The petitioner no. 1 was in continuous employment from 20.09.1996 to 31.05.2000 and the petitioner no. 2 was in continuous employment from 15.06.1995 to 31.05.2005. Both the petitioners were engaged as daily wage workers. Subsequently, they were posted in the office of Steel Plant at Dinakar Golambar for its maintenance. They rendered their services for more than 180 days. Even though there was no reasonable cause for dispensing with their services, they were terminated by oral order without notice as required under sub-section (1) of Section 26 of the Act of 1953. He submitted that the authority under the Act of 1953 has not appreciated the facts and law in correct perspective and has dismissed the application filed by the petitioners under Section 26(2) of the Act of 1953.

4. *Per contra*, learned counsel appearing for respondent nos. 2 and 3 submitted that the entire case of the petitioners is that they were daily wage workers and had been engaged for more than



180 days which they failed to prove. He submitted that even if it is assumed for the sake of argument although it is not correct that the petitioners have actually worked for 180 days or more even then they cannot claim relief in the light of ratio laid by the Supreme Court in **the Secretary, State of Karnataka vs. Uma Devi [2006 (4) SCC 1]**.

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

6. Sub-section (1) of Section 26 of the Act of 1953 prescribes that no employer shall dismiss or discharge or otherwise terminate the employment of any employee who has been in his employment continuously for a period of not less than six months, except for a reasonable cause and after giving such employee at least one month's notice or one month's wages in lieu of such notice. Sub-section (2) of the said provision gives option that every employee, dismissed or discharged or whose employment is otherwise terminated, may make a complaint in writing in the prescribed manner, to a prescribed authority within 90 days of the receipt of the order of dismissal or discharge or termination of employment on the one or more of the following grounds, namely :-

(i) there was no reasonable cause for dispensing



with his services; or

(ii) no notice was served on him as required by sub-section (1); or

(iii) he has not been guilty of any misconduct as held by the employer ; or

(iv) no compensation as prescribed in sub-section (1) was paid to him before dispensing with his service.

7. From perusal of Section 26 of the Act of 1953, it would be evident that the requirement of notice of dismissal or discharge or one month wages in lieu of such notice is for those employees who have continued in employment for a period of not less than six months.

8. As far as the case of the petitioners is concerned, the Labour Court, on appreciation of evidence led before it, has given a clear finding that the petitioners have failed to prove that they were in continuous employment of the establishment for a period of 180 days.

9. The Labour Court vide impugned order dated 21.09.2009 held as under :-

“Having considered the oral and documentary evidence I find that in order to



succeed a case under Section 26 of the B.S.E. Act, it is mandatory that there should be continuous employment. In pleadings of the party, it has been stated that in paragraph-14 the presence of the workers used to be marked on the register and payment of wages used to be made through vouchers and vouchers used to be kept in the office itself but no evidence on the score. The worker has stated nothing about the vouchers. Pleading of the O. P. discloses that workers were used to be paid on daily basis, every day rather than at the end of the months. Ext.-8 discloses that workers were in engagement since 15.06.1995 & 23.09.96 to 11.1.1997 but it does not conclusively show that during the said period, the workers have completed the period of 180 days in continuity or without a break. On the basis of the reasons stated above, I find there is no direct, documentary and positive evidence on the point of continuity of service as laid down in Section 26 of the B.S.E. Act. Employees have failed to prove their case. Therefore, employees are not entitled to any relief.”

10. Apart from the above observation of the Labour Court, it is an admitted case of the petitioners that their employment was on daily wages. If that be the case, no error can be found with the order impugned.

11. Though, learned counsel for the petitioner has



contended that the findings of facts given by the Labour Court are not based on incorrect appreciation of facts and evidences adduced before it, nothing could be shown from the record that the findings recorded by the Labour Court are perverse.

12. The jurisdiction of this Court under Article 226 of the Constitution of India is to issue appropriate writ and direction of supervisory nature. It would not be proper for this Court to sit in appeal over the finding of the Labour Court. It is not open to this Court to examine sufficiency or adequacy of evidence laid before the Labour Court. Under writ jurisdiction, this Court is only required to see as to whether the Labour Court has properly exercised power or that the findings arrived at is not based on no evidence.

13. While dealing with limitation of power of writ court under Article 226 of the Constitution of India with regard to findings of fact, on a petition for issuance of a writ of certiorari, the Supreme Court observed in **Syed Yakoob vs K.S. Radhakrishnan And Ors. [AIR 1964 SC 477]** as under :-

“the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a



result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law, which is apparent on the face of the record, can be corrected by a writ, but not an error of fact, however it may appear that in regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court.”

14. In the present case, the petitioners have failed to make out that the Labour Court had erroneously refused to admit



admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. It is also not the case of the petitioners that the finding of fact is based on no evidence. Thus, there is neither any error apparent on the face of the record nor any error of law.

15. In that view of the matter, I see no merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.06.2018
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