

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12436 of 2017

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Bihar State Rajya Path Parivartan Nigam Karamchari Sangathan, registration no. 4061 through its General Secretary Ajit Kumar Mishra Son of Late Suresh Mishra, Parmanand Niketan, Annie Besant Road, P.S.- Pirbahore, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Transport Department, Bihar.
2. The Principal Secretary, Transport Department, Bihar.
3. The Bihar State Road Transport Corporation, through its Managing Director, Sultan Palace, Birchand Patel Path, Patna, Bihar.
4. The Administrator, Bihar State Road Transport Corporation, Sultan Palace, Birchand Patel Path, Patna, Bihar.
5. The Labour Commissioner, Bihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Advocate
Mr. Om Prakash, Advocate
Mr. Sunil Kumar, Advocate

For the Respondent-State : Mr. Ajay Kumar Rastogi , AAG-10

For the Corporation : Mr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-04-2018

In the instant writ petition, the petitioner has made the following prayers:-

- (a) To issue writ in the nature of certiorari to quash memo no.3/D-39/2015-310 dated 23.09.2016 passed by Labour Commissioner, Bihar



(respondent no.5) whereby and whereunder respondent no.5 in a most discretionary and arbitrary manner passed the order (impugned herein) by misconstruing/misinterpreting the order dated 16.03.2016 read with order dated 16.03.2016 passed by Hon'ble Apex Court in special leave to appeal (c) no.22998/2010. In doing so, respondent no.5 exercised the adjudicatory power although no such direction was given by the Hon'ble apex court to respondent no.5. In furtherance of this respondent no.5 arbitrarily invoked section 25N(a) of the industrial dispute act to retrench the members of petitioner and further it was directed to make payment of due amount on the basis of minimum wages fixed by Bihar government for that year/period.

- (b) To issue writ to quash the newspaper publication issued by the corporation in consequence of the order dated 23.09.2016 passed by respondent no.5.
- (c) To issue writ in the nature of mandamus directing the respondents especially respondent no.5 to act in a manner circumscribed by Hon'ble apex court in special leave to appeal (c) no.22998/2010 as well as the earlier settlement of the year 1988 and 1990 be taken care of. In the instant case respondent no.5 exceeded its jurisdiction and entire dispute has been tried to



be given a new dimension.

- (d) To issue writ in the nature of mandamus directing respondent no.5 or any other authority deem to be appropriate by this Hon'ble court to call for the petitioner and the corporation so that way out comes and the settlement be reached with the consent of the parties which is also the purport of the order passed by Hon'ble apex court in its order dated 16.02.2016 read with order dated 16.03.2016 passed in special leave to appeal (c) no.22998/2010.
- (e) To issue writ in the nature of mandamus directing the respondent no.5 to take steps for the "settlement of claim" with the petitioner and in order to settle the claim respondent no.5 be directed to act in a fair and reasonable manner so that consensus be arrived between the parties and the settlement entered into between the petitioner and respondents in the year 1988 and 1990 be taken care of alongwith the recent judgment of Hon'ble apex court rendered in Jagjit Singh's case reported in 2017 (1) SCC 148.
- (f) To issue writ in the nature of mandamus directing respondent no.5 to consider the settlement of the year 1988 and 1990 and if "corporation" is proposing for one time settlement (as what has been suggested by Hon'ble apex court in special leave to appeal (c) no.22998/2010) then the long service as well as



petitioner no other means of livelihood be also considered and the settlement be done after giving a proper and reasonable compensation so that petitioner's member may be able to maintain their livelihood. In short petitioner prays that respondent be directed to act within the constitutional limits.

- (g) To issue writ in the nature of mandamus directing "State of Bihar" to take steps for harmonizing the situation/dispute/issue as corporation is an instrumentality of "State". It is further prayed that the financial crunch should not come into play to defeat the legal rights of petitioners or to defeat the order passed in different judicial proceedings.
- (h) It is further prayed that during the pendency of instant writ application directions be given to stay the effect of order dated 23.09.2016 contained in memo no. 3/D-39/2015-310 passed by Labour Commissioner, Bihar or in alternative directions be given to maintain the status quo till the adjudication of instant writ application
- (i) To pass such other order(s) direction(s) petitioner is entitled in the facts and circumstances of the instant case.

2. The petitioner is an association of casual employees working in the Bihar State Road Transport Corporation (for short 'Corporation').



3. The case of the petitioner in brief is that altogether 925 members of petitioner who were appointed on daily wages/casual basis prior to 1985 were subjected to illegalities by the respondents.

4. In the year 1985, the petitioner association approached this Court by filing writ petition bearing CWJC No.3460 of 1985 inter alia praying for regularization of their services. The said writ petition was dismissed vide order dated 02.09.1985. Against the dismissal order, the petitioner preferred Civil Appeal No.1509 of 1987 before the Supreme Court of India which was disposed of vide order dated 16.12.1987 giving the following directions to the Corporation:-

“(a) To prepare a reasonable scheme for regularization of the casual labour who have been working for more than one year.

(b) The salaries and allowances be paid to the casual labourers at the rates at par with the minimum pay in the scale of regularly paid employee in the corresponding cadres of the Corporation with effect from 1st January, 1987; and

(c) To pay all arrears payable pursuant to the order.”

5. Subsequently, the petitioner filed a review



application vide Review Petition (c) No.381 of 1988 reviewing the order passed by the Supreme Court in Civil Appeal No.1509 of 1987. It appears that before the review petition was taken up, some sort of compromise was arrived at between the parties and in view of that, the Review Petition was disposed of by the Supreme Court vide order dated 30th October, 1990. Thereafter, the respondents regularized the services of 377 casual workers. Later on also 100 casual labourers were regularized. Since all the workers attached to the petitioner association were not regularized, a letter was written to the then Chief Justice of the High Court highlighting the callous approach of the Corporation which was registered as a writ petition vide CWJC No.973 of 1993. Eventually CWJC No.973 of 1993 was disposed of vide order dated 21.02.1994 and a direction was given to respondents to implement the order of the Supreme Court dated 16.12.1987 passed in Civil Appeal No.1509 of 1987 as early as possible preferably within a period of four months from the date of receipt of a copy of the order. The special leave petition preferred against the order dated 21.02.1994 was dismissed by the Supreme Court.

6. It is not known as to what happened after the disposal of CWJC No.973 of 1993 for about 16 years. However, the petitioner once again approached this Court vide preferring writ



petition being CWJC No.12926 of 2009 raising grievance of non-regularization and payment of wages less than the minimum wages prescribed by the State. The said writ petition was disposed of by this Court on the following terms:-

“On behalf of the Union, it is also submitted that though their members were continuously in service with the Corporation, though not regularized, they were all along paid less than minimum wages. Without going into this aspect, for the present, I may note that if this is happening then on a proper application before appropriate authority, appropriate action can be taken for violation of Minimum Wages Act. It cannot be doubted that Corporation is an instrumentality of the State and it is not desirable nor conceivable that an instrumentality of a State would violate law with impunity. It is a matter which the State Transport Commission must look into and take appropriate actions so that there are no violations of the Minimum Wages Act. It is the duty of the State to ensure compliance thereof as well as other statutory requirements. If people have been paid less than the minimum wages prescribed, it will be open to them to raise claims which the Corporation would be bound to consider.

The last grievance of the petitioner's Union is that their members' services have now been



terminated. It is not in dispute that the members of petitioner's Union are not permanent or regularized employees of the Corporation. They are casual workers or daily wages. They have no right of continuity more so in the decimal financial situation of the Corporation. It is open to them to take such remedial measure as may be available to them under the Industrial Disputes Act, if they are so advised.

With these observations and directions, the writ petition stands disposed of.”

7. Against the aforestated order dated 06.10.2009 passed in CWJC No. 12926 of 2009, the petitioner filed an intra court appeal vide LPA No.1412 of 2009, which was also dismissed finding no illegality in the order passed by the learned single Judge.

8. Being aggrieved by the order passed by the Division Bench in LPA No.1412 of 2009, the petitioner filed special leave petition vide SLP (C) No.22998 of 2010 before the Supreme Court of India. The Supreme Court did not interfere with the order passed by this Court. However, it disposed of the said special leave petition with liberty to the petitioner to approach the Commissioner of Labour for settlement of claims.

9. It appears that after the disposal of the special leave petition by the Supreme Court, the petitioner filed a



representation before the Labour Commissioner. While the representation was still pending, the petitioner filed Contempt Petition (Civil) No.481 of 2016 stating therein that the respondents were not taking steps towards compliance of the order passed in special leave petition vide SLP (C) No.22998 of 2010. During pendency of the contempt petition, the Labour Commissioner passed order dated 23.09.2016 directing the Corporation to pay notice pay for three months in terms of Section 25-N(1)(a) of the Industrial Disputes Act, 1947 to the retrenched daily wage workmen attached to the petitioner association as also to pay the difference of the amount in case payments have been made to the workmen less than the minimum wages prescribed by the State Government and to pay gratuity in terms of Payment of Gratuity Act, 1972. It was also ordered that a month-wise list pertaining to work done by those workmen should be prepared and published within fifteen days and the payable amount should be transferred to the account of the beneficiary workmen within thirty days through RTGS/Account Payee Cheque.

10. In the contempt petition before the Supreme Court, a plea was taken that the Commissioner of Labour had only granted three months compensation which was not adequate nor can be called to be fair. However, the Supreme Court vide order dated



17.07.2017 passed in aforesaid Contempt Petition (Civil) No.481 of 2016 observed that if the petitioner is aggrieved by the order of the Commissioner of Labour, it will be open for it to challenge the same in appropriate proceeding in accordance with law.

11. In the aforesaid background, this writ petition has been filed by the petitioner making several prayers as noted hereinabove. Learned counsel for the petitioner submitted that the action of the respondents is inhuman and bad in the eyes of the law. They adopted arbitrary mechanism of pick and choose while regularizing the service of some of the casual employees and ignored other employees. Their action is also in teeth of the order passed order passed by the Supreme Court in Civil Appeal No.1509 of 1987 as well as settlement entered between the parties in the year 1988 and 1990. Further, non-granting the wages at par with regular employees discharging the same duties is contrary to law. He submitted that order passed by the Commissioner of Labour is without jurisdiction and hence the same is *non est* and void *ab initio*.

12. *Per contra*, learned counsel for the respondent-State and the Commissioner Labour submitted that in compliance of the Supreme Court order dated 16.02.2015 and 16.03.2015 the grievance of the petitioners were looked into by the Labour Commissioner, Bihar and necessary steps were taken to



settle the claim of workmen of the association. The petitioner and the Corporation were called on for hearing. Both the parties participated in hearing held on 16.09.2016, 19.09.2016 and 23.09.2016 and submitted their written pleadings and documents in support of their submission. After considering the pleadings of the parties and the documents submitted by them, it was concluded by the Labour Commissioner that notice pay equal to three months wages and due wages of the period for which work was done not less than the rate of minimum wages be paid to the workmen in accordance with Section 25-N (1) (a) of the Industrial Disputes Act. Gratuity was also ordered to be paid to them in terms of Payment of Gratuity Act. It is further submitted that the petitioner raised the issue before the Supreme Court in Contempt Case No.481 of 2016 but the contempt case was closed giving liberty to the petitioner to challenge the same if he is aggrieved by the order dated 23.09.2016 in accordance with law which would not mean that the petitioner has been given liberty to agitate the matter once again in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

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

14. In my opinion, the writ petition raising several



issues cannot be entertained in view of the fact that the grievances raised by the petitioner were already considered earlier by this Court in CWJC No.12926 of 2009 in which it was clearly held that the members of the petitioner association have no right of continuity more so in the decimal financial situation of the Corporation. This Court also observed that it would be open to the petitioner to take remedy under the Industrial Disputes Act, if they are so advised. The order passed by the learned single Judge was affirmed by the Division Bench and in the appeal preferred before the Supreme Court also no relief was granted to the petitioner and the order of this Court was not interfered with. However, the Supreme Court gave liberty to the petitioner to approach the Commissioner of Labour for settlement of claim. After the Labour Commissioner passed the order when the petitioner raised the issue before the Supreme Court in contempt petition, the Supreme Court did not find any merit in the plea of the petitioner regarding disobedience of the order passed by the Supreme Court. However, while closing the contempt petition, the Supreme Court observed that the petitioner may challenge the order passed by the Commissioner of Labour in appropriate proceeding in accordance with law. Thus, the issues apart from the order of the Commissioner Labour raises by the petitioner in the writ petition has already attained finality. So far as



challenge to the legality of the order of the Commissioner of Labour is concerned, the petitioner has efficacious statutory remedy under the Industrial Disputes Act which has been enacted with a view to provide a special procedure for resolving industrial disputes between the workmen and the employer. It is well settled law that the High Court ordinarily would not entertain a petition under Section 226 if an effective statutory remedy is available to the aggrieved person. No extraordinary case has been made out by the petitioner in order to enable me to entertain the writ petition in spite of availability of alternative efficacious remedy.

15. Accordingly, the writ petition is dismissed with liberty to the petitioner to challenge the order passed by the Commissioner of Labour in accordance with law before the appropriate forum.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.04.2018
Transmission Date	NA

