

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.764 of 2017

IN

Civil Writ Jurisdiction Case No. 16752 of 2015

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1. Ram Prasad Saha, son of Late Ratan Saha, resident of village- Kuwari Dudhi, Bhita, P.O.- Kuwari Gola, P.S.- Dhandaha, District- Purnea.

..... Appellant/s

Versus

1. State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800 001 through its Chairman.
2. The Union of India, through the Secretary, Ministry of Labour Government of India, New Delhi.

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shravan Kumar, Sr. Adv.

: Mr. Dinesh Maharaj, Adv.

For the Bank : Mr. Alok Kumar Sinha, Adv.

: Mr. Binod Bihari Sinha, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 08-10-2018

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 30.03.2017 passed in C.W.J.C. No. 16752 of 2015, by which the learned Single Judge has allowed the said petition preferred by the original writ petitioner-State Bank of India-employer and quashed and set aside the judgment and award passed by the Presiding Officer, Industrial Tribunal, Patna dated 20.03.2015 passed in Reference Case No. 02(C) of 2011, the original



respondent No.2-workamn-employee has preferred the present Letters Patent Appeal under Clause 10 of the Letters Patent.

2. The facts leading to the present Letters Patent Appeal, in nutshell, are as under;

3. That the appellant, herein, (hereinafter referred to as the 'workman') was temporarily appointed as a Security Guard at Birpur Branch of State Bank of India on 14.03.1984. He joined the services as temporary Guard on 20.03.1984. That by the letter/order dated 14.09.1987 issued by the Bank, the workman was absorbed in permanent establishment provided that he has completed six months of probation period satisfactorily. That after the probation period, he was confirmed in the service vide order dated 14.03.1988. That the workman retired on 31.12.1997 on attaining the age of superannuation. He was paid all the retirement benefits at the time of his retirement on attaining the age of superannuation. That after period of almost 10 years from the date of retirement, he approached the High Court by way of C.W.J.C. No. 800 of 2007 making grievance with respect to non-payment of pensionary benefits. That the said writ petition came to be disposed of by this Court vide order dated 23.01.2009 by relegating the



workman to approach the Industrial Tribunal. That thereafter the workman raised an industrial dispute on 15.04.2009. It was the Assistant Labour Commissioner, Patna raising the dispute that his date of confirmation is wrongly considered as 14.03.1988 and it ought to have been 20.11.1984. The Assistant Labour Commissioner (Central) -cum- Conciliation Officer referred the dispute to the Industrial Tribunal. The terms of reference read as under;

"(i) Whether the action of the management of SBI, Patna in treating the date of confirmation as 14.03.1988 and instead of 20.11.1984 in respect of Shri Ram Prasad Saha, Ex-Security Guard who was retired on 31.12.1997 and denying him pensionary benefits, is legal and justified ?
(ii) If not, what relief the employee is entitled to ?"

3.1. The reference was numbered as Reference Case No. 2(C) of 2011. That by the judgment and award dated 20.03.2015, the learned Industrial Tribunal allowed the said reference by holding that the date of confirmation in service of the workman should be treated to be 20.11.1984 instead of 14.03.1988 and accordingly, he should be given pensionary benefits from the date of his retirement from service on 30.12.1997.

3.2. Feeling aggrieved and



dissatisfied with judgment and award passed by the Industrial Tribunal dated 20.03.2015, the employer-Bank preferred the writ petition being C.W.J.C. No. 16752 of 2015 before the learned Single Judge. That by the impugned judgment and order, the learned Single Judge has allowed the said writ petition and has quashed and set aside the judgment and award passed by the learned Industrial Tribunal dated 20.03.2015 passed in Reference Case No. 02(C) of 2011.

3.3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the appellant-workman has preferred the present Letters Patent Appeal under Clause 10 of the Letters Patent.

4. Sri Sarwan Kumar, learned senior Advocate has appeared on behalf of the appellant-workman and Sri Alok Kumar Sinha, learned Advocate has appeared on behalf of the respondent-Bank-employer.

5. Sri Sarwan Kumar, learned senior counsel appearing on behalf of the original workman has vehemently submitted that in the facts and circumstances of the case, the learned Single Judge has materially erred in quashing and setting aside the judgment and award passed by the Industrial Tribunal and that too in exercise of powers under Article



226 and 227 of the Constitution of India.

5.1. It is further submitted by Sri Sarwan Kumar, learned senior counsel appearing on behalf of the original workman that unless and until the finding recorded by the Industrial Tribunal is found to be perverse and/or contrary to the evidence on record, the interference of the High Court in exercise of powers under Article 226 and 227 of the Constitution of India, is not warranted. It is further submitted that the learned Single Judge has materially erred in interfering with the judgment and award passed by the Industrial Tribunal.

5.2. Sri Sarwan Kumar, learned senior counsel appearing on behalf of the original workman has further submitted that as observed by the Hon'ble Supreme Court in the case of **Devinder Singh Vs. Municipal Council, Sanaur** reported in (2011) 6 SCC 584 unless it is found by the High Court that there is any jurisdictional infirmity in Labour Court's award and/or it has been vitiated by an error of law, the High Court is not justified in interfering with the judgment and award passed by the Labour Court. It is further submitted that therefore, the learned Single Judge has materially erred in quashing and setting aside and in interfering with the judgment and award passed by the Industrial Tribunal and quashing



and setting aside the same in exercise of powers under Article 226 and 227 of the Constitution of India. In support of his above submission, the learned senior counsel appearing on behalf of the appellant-original workman has also relied upon the decision of the Hon'ble Supreme Court in the case of **Harjinder Singh Vs. Punjab State Warehousing Corporation** reported in (2010)3 SCC 192.

5.3. Relying upon the decision of the Hon'ble Supreme Court in the case of **State Bank of India Vs. L. Kannaiah and Others** reported in AIR 2003 SC 3860, it is vehemently submitted by Sri Sarwan Kumar, learned senior counsel appearing on behalf of the original workman-appellant that the workman ought to have been confirmed from 20.11.1984 instead of 14.03.1988. It is further submitted that therefore, the Industrial Tribunal has rightly allowed the award and rightly held that the date of confirmation in service of the workman should be treated to be 20.11.1984. It is further submitted that the learned Industrial Tribunal rightly held that the workman should be given pensionary benefits from the date of retirement from service on 30.12.1997.

5.4. Relying upon the decision of the Hon'ble Supreme Court in the case of **State Bank of India Vs. L. Kannaiah and Others** reported in (2003)10 SCC 499, it is vehemently



submitted by Sri Sarwan Kumar, learned senior counsel appearing on behalf of the original workman-appellant that the workman shall be entitled to pension from the date of his retirement. It is further submitted by Sri Sarwan Kumar, learned senior counsel appearing on behalf of the original workman-appellant that even the cut-off date provided while amending Rule-8 shall be arbitrary and violative of Article 14 of the Constitution of India. In support of his above submission, he has relied upon the decision of the Hon'ble Supreme Court in the case of **L.Kannaiah and Others (Supra)**.

5.6. Making above submission and relying upon the above decisions, it is requested to admit/allow the present Letters Patent Appeal and quash and set aside the impugned judgment and order passed by the learned Single Judge and to restore the judgment and award passed by the Industrial Tribunal.

6. Sri Alok Kumar Sinha, learned counsel appearing on behalf of the employer-Bank has supported the impugned judgment and order passed by the learned Single Judge.

6.1. Sri Alok Kumar Sinha, learned counsel appearing on behalf of the employer-Bank has submitted that having found that the judgment and award passed by the Industrial Tribunal was arbitrary, erroneous and perverse, the



learned Single Judge has not committed any error in quashing and setting aside the judgment and award passed by the Industrial Tribunal.

6.2. Sri Alok Kumar Sinha, learned counsel appearing on behalf of the employer-Bank has further submitted that considering the fact that though right from very beginning-since 1984, the date of confirmation of the workman was treated to be 14.03.1988, the workman did not raise any grievance till 2007. It is further submitted by Sri Alok Kumar Sinha, learned counsel appearing on behalf of the employer-Bank that in between, the workman retired from service on attaining the age of superannuation in the year 1997 and at that time, he was paid all the retirement benefits excluding the pensionary benefits. It is further submitted that for the first time, in the year 2007 by way of C.W.J.C. No. 800 of 2007, the original workman-employee made a grievance that his date of confirmation ought to have been treated as 20.11.1984 instead of 14.03.1988 and he ought to have been paid pensionary benefits accordingly. It is further submitted by Sri Alok Kumar Sinha, learned counsel appearing on behalf of the original workman-employee that therefore, considering the above facts, delay and laches and acquaintances, the learned Single Judge has



rightly interfered with the judgment and award passed by the Industrial Tribunal.

6.3. It is further submitted by Sri Alok Kumar Sinha, learned counsel appearing on behalf of the employer-Bank that even otherwise, there was no justification and/or cogent reason given by the Industrial Tribunal for shifting the date of confirmation of workman-employee in service from 14.03.1988 to 20.11.1984. It is further submitted that as such, the workman was absorbed in service/permanent establishment on 14.09.1987 subject to completing six months of probation period satisfactorily and thereafter, after completing six months of probation period, he was confirmed in the service on 14.03.1988. It is further submitted that therefore, the Industrial Tribunal committed a grave error in shifting the date of confirmation as 20.11.1984 in place of 14.03.1988. It is further submitted that therefore, the learned Single Judge has rightly interfered with the judgment and award passed by the Industrial Tribunal.

6.4. It is further submitted by Sri Alok Kumar Sinha, learned counsel appearing on behalf of the employer-Bank that even otherwise, as rightly observed by the learned Single Judge, in any case, the workman-employee shall not be entitled to the



pensionary benefits considering the pension Rules, more particularly, Rules-7 and 8 unamended as well as amended. It is further submitted that in any case, the workman does not fulfill any of the conditions prescribed under Rules 7 and 8 of the Pension Rules and therefore, the learned Single has rightly allowed the writ petition and quashed and set aside the judgment and award passed by the learned Industrial Tribunal by which the Bank-employer was directed to pay the pensionary benefits to the workman from the date of his retirement from his service on 30.12.1997.

6.5. It is further submitted by Sri Alok Kumar Sinha, learned counsel appearing on behalf of the employer-Bank that even otherwise, it is required to be noted that the pension scheme was a contributory pension scheme and it is admitted position that at no point of time the workman contributed any amount to the pension fund. It is further submitted that the workman shall not be entitled to the pension under the State Bank of India Employee's Pension Fund Rules without his contribution to the pension fund.

6.6. Now, so far as reliance placed upon the decisions of the Hon'ble Supreme Court relied upon by the learned counsel appearing on behalf of the appellant-workman are concerned, it is vehemently submitted by the



Sri Alok Kumar Singh, learned counsel appearing on behalf of the Bank-employer that the aforesaid decisions in the facts and circumstances of the case, on hand, including the decision of the Hon'ble Supreme Court in the case of **L.Kannaiah and Others (Supra)** are not applicable.

6.7. Making above submissions, it is requested to dismiss the present Letters Patent Appeal.

7. Heard learned counsel appearing on behalf of the respective parties at length.

8. It is required to be noted that initially, the workman was appointed as a Security Guard on temporary basis in the year 1984. Thereafter, by order dated 14.09.1987, he was absorbed in permanent establishment, however, subject to his completing six months of probation period satisfactorily. Thereafter on completion of the probation period, he was confirmed in the service vide order dated 14.03.1988. That thereafter, the workman retired on 31.12.1997 on attaining age of superannuation. At that time, he was paid all the retirement benefits and the workman accepted the same without raising any objection whatsoever. That thereafter after period of 10 years, the workman made a grievance that his date of confirmation was wrongly considered as 14.03.1988 and it should



have been 20.11.1984. That it was for not to entertain the said petition, however, relegated the workman to approach the Industrial Tribunal. That thereafter the Industrial Tribunal by judgment and order dated 20.03.2015 allowed the said reference and directed that his date of confirmation should be 20.11.1984 instead of 14.03.1988 and accordingly, he should be given the pensionary benefits from the date of his retirement from service i.e. 30.12.1997. Thereafter, the judgment and award passed by the learned Tribunal has been set aside by the learned Single Judge by the impugned judgment and order.

9. Having heard learned counsel appearing on behalf of the respective parties and considering the facts narrated hereinabove, and considering the fact that there was no cogent reason given by the Tribunal to shift the date of confirmation from 14.03.1988 to 20.11.1984, the learned Single Judge has rightly quashed and set aside the award passed by the Industrial Tribunal. The learned Single Judge has rightly quashed and set aside the judgment and award passed by the learned Tribunal directing the Bank to give all the pensionary benefits to the workman from the date he retired i.e.30.12.1997.

10. As rightly observed by the learned



Single Judge that considering the matter from any angle and considering the amended as well as unamended Rules 7 and 8 of the Pension Rules, the workman does not fulfill any of the conditions prescribed. We are in complete agreement with the view taken by the learned Single Judge. The learned Single Judge has rightly dealt with the judgment and award passed by the learned Tribunal.

11. Even otherwise, it is required to be noted that the pension scheme was a contributory pension scheme and it is admitted position that at no point of time, the workman was contributed any amount to the pension fund. Therefore also the workman shall not be entitled to pension under the pension Scheme/Rules without his contribution to the pension fund.

12. Now so far as the reliance placed upon the decisions relied upon by the learned counsel appearing on behalf of the workman referred to hereinabove, are concerned, on considering the same none of the decisions shall be applicable and/or of any assistance to the workman to the facts of the case on hand.

13. We are in complete agreement with the view taken by the learned Single Judge and no interference of this Court is called for in exercise of intra Court jurisdiction.



14. In view of the above and for the reasons stated above, the present Letters Patent Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed. No cost.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

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