

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8136 of 2016

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The Management of State Bank of India, Patna. Petitioner

Versus

1. The Union of India, through the Secretary, Ministry of Labour, Government of India, New Delhi.
2. Shri Ashok Kumar S/o late Chandrika Prasad Resident of Mohalla- Simlibundel Toli, P.O.- Madho Mills P.S.- Malsalami, Dist.- Patna.
3. Pramanand Singh S/o late Indradeo Singh Resident of Village- Hullukupur P.O. Pakri via Anishabad P.S.- Beur, Distt- Patna.
4. Satendra Singh S/o late Shankar Singh Resident of Mohalla- New Nathupur, Parsa Bazar, P.O.- Kurthol, P.S.- Parsa, Distt- Patna.
5. Ajay Prasad Shrivastava S/o late Sri Ram Equbal Prasad Resident of Village- Salempur, P.O. Belwania P.S.- Muffasil, Arrah, Distt- Patna.
6. Binay Kumar Sinha S/o late Shiv Nandan Prasad Resident of Mohalla- Gardanibagh P.O.- Gardanibagh, P.S.- Ansabad, Distt- Patna.
7. Rabindra Kumar S/o Sri Bhagwan Lal, resident of Village- Gakhour, PO -Godhi Saraiya, P.S. Barhara District -Bhojpur.
8. Nand Kishore Ram S/o Sri Banwari Ram Resident of Mohalla- New Yarpur, Gardanibagh, Patna.
9. Suchita Ram S/o Late Lal Bihari Ram Resident of Quarter No. 1, Gardanibagh, Road No. 5, PO- GPO, P.S.- Gardanibagh , Patna.
10. Jai Prakash Singh, S/o Shri Peramhans Singh Resident of Village- Bhartendu Nagar, P.O. Hasanpur P.S.- Mahnar, Distt-Patna.
11. Arun Kumar Singh S/o late Sineshwar Singh Resident of Village- Nawada Bane, Udwantnagar, Distt- Bhojpur.
12. Prabhat Kumar S/o Late Shiva Devi Ram Resident of Village & P.S. -Rupaspur, Distt- Patna.
13. Vijay Kumar Singh S/o Sri Paramhans Singh Resident of R/12, Alkapuri Colony, PO- Anisabad, P.S.- Gardanibagh , Patna.
14. State Bank of India Employees' Union (Bihar State) 215, Ashoka Place, Exhibition Road, Patna-800001

.... Respondents

With



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Civil Writ Jurisdiction Case No. 8310 of 2016

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1. Shri Ashok Kumar S/o late Chandrika Prasad Resident of Mohalla- Simli Bundel Toli, P.S.- Malsalami, Dist.- Patna.
2. Pramanand Singh S/o late Indradev Singh Resident of Village- Hullukupur P.O. Vishnupur Pakri P.S.- Anishabad (Beur), Distt- Patna.
3. Satendra Singh S/o late Sukan Singh Resident of Mohalla- New Nathupur, Parsa Bazar, P.O.- Kurthol, P.S.- Parsa, Distt- Patna.
4. Ajay Prasad Shrivastava S/o late Sri Ram Ekbal Prasad Resident of Village-Shiv Nagar Beur Near R.S. Gas Godam Anishabad, P.S.- Gardanibagh, Distt- Patna-800002.
5. Binay Kumar Sinha Resident of Mohalla- Mangal Baza, Uttar Bori Naaya Tola, P.O. + P.S.-Munger, District-Munger
7. Rabindra Kumar S/o Sri Bhagwan Lal, resident of Village- Golchour, PO - Gudisaraiya, P.S.- Barhara District –Bhojpur at Arrah.
8. Nand Kishor Ram S/o Sri Banwari Ram Resident of Mohalla- Kahartoli, New Yarpur, P.S.-Gardanibagh, Distt.-Patna-800001.
9. Suchita Ram S/o Late Lal Bihari Ram Resident of Quarter No. 6, Road No. 5, P.S.- Gardanibagh , Patna-800001.
10. Jai Prakash Singh, S/o Peramhans Singh Resident of Village- Shail Niwas, B/32 Alkapuri, P.S.- Gardanibagh, Distt-Patna-800002.
11. Arjun Kumar Singh S/o late Deneshwar Singh Resident of Village- Nawada Bane, P.S.-Udwantnagar, Distt- Bhojpur, Arrah.
12. Prabhat Kumar S/o Late Shivadeni Ram Resident of Village & P.S. -Rupaspur, P.O.-Danapur, Distt- Patna.
13. Vijay Kumar Singh S/o Sri Prabhans Singh Resident of R/12, Shail Niwas, B/32, Alkapuri, P.S.- Gardanibagh, Distt.-Patna-800002..

.... Petitioners

Versus

1. State Bank of India, Local Head Office (LHO) West Gandhi Maidan, P.S. - Gandhi Maidan, Patna.
2. The Employer in relation to the management of the State Bank of India, Regional Office J.C. Road, P.S. - Pirbahore, Patna.

.... Respondents



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Appearance :

(In CWJC No.8136 of 2016)

For the Petitioner/s : Mr. Alok Kumar Sinha, Advocate
Dr. Binod Bihari Sinha, Advocate
Mr. Ajay Dutt Mishra, Advocate
Mr. Amarjeet Choudhary, Advocate
For the Respondents-UOI : Mr. Nivedita Nirvikar, CGC
(In CWJC No.8310 of 2016)

For the Petitioner/s : Mr. Amaresh Kumar Sinha, Advocate
For the Respondent/s : Mr. Alok Kumar Sinha, Advocate
Dr. Binod Bihari Sinha, Advocate
Mr. Ajay Dutt Mishra, Advocate
Mr. Amarjeet Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 12-04-2018

In CWJC No.8136 of 2016, the petitioner State Bank of India has sought the following reliefs:-

- (a) For setting aside / quashing the award dated 24.9.2015 given in Reference Case No.09 of 2011 by the Central Government Industrial Tribunal No.1, Dhanbad.
- (b) For granting such other relief(s) as the petitioner may be entitled in the facts and circumstances of the present case.

2. In CWJC No.8310 of 2016, the petitioners have sought the following reliefs:-

- (i) For the issuance of a writ in the nature of writ of certiorari or any other appropriate writ or order or direction, quashing that part of the Award dated 24.09.2015 whereby the learned Central Government Industrial Tribunal No.1, Dhanbad,



though directing for reinstatement of the petitioners, has declined to give back wages or even the piece rate wages.

(ii) For the issuance of a writ in the nature of writ of mandamus or any other appropriate writ or order or direction, commanding the respondents to regularize the petitioners on their respective posts.

(iii) For the issuance of a writ in the nature of writ of mandamus or any other appropriate writ or order or direction, commanding the respondents to reinstate the petitioners in terms of the Award dated 24.09.2015.

(iv) For any other relief to which the Petitioners may be found entitled.

3. The private respondents of CWJC No.8136 of 2016 are the petitioners of CWJC No.8310 of 2016. Since both the writ petitions arise out of Award dated 24.09.2015 given in Reference Case No.09 of 2011 by the Central Government Industrial Tribunal No.1, Dhanbad (for short 'Tribunal') pursuant to a reference of dispute between the same parties by the Central Government for the sake of convenience, I shall refer to the relevant facts from the CWJ No.8136 of 2016.

4. The State Bank of Employees' Union (Bihar State), Patna (for short 'the Union') raised Industrial disputes before the Regional Labour Commissioner (Central), Patna on



30.11.2005 for regularization of 13 persons named in the Reference. The stand of the petitioner was that the dispute is not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act (for short 'ID Act') as they are not the members of the Trade Union which has raised the dispute and that the matter pertains to contract labour. As conciliation between the parties failed, the Central Government in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the ID Act vide order dated 17.01.2011 referred the following dispute for adjudication to the Tribunal:-

Schedule

“Whether the action of the management of SBI Patna in not regularizing the services of their thirteen workmen listed below is legal and justified? To what relief the workmen are entitled?”

List of worker:- (1) Shri Ashok Kumar (2) Shri Pramanand Singh (3) Shri Satendra Singh (4) Sh. Ajay Prasad Srivastava (5) Sh. Binay Kumar Sinha (6) Sh. Rabindra Kumar (7) Sh. Nand Kishore Ram (8) Sh. Suchita Ram (9) Sh. Jai Prakash Singh (10) Sh. Sunil Kumar (11) Sh. Arjun Kumar Singh (12) Shri Prabhat Kumar and (13) Shri Vijay Kumar Singh.

5. By a subsequent notification dated 30.09.2011,



the Central Government issued corrigendum amending the schedule dated 17.01.2011 as under:-

“Whether the action of the Management of SBI Patna in terminating the services of S/Sh (1) Ashok Kumar (2) Sh. Pramanand Singh (3) Sh. Satendra Singh (4) Ajay Prasad Srivastava (5) Binay Kumar Sinha (6) Rabindra Kumar (7) Sh. Nand Kishore Ram (8) Sh. Suchita Ram (9) Sh. Jai Prakash Singh (10) Sh. Sunil Kumar (11) Arjun Kumar Singh (12) Prabhat Kumar and (13) Vijay Kumar Singh w.e.f. 02/06/2007 is legal and justified? If not what relief the concerned workmen are entitled?”

6. The Union filed claim statement and the petitioner filed a written statement to the claim statement of the Union. The Union filed a rejoinder to the written statement. On behalf of the petitioner one Dinesh Kumar, Deputy Manager posted at Patna Secretariat Branch was examined before the Tribunal and on behalf of the Union 8 workmen and Union leader were examined. They also proved 33 documents which were marked as Ext. W 1 to W 33

7. The case of the workmen was that during the conciliation proceedings the petitioner terminated their services without taking explicit permission of the then Conciliation Officer



in violation of Section 33 of the ID Act and prior to termination of the workmen, they were not served any notice or notice wage as provided in Section 25F of the ID Act. They also claimed that they were appointed by the petitioner after interview, and they were rendering services continuously but without any rhyme and reason the petitioner asked them not to come bank to work. They also claimed that since their appointment, they performed full time work on all working days and, thus, they worked for more than 240 days in each and every calendar year on the post uninterruptedly but the petitioner continued exploiting the workmen by keeping them on daily wages under the control and direction of the Branch Manager of the Bank. Their further case was that they all were appointed against the vacant post of subordinate cadre and after termination of these workmen, the petitioner has appointed 13 new hands who are working in place of the terminated workmen.

8. On the other hand, the case of the petitioner was that no appointment letter was ever issued to the 13 persons. They were daily wagers and were working under a contractor. They were being paid by the contractor and not by the Bank. There is no evidence to suggest that these 13 persons were engaged against any sanctioned post and/or the job which they were performing were common in nature. The petitioner further pleaded that these 13



persons were never working in the Bank in any capacity as employees and they were never appointed after following the rules of recruitment against any sanctioned post. They might be working on the basis of as and when required on contract basis and used to be paid by the contractor on daily basis. They might be daily wagers and question of their continuously working for 240 days in the last calendar year did not arise.

9. After discussing the case of the parties and very briefly discussing the evidence led on their behalf, the Tribunal passed the impugned award dated 24.09.2015. The operative part of the award reads as under:-

“17. On perusal of voluminous document of workmen and several photocopy of cheques it is clear that the management create the camouflage, and the Bank management terminated the service of the concerned workmen without taking permission of the then conciliation proceedings Officer in violation of section 25 F and prior to termination of the workmen not serving any notice or wages is illegal.

18. Considering the facts and circumstances and perusal of the documents, it is clear that the management has violated the 25 F of I.D. Act, it hold that the action of the management of SBI Patna in terminating the service of Shri (1) Ashok Kumar (2) Shri Pramanand Singh (3) Shri



Satendra Singh (4) Sh. Ajay Prasad Srivastava (5) Sh. Binay Kumar Sinha (6) Sh. Rabindra Kumar (7) Sh. Nand Kishore Ram (8) Sh. Suchita Ram (9) Sh. Jai Prakash Singh (10) Sh. Sunil Kumar (11) Sh. Arjun Kumar Singh (12) Shri Prabhat Kumar and (13) Shri Vijay Kumar Singh w.e.f. 02.06/2007 is not legal and justified. Hence all be reinstated in Bank from the date of receipt of reference but without back wages.”

10. It is submitted by Mr. Alok Kumar Sinha, learned counsel appearing for the management of State Bank of India that before the Tribunal the petitioner had specifically contended that the 13 persons were never bank employees, as they had never been recruited after following the rules of recruitment but the Tribunal failed to give any finding on this vital issue and without giving any finding, the Tribunal further illegally held that the petitioner had violated Section 25 F of the ID Act while terminating their services. He submitted that the Tribunal grossly erred in law firstly by not deciding to the status of the 13 persons and as to whether they were ever bank employees and, secondly, without giving any finding to the status, the Tribunal could not have held that the petitioner bank violated Section 25 F of the ID Act while allegedly terminating their services. He submitted that there is no finding of the Tribunal that the 13 persons claiming



themselves to be engaged by the bank were in employment of management of the bank for at least 240 days in the 12 calendar months immediately preceding the alleged date of termination i.e. 02.06.2007. He submitted that the respondents completely failed to produce any evidence in this regard and the Tribunal has not recorded any finding on this issue. He submitted that out of 13 workmen only 8 had contested before the Tribunal but the Tribunal erroneously granted relief to even those who did not contest.

11. On the other hand, Mr. Amresh Kumar Sinha, learned counsel appearing for the respondents submitted that the Tribunal has recorded the facts of the case succinctly and given specific reason for allowing the case of the respondents. He submitted that the Tribunal has rightly directed for the reinstatement of the workmen. However, even though the termination has been held illegal and unjustified, yet back wages were not given to the workmen nor were they given the wages as per the piece rate basis for the period for which they stood unjustifiably terminated. He submitted that once the Tribunal had upheld the stand of the workmen that they had been working directly in service of the Bank, it was incumbent for the Tribunal to have directed for their regularization. He submitted that since the termination was in violation of Section 25 F of the ID Act and all



the 13 concerned workmen rendered continuous service for more than 240 days in a calendar year, their termination without giving one month of notice indicating the reason of retrenchment or to pay the workmen compensation equivalent to 15 days of average pay for every completed year is bad. He submitted that the award passed is bad to the extent that the back wages have not been granted to the concerned workmen even though they have been reinstated and their termination from services has been held illegal and unjustified.

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

13. As stated above, the first reference was made by order of Reference dated 17.01.2011 and the same was with respect to the subject matter of regularization. Subsequently, by another order of Reference dated 30.09.2011 a corrigendum was issued amending the previous term of Reference and the subject matter of the dispute was drastically changed from regularization to termination.

14. It would be manifest from the record that out of 13 persons only 8 namely, Jay Prakash Singh, Suchita Ram, Parmanand Singh, Satyendra Singh, Binay Kumar Sinha, Vijay Kumar Sinha, Ashok Kumar and Prabhat Kumar contested the



Reference case by giving their evidence. The others did not turn up to contest the case, but the Tribunal has granted relief of reinstatement to even those respondents who never contested the case.

15. As per settled law, once the petitioner had disputed the claim of the contesting respondents that they were in employment of the petitioner bank, the onus was on those 13 persons to prove that they were in employment of the bank for at least 240 days in the 12 calendar months immediately preceding the alleged date of termination i.e. 02.06.2007. There is no finding of the Tribunal that those 13 persons were in employment of the bank for at least 240 days in 12 calendar months immediately preceding their alleged date of termination and in absence of any finding in this regard, the Tribunal could not have recorded that there was violation of Section 25 F of the ID Act in its award. I further find that in paragraph 17 of the impugned award, the Tribunal has observed: “that the petitioner Bank terminated the services of the concerned workmen without taking permission of the then conciliation proceedings officer. ...” This finding given by the Tribunal also suffers from the legal infirmity of being a finding arrived at without assigning any reason

16. It has rightly been submitted by Mr. Alok



Kumar Sinha, learned counsel for the petitioner that in absence of any finding about the status of 13 persons as to whether they were ever bank employees and without giving any finding on their status the Tribunal could not have held that the petitioner violated Section 25 F of the ID Act while terminating their services. The onus was on 13 persons to prove that they were in employment of the petitioner for at least 240 days in 12 calendar months immediately preceding the alleged date of termination i.e., 02.06.2007. The Tribunal has not recorded any finding on this issue. In absence of such finding, the Tribunal could not have concluded regarding violation of Section 25-F of the ID Act.

17. From the reading of the award, it would be manifest that para 1 records the dispute referred by the Central Government for adjudication, para 2 records the filing of written statement and rejoinder by the parties and number of witnesses examined on their behalf and documents exhibited, para 3 records as to whether the termination of workmen by the bank was legal or justified or not, para 4 to 8 state about the pleas taken by the petitioner before the Tribunal, para 9 to 16 discuss about the pleas taken on behalf of the respondents-workmen and para 17 to 18 record finding of the Tribunal.

18. Thus, the Tribunal has passed the impugned



award in a very casual manner without giving any reasoning.

19. The necessity of giving reason by a quasi judicial authority in arriving at a decision affecting the rights of the parties has been highlighted by this Court as also by the Supreme Court in several decisions. It is well settled position in law that a quasi judicial authority must record reasons in support of its conclusions as recording of reasons is meant to serve the wider principle of justice that justice must not only be done, it must also appear to be done as well. Further, recording of reasons also operates as a restraint on any possible arbitrary exercise of quasi judicial power. Recording of reasons in support of arriving at a decision re-assures the parties that the order has been passed by the quasi judicial authority on relevant grounds after proper appreciation of the evidence led.

20. In the present case, in absence of recording reason for arriving at a conclusion by the Tribunal, it is not known on what basis the Tribunal recorded its finding that the management terminated the services of the workmen without taking permission of the conciliation officer in violation of Section 25 F of the ID Act.

21. In that view of the matter, the impugned award dated 24.09.2015 cannot be sustained. It is set aside, accordingly.



22. Since the case is quite old, the matter is remitted back to the Tribunal. The Tribunal shall ensure disposal of the Reference case on the basis of materials already on record as early as possible preferably within three months from the date of receipt/production of a copy of the order. It is made clear that the parties shall not be allowed to adduce any fresh evidence. However, before passing the award, the Tribunal shall give an opportunity of hearing to the parties on the basis of materials already on record.

23. With the aforesaid observations and direction, these two writ petitions are disposed of.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.04.2018
Transmission Date	NA

