

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7998 of 2007

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The Managing Director, Bihar State Warehousing Corporation, Maurya Lok Complex, P.O.- G.P.O., P.S.- Kotwali, District- Patna.

....Opposite Party-Petitioner

Versus

1. Sri Nawal Kishore Singh son of Laxmi Prasad Singh, resident of village- Nawadah, P.O.- Makha Takia, P.S.- Naugachhia, District-Bhagalpur.
2. The Divisional Manager, Bihar State Warehousing Corporation, Bhagalpur, District- Bhagalpur.
3. The Superintendent, Bihar State Warehousing Corporation, Barahat, P.O. & P.S._ Barahat, District- Banka.
4. The Secretary, Bihar State Warehousing Corporation, Maurya Lok Complex, Patna, P.O.- GPO, P.S. Kotwali, District- Patna.
5. The State of Bihar through the Secretary, Food and Civil Supply Department, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pandit Jee Pandey, Advocate
Mr. Radha Raman, Advocate
For the State : Mr. Ashok Kumar Debey, AC to AAG-1
For respondent no. 1 : Mr. Sharda Nand Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-03-2018

Heard learned counsel for the petitioner and learned counsel for the State and learned counsel for respondent no. 1.

2. In the instant writ petition, the petitioner has assailed the order dated 17.05.2007 passed by the Presiding Officer, Labour Court, Bhagalpur in Misc. Case No. 37 of 1993 by which the



application dated 17.03.2004 filed by the petitioner under Sections 151 and 152 of the Code of Civil Procedure (for short 'C.P.C.') for modification/correction in the award prepared in the light of judgment dated 07.08.2000 in the aforesated Misc. Case No. 37 of 1993 has been rejected.

3. The petitioner is a Warehousing Corporation owned by the Government of Bihar. It is engaged in the business of storage of agriculture produce and other articles belonging to different agencies. Respondent no. 1 was initially appointed by the petitioner by office order no. 136 dated 21.06.1991 on Class-IV posts. He had submitted his joining on 22.06.1991 before the Incharge-Superintendent, Bihar State Warehousing Corporation, Banka. Being aggrieved, due to non-payment of wages by the petitioner, respondent no. 1 filed a petition under Section 33(C) (ii) of the Industrial Disputes Act, 1947 before the Presiding Officer, Labour Court, Bhagalpur, which was registered as Misc. Case No. 37 of 1993. After hearing the parties, the learned Presiding Officer, Labour Court, Bhagalpur vide his judgment dated 07.08.2000 allowed the claim of respondent no. 1. The petitioner was directed to pay due wages along with interest @ 12 per cent per annum calculated from 04.11.1993 to the date of payment of dues by the petitioner to the respondent no. 1.



4. Being aggrieved by the award dated 07.08.2000 passed in favour of respondent no. 1 in Misc. Case No. 37 of 1993, the petitioner preferred a writ petition before this Court vide CWJC No. 8464 of 2001. The said writ petition was withdrawn after argument on 13.07.2001 in the following terms :-

“After some argument as prayed this writ petition is permitted to be withdrawn.”

5. Against the aforesaid order dated 13.07.2001, the petitioner filed an intra court appeal vide LPA No. 763 of 2001, which was also disposed of on 18.08.2001 with liberty to file appropriate application as appeal was not remedy against the order dated 13.07.2001. Once again, the petitioner preferred another writ petition vide CWJC No. 12520 of 2001 against the judgment dated 07.08.2000 passed in Misc. Case No. 37 of 1993, which was dismissed as misconceived vide order dated 02.11.2001. The operative part of the order dated 02.11.2001 reads as under:-

“On an earlier occasion, CWJC No. 8164 of 2001 came up for hearing, which was dismissed as withdrawn on 13.07.2001. The present petitioner being dissatisfied with the said order challenged the correctness and validity of the same before the Division Bench in LPA No. 763 of 2001. It was contended before the Division Bench that the counsel who appeared in



the earlier petition withdrew the said petition without any authority or instruction from the petitioner. The Division Bench while dismissing the Letters Patent Appeal directed that in such a situation, the appellant should move before the learned Single Judge himself bringing the said facts by filing proper petition because the appeal was not a proper remedy against the said order. Instead of making an application either for review of order dated 13.07.2001 on the additional facts or an application for recall of the earlier order the petitioner has filed the present petition.

Learned counsel for the petitioner submits that as the earlier petition was dismissed without entering into the merit of the matter, the present petition is maintainable.

In the opinion of this Court, the argument is contrary to the observation made by the Division Bench, when the Division Bench has clearly directed that an application should be moved before the learned Single Judge himself, thus petitioner is obliged to make an application either for review or recall of the earlier order before the same Bench.

This petition is dismissed as misconceived.”

6. Being aggrieved by the aforesaid order dated 02.11.2001, the petitioner preferred Civil Review Petition No. 156 of



2001 against the order dated 13.07.2001 passed in CWJC No. 8164 of 2001. However, the said civil review application has also been dismissed vide order dated 25.03.2003. The operative part of the aforesated order dated 25.03.2003 reads as under :-

“Learned counsel for the petitioner has failed to show any provision/law according to which the present review application against the order withdrawing the writ petition is maintainable.

Under such circumstances, this Court does not find any merit in this review application and it is, accordingly, dismissed.”

7. Since the petitioner failed to comply with the award passed by the Labour Court, a certificate case was instituted against him in which notices were issued. After considering objection filed by the petitioner, the Certificate Officer directed the petitioner to immediately make payment of the decretal amount. Even then, instead of complying with the order passed by the Certificate Officer, the petitioner filed another writ petition before this Court vide CWJC No.2107 of 2002 against the order dated 13.11.2001 passed by the Certificate Officer, Bhagalpur, which was dismissed on 25.02.2002. Once again, the petitioner challenged the aforesated order dated 25.02.2002 before the Division Bench in LPA No.327 of 2002,



which too was dismissed vide order dated 21.04.2003 passed by a Division Bench of this Court.

8. The facts noted above would clearly suggest that the petitioner having participated in the proceedings before the Labour Court and being fully aware of the award passed against it, approached this Court repeatedly by way of filling writ petitions and intra court appeals and after dismissal of those petitions and intra court appeals, he filed an application under Sections 151 and 152 of the C.P.C. on 06.01.2005 for modification of the award. The Tribunal in its order has clearly recorded that the modification of the award of the Tribunal was sought not on the ground that in passing the award, the Tribunal had committed any procedural illegality or mistakes of the nature which vitiated the proceeding itself and consequently the award, but on the ground that some matters which ought to have been considered by the Tribunal were not considered. Under such circumstances, in my opinion, the Tribunal rightly held that in the petition filed under Section 152 of the C.P.C. only clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein or incidental slip or omission may be corrected. Since nothing was brought to its notice to show that there was any clerical or arithmetical mistake in the award, the Tribunal rightly rejected the prayer of the petitioner for modification in award. Moreover, the



petition filed before the Tribunal was grossly barred by law of limitation.

9. In view of the above discussions, this Court is of the opinion that there is no error in the order passed by the Tribunal. The writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.03.2018
Transmission Date	NA

