

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15749 of 2013

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Bhashkar Kumar Son Of Sri Rajendra Upadhyay Resident Of Village + P.O.
Bangra, P.S. Mahrajganj, District - Siwan

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry Of Labour and Employment, Government of India, New Delhi
2. Regional Labour Commissioner (Central), Patna, Room No.6/17, A - Block, II Floor, Maurya Lok Complex, Patna
3. The Assistant Labour Commissioner (Central), Bailey Road, Patna - 1
4. The Zonal Manager, Circle Head, Punjab National Bank, Circle Office, At Aghoria Bazar, Muzaffarpur, Bihar
5. The General Secretary, Punjab National Bank, Employee Union, C/O Punjab National Bank, Boring Road, Patna - 1, Bihar
6. The Branch Manager, Punjab National Bank, Maharajganj, District - Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Ajit Kumar, Advocate
For Union of India : Mr Anshuman Singh, CGC
For the Bank : Mr Suresh Pd Singh No 1, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 18-07-2018

In spite of indulgence granted earlier, the Union of India has not filed any counter affidavit.

2 The short issue raised by the learned counsel for the petitioner in the proceedings is that though conciliation proceedings have been undertaken by the Assistant Labour Commissioner (Central) Patna on the allegations raised by the union in the letters dated 04.12.2011 and 09.04.2012 (Annexure 1 and 2 of the writ petition) and the Assistant Labour Commissioner has submitted a



report to the appropriate Government that there is failure of conciliation, and that no settlement could be arrived at, the appropriate Government has refused to refer the dispute.

3 Option open to the appropriate Government under Scheme of the Industrial Disputes Act is to be found in Section 12 (5). The scheme of the Act provides for either reference to a Board, Labour Court, Tribunal or National Tribunal as the case may be. Where no reference is made, the appropriate Government is required to communicate its reasons to the parties concerned.

4 The order/decision of the appropriate Government records that the Management has avoided attendance and that they failed to avail the opportunity. However, because the Union desired that proceedings be concluded ex parte and matter referred to the appropriate forum, the appropriate Government under impugned communication dated 14.02.2013 has found the dispute not fit for adjudication. Such a conclusion, in view of the aforesaid facts is, to say the least, perverse.

5 Even though there is a report of the Assistant Labour Commissioner regarding failure of conciliation, the appropriate Government, without there being any material in support of the conclusion, has recorded the conclusion that “the dispute is not deemed fit for adjudication”. Such conclusion is not only contrary to



the procedure prescribed under Section 12 of the Industrial Disputes Act, but is also without any basis.

6 Absence per se of one of the parties in the conciliation proceedings cannot lead to the conclusion that dispute is not fit for adjudication. The Assistant Labour Commissioner has rightly recorded failure of conciliation. Other than absence of the Bank representatives, the appropriate Government has not taken note of any facts or circumstances whatsoever to record its conclusion.

7 At this juncture, this Court would also notice the provisions contained in Section 10 of the Industrial Disputes Act, 1947.

“10. Reference of dispute to Boards, Courts or Tribunals.-(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified



in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.”

Bare perusal of Section 10 (1) of this socially beneficial legislation would show that reference is contemplated not only on existing, but also on “apprehended” disputes.

8 In view of the aforesaid consideration, this Court would remit the matter to the appropriate Government (respondent No 1) for taking decision afresh on the report submitted by the Assistant Labour Commissioner (Central), Patna dated 08.01.2013 in accordance with law.



9 While taking decision afresh, the communication dated 14.02.2013 issued under the signature of the Section Officer (respondent No 1) shall not stand in the way of the Authorities.

10 Writ petition is allowed to the extent indicated hereinabove.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.07.2018
Transmission Date	NA

