

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1888 of 2012**

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The Executive Engineer, Western Koshi Canal Division no. 1, Raj Nagar, District-Madhubani (Now modified as Water Resources Department, Darbhanga).

.... .... Appellant/s

Versus

Sikandar Prasad Singh, Son of Late Noonoo Prasad Singh R/o Sigraha, P.S. Madhepura, District-Madhepura.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Anjani Kumar, AAG-4, Sr. Advocate  
Mr. Brajesh Kumar, Advocate

For the Respondent/s : Mr. Nikunj Shekhar, Advocate

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**

**And**

**HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**

ORAL JUDGMENT

**(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)**

**Date: 17-01-2018**

Heard parties.

**2.** This Intra Court appeal is directed against the order dated 20.07.2012 passed by a Single Bench of this Court in C.W.J.C. no. 10033 of 2006.

**3.** It appears that the respondent-workman raised an industrial dispute, which was referred to the Labour Court, Muzaffarpur and was registered as Reference Case no. 4/98. The term of reference was, as to whether the termination of service of the respondent, namely, Sikandar Prasad Singh, Karya Darshak was justified? If not justified, then what relief he would be entitled to? It further appears from the record that the Irrigation Department though had filed its written statement but did not produce any evidence and,



thus, the Tribunal considering all the materials and evidence held that there was no procedure followed with regard to section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act) and Award was pronounced in favour of the workman setting aside his termination and also directing for payment of the back wages.

4. The said Award was challenged by the Executive Engineer, Western Koshi Canal Division by filing C.W.J.C. no. 10033 of 2006 which was dismissed by the order impugned.

5. It appears that four contentions were raised before the learned Single Judge.

6. First was that the Irrigation Department cannot be considered to be State in view of judgment of the Division Bench of this Court rendered in **Koshi Project Workers Association, Bhimnagar, Birpur Supaul and others Vs. State of Bihar and others (L.P.A. no. 884 of 1996)** disposed of on 26.09.1997 contained in annexure-10.

7. The second contention was that annexure-9 series shows that payment was made to the workman as compensation and receipt thereof annexed with the writ petition, therefore, the finding of the Labour Court was erroneous.

8. Third contention was that there cannot be an automatic grant of back wages as conditions thereof must be fulfilled



as held by the Apex Court by the several decisions.

9. Lastly, the fourth contention was that the State was not provided opportunity to argue and assist the Court because it was an *ex parte* order.

10. Learned Single Judge rejected all the contentions made by the State. The first contention was rejected on the ground that the Division Bench had passed the order in complete ignorance of a Full Bench Judgment of the Patna High Court rendered in **Bijay Kumar Bharti Vs. State of Bihar reported in 1983 PLJR, 667**. The Full Bench, after considering the decision of the Apex Court rendered in **Bangalore Water Supply Vs. A. Rajappa (AIR 1978 S.C. 548)** held that Irrigation Department is an industry. Thus, the decision of the Division Bench of this Court rendered in the case of **Koshi Project Workers Association (Supra)** since has not taken note of the aforesaid Full Bench decision, was held to be *per incuriam*.

11. So far the second contention is concerned, admittedly it has no where been stated that annexure-9 series was exhibited before labour court. Thus, in our opinion, the opinion of learned Single Judge cannot be faulted with.

12. Third contention was also rejected on the ground that since the termination of the workman was found illegal, the order for



grant of back wages does not also warrant any interference.

**13.** The fourth contention was also rejected considering the facts and circumstances that since long time has elapsed there is no requirement of remanding the matter to the Labour Court.

**14.** Mr. Anjani Kumar, learned counsel for the petitioner has brought our attention towards a decision of Hon'ble Apex Court rendered in **Union of India Vs. Jai Narain Singh reported in 1995 Supp (4) Supreme Court Cases 672** to impress upon this Court that Central Board has not been accepted as industry by the Hon'ble Supreme Court. The aforesaid submission made on behalf of the appellant is noted only to be rejected as the Water Board was not a party rather the Irrigation Department through Executive Engineer was a party before the Labour Court. That apart, the decision of the Apex Court rendered in **Bangalore Water Supply Vs. A. Rajappa (supra)** as well as the Full Bench decision of this Court rendered in **Bijay Kumar Bharti (supra)** still occupy the field. So far as the annexure-9 is concerned, the learned Single Judge has rightly observed that since it was not brought on record before the Labour Court, it cannot be considered at the stage of writ petition.

**15.** Thus, in our considered opinion, the decisions expressed by learned Single Judge does not warrant any interference in the present Intra Court appeal.



16. Accordingly, the appeal being devoid of any merit, is dismissed. However, there would be no order as to cost.

(Dr. Ravi Ranjan, J.)

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(Prakash Chandra Jaiswal, J.)

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| AFR/NAFR          | NAFR       |
| CAV DATE          | N.A.       |
| Uploading Date    | 29.01.2018 |
| Transmission Date | N.A.       |

