

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4780 of 2018

Rahul Muzaffarpuri, son of Shri Uma Shankar Prasad Sharma, resident of House of Anil Sharma, Vidhi Nagar, Near Sonu Maket, Varun Colony, Gola Road, P.S.- Rupaspur, District- Patna.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Labour and Employment, Government of India, New Delhi.
2. The Secretary, Ministry of Labour and Employment, Government of India, New Delhi.
3. The Under Secretary, Ministry of Labour and Employment, Government of India, New Delhi.
4. The Deputy Chief Labour Commissioner (Central), Patna, Bihar.
5. The Assistant Labour Commissioner (Central), Maurya Lok Complex, Patna, Bihar.
6. Bajaj Allianz Life Insurance Co. Ltd. through its Chief Executive Officer & Managing Director, G.E. Plaza, Airport Road, Yerawada, Pune, Maharashtra.
7. The Chief Executive Officer & Managing Director, Bajaj Allianz Life Insurance Co. Ltd. G.E. Plaza, Airport Road, Yerawada, Pune, Maharashtra.
8. The Human Resources State Manager, Bajaj Allianz Life Insurance Co. Ltd. 1st Floor, Rajendra Ram Plaza, Exhibition Road, P.S.- Gandhi Maidan, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Patanjali Rishi, Advocate
For the Union of India	:	Mr. S.D Sanjay Addl. Soc. Gen.
For the Respondent No. 8:		Mr. S.N. Choubey, Advocate
		Mr. Arun Kumar Lal, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 05-07-2019

Heard learned counsel for the petitioner, learned counsel for the Union of India and learned counsel for the Bajaj Allianz Life Insurance Co. Ltd.

In the present case, the petitioner is challenging the order dated 01.12.2017, whereby and whereunder the authority has refused to refer the industrial dispute raised by the petitioner



for adjudication on the ground that the disputant was engaged in the capacity of Sales Manger, as such he cannot be said to be a workman with the definition of Section 2(S) of the Industrial Disputes Act, 1947.

The petitioner was appointed as Trainee Sales Team Manager, but he has claimed that he is a workman under the Industrial Disputes Act. The Conciliation was held, but it could not be materialized, resulting into the failure report, ultimately refused to refer the industrial dispute being Sales Manager, is under challenge before this Court.

The authority while exercising the power of conciliation and consideration to refer the dispute raised, exercises administrative function and cannot exercise the power of adjudication and as such, cannot adjudicate the status of an employee whether he is a workman or not a workman. Basically, this issue can only be thrashed out by adjudicatory process, would be gone into by the adjudicating authority i.e. the Industrial Tribunal or Labour Court constituted under the Industrial Disputes Act and while refusing to refer the industrial dispute, appropriate Government or the authority cannot embark upon adjudicatory mechanism and should not have adjudicated the status of an employee.



In such view of the matter, this Court is of the view that that authority has misdirected himself in usurping the power of quasi judicial body and his finding on misdirection.

In that view of the matter, the impugned order dated 01.12.2017 is not sustainable, accordingly, the same is quashed. The matter is remanded back to the competent authority to consider the claim of the petitioner afresh and take decision in accordance with law within a period of 8 (eight) weeks from the date of receipt/production of a copy of this order. However, the respondents-management will be at liberty to raise all the points as available to it before the Industrial Tribunal-cum- Labour Court.

With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	09.07.2019
Transmission Date	

