

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5027 of 2017

Management of Daya Engineering Works (Sleeper) Ltd. Manpur, Gaya
through its authorized signatory namely Diwakar Prasad Roy.

... .. Petitioner/s

Versus

1. The Workmen of Daya Engineering Works (Sleeper) Ltd. Manpur, Gaya
represented by the District Engineering Sharamik Sangh (Unit), Daya
Engineering Works (Sleeper) Ltd., Manpur, Gaya through its General
Secretary, Sri Yadu Mistri.

2. The Industrial Tribunal, Sharam Bhawan, Bailey Road, Patna through its
Presiding Officer.

3. The State of Bihar through its Principal Secretary-cum-Commissioner,
Department of Labour, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ashutosh Singh

For the Respondent/s : Mr.Raghwendra Kumar- SC22

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 05-08-2019

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the
award dated 30.09.2010 passed by the Industrial Tribunal, Patna in
Reference Case No. 1 of 2008, whereby and whereunder, all the
206 employees have been directed to be reinstated with full back
wages on the date of dismissal.

The management of Daya Engineering Works (sleeper)
Ltd. Manpur, Gaya, the present petitioner, is the Company
incorporated under the Companies Act, 1956 engaged in
manufacturing of Concrete Railway Sleepers. As per workman, the
service condition including the wages were governed by the term
of settlement between the Management and the Union. The



settlement was for the period two and half years, as last settlement was entered on 17.5.2003, on expiry of the same on 16.11.2005, the Union requested for fresh agreement substituted by fresh terms and conditions but, when the Management did not respond favorably, the Union served a notice on 16.2.2007 for one day token Dharna on 19.2.2007, copy was given to the Deputy Labour Commissioner, Magadh Division, Gaya, who started a conciliation proceeding and served notice to both the parties to participate in the proceeding for settling the dispute, on the advice of the Conciliation Officer, the Union ended their agitation and participated in the conciliation proceeding on 27.2.2007 but, the Management did not respond and no one from the Management participated in the conciliation proceeding. During conciliation proceeding, the Management suspended Bineshwar Pandit, Vice President of the Union and Yadu Mistry, the General Secretary of the Union vide letter dated 1.3.2007. In spite of direction from the Deputy Labour Commissioner, the Management failed to pay salary to the workman for the period February, 2007 to March, 2007 and even not paid any subsistence allowance to Bineshwar Pandit and Yadu Mistry. The issue of payment of subsistence allowance was again raised, the Deputy Labour Commissioner again called for conciliation and fixed the date for the same on



10.4.2007. Again the Union served a notice to the Deputy Labour Commissioner, Gaya who again fixed the date 28.5.2007 for conciliation, called the Union as well as the Management for conciliation vide letter dated 16.5.2007 but, the Management again did not respond to the notice and did not appear for conciliation proceeding on 28.5.2007, dismissed Yadu Mistry, Bineshwar Pandit, Hardip Dusad, Rajesh Paswan, Ram Dhayan Singh and Pappu Singh, all office bearers of the Union. The Union raised a grievance that the Management has engaged the local criminals to curb the Trade Union activities and, in order to harass the office bearers, the Management lodged a false police case against them. The Union protested against the high handedness of the Management, called for an indefinite Dharna before the District Magistrate with effect from 20.6.2007 whereupon the District Magistrate directed the Deputy Labour Commissioner to intervene in the matter, the Deputy Labour Commissioner again served notice for conciliation proceeding on 28.6.2007 vide letter dated 25.6.2007, the matter was remitted to the Labour Commissioner, Bihar for settling the dispute through conciliation, the Labour Commissioner started conciliation proceeding and, for that, the date 13.8.2007 was fixed. This time also, the Management failed to appear in the conciliation proceeding on 13.9.2007 and



11.10.2007. The Management, on the other hand, informed the Labour Commissioner, Patna vide letter dated 13.8.2007 that they have already dismissed 206 workers from service which violates the provision of 33(2)(b) of the Industrial Disputes Act, 1947. On account of this position, the Government of Bihar referred the dispute in the following terms:-

“Whether the action of the Management of Daya Engineering Works (Sleeper) Ltd., Manpur, Gaya in terminating the services of 206 workmen as per list enclosed with the reference w.e.f. 25.7.2007 is legal and justified? If not are the workmen entitled to reinstatement or entitled to what other relief?”

On receipt of the reference, the Industrial Tribunal sent a notice to both the sides, the Union filed statement narrating that the action of the Management per se is illegal as they have terminated/dismissed from service without holding any enquiry, inasmuch as, a fair enquiry and without giving any notice and without following the procedure of enquiry, they have been dismissed from service on account of the fact that they have raised the industrial dispute on account of failure of the Management to come forward with fresh settlement with the Union substituting new set of service condition including revision of wage whose life of settlement was already expired. It has been alleged that the action of the Management is completely malafide, illegal and not



sustainable in law. All 206 workmen have been dismissed from service illegally, malafidely, without any show-cause, without holding the departmental enquiry and, thus, the entire action of the Management is actuated by malafide.

Per contra, the Management has appeared and filed written statement wherein the plea has been taken by the Management that the work of manufacturing of concrete railway sleeper depends upon the demand made by the Railway and the work of the Company remains functional round the year but, the worker, as a matter of practice, used to stop the work for any two months, on any pretext, go to their village, work in their farms and, after completion of the same, they join the factory. On that account, the factory suffers a lot. In the year 2007, the workmen stopped the work suddenly, the Company was required to deliver the concrete sleeper to Railway but, due to stoppage of work by the workmen, the Company suffered loss. Even after repeated requests, the workmen did not return to work and it has further been said that certain workmen called the outsiders and they forcefully stopped the workmen to work in the factory. It has been stated that the Management started the departmental proceeding against the workmen, served the notice to them as well as the charge-sheet for the willful absence and other misconducts and



despite the knowledge of the proceeding, the workmen did not appear before the Enquiry Officer. In such circumstances, the Enquiry Officer conducted the enquiry ex-parte which was done in presence of the representative of the Labour Union and, accordingly, the enquiry report was submitted and they were found guilty of the commission of misconduct and, accordingly, the workmen were dismissed from service. It has also been stated that the Management did not violate any provision of the Industrial Dispute Act as well as the order passed by the Management is not required to be interfered by the Court.

Both the sides, in order to substantiate their respective cases, brought on record the documentary evidences as well as examined the witnesses. The Tribunal, after full discussion, has arrived to a conclusion that the enquiry was not conducted following the principle of natural justice and all the employees have been dismissed during conciliation proceeding without getting approval from the Conciliation Officer which violates the provision of 33(2)(b) of the Industrial Disputes Act, 1947 which specifically prescribes that in the event of dismissal/discharge/removal from service of an employee on the ground of misconduct not connected with the industrial dispute which is under conciliation subject to approval action followed by



an application filed by the employer to the Authority before which the proceeding is pending for one month as envisaged under Section 33(2)(b) of the Industrial Dispute Act. Reliance in this connection may be made to the judgment passed in the case of Jaipur Zila Sah. Bhoomi Vikas Bank Ltd. vs Shri Ram Gopal Sharma & Ors reported in AIR 2002 SC 643 and Indian Telephone Industries Ltd. Vs. Prabhakar H. Manjare reported in AIR 2003 SC 195. So, the Management did not take approval from the Conciliation Officer before whom the proceeding in connection with industrial dispute pending and declared the dismissal order to be void and with regard to grant of relief for reinstatement, the Industrial Tribunal has found that no domestic enquiry was conducted, in mass, 206 employees were dismissed from service which is per-se illegal and, as such, directed for their reinstatement with full back wages.

In normal circumstances, this Court could have remanded back the matter for consideration to the Industrial Tribunal to examine the issue as to whether the workmen would be given compensation in place of reinstatement looking to the period they remained outside job and they were not keeping good relationship with the Management but, keeping in view that the termination has effected in the year 2007, more than 12 years have



already passed, it will not be in the interest of industry or the workmen to give the relief of reinstatement and, during the period, these workmen were remained out of job. Earlier view of reinstatement with back wages has been substituted and replaced with the view of grant of compensation. Reliance in this connection may be made to the judgment passed in the case of Uttranchal Forest Development Corporation Vs. M.C. Joshi reported in (2007) 9 SCC 353, Jasbir Singh vs Punjab & Sind Bank & Ors reported in (2007) 1 SCC 566, U.P. State Brassware Corpn. Ltd. & Anr. vs Udai Narain Pandey reported in (2006) 1 SCC 479 and Allahabad Jal Sansthan vs Daya Shankar Rai & Anr reported in (2005) 5 SCC 124. In that view of the matter, this Court directs that in place of reinstatement with back-wages, the Management would pay Rs. 75,000/- to each of the 206 workmen.

Accordingly, the Award is modified to the extent indicated above.

The writ application stands disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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