

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 23881 of 2015**

Arising Out of PS. Case No.-3 Year-2009 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

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Dr R Sangapure @ Dr Ram Sangapure, Zonal Manager, Central Bank of India, Zonal Office, Pawapuri Vihar, NH – 28, Bhagwanpur, PS – Sadar, Muzaffarpur – 1.

... .. Petitioner/s

Versus

State Represented Through Labour Enforcement Officer (Central), Muzaffarpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Ajay Kumar Sinha, Advocate
For the Opposite Party/s : Ms Shail Kumari, CGC

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 09-12-2019

Heard learned counsel for the petitioner and the State.

2 The Enforcement Officer has filed the complaint for non-implementation of Award dated 18.12.2007 passed in Reference Case No 5 (C) of 2005. It is submitted by the learned counsel for the Bank that the order of the Industrial Tribunal was modified by the High Court in the writ proceedings arising out of CWJC No 5717 of 2008. The High Court, under order dated 23.06.2009, has held that the Tribunal should not have awarded a higher status than what he was enjoying as a daily wager at the time of his retrenchment. The directions of the Tribunal were to be read in light of the observations of the High to this effect.



3 The petitioner's counsel submits that by Annexure 5 dated 12.09.2009, the Bank has ensured compliance with the order of the Industrial Tribunal, as modified by the High Court.

4 Learned counsel for the Union of India submits that she has no knowledge whether the beneficiary of the Industrial Tribunal, namely, Shri Rajan Kumar Tripathi has availed the benefits of the Communication dated 12.09.2009 issued by the petitioner for implementing the Award of the Industrial Tribunal, as modified by the Hon'ble High Court.

5 The application for exemption from personal appearance and for permission to appear through Pleader under Section 205 of Criminal Procedure Code (for brevity, *Cr P C*) was presented by the petitioner, who was at the relevant point of time, an officer of the Management Grade in the Bank and subject to transfer from one place to another.

6 Invoking the provisions of Section 205 of *Cr P C*, the petition has been filed, which has been rejected by the Court below under order dated 05.03.2014 passed in Complaint Case No C03 of 2009, Trial No 2302 of 2014. The petitioner, who is an officer of the Management Grade of the Bank, is required, in normal course of employment, to be transferred from one place to another any where in the country and at the relevant time and, therefore, he has



expressed his inability to ensure appearance on each and every date and requested the Court for permission to appear through Pleader/ advocate, which has been rejected.

7 The petitioner, by virtue of his employment and requirements of service, is, in the opinion of this Court, entitled to the permission under Section 205 of Cr P C to be represented through Pleader. At the relevant point of time, when the application was filed, the petitioner was in fact posted as a General Manager at Mumbai posted at Mumbai at a great distance from Muzaffarpur where the trial is being conducted. Under similar circumstances, the Apex Court in the case of Rameshwar Yadav & Ors. versus State of Bihar and others reported in (2018) 4 SCC 608 has considered the nature of employment coupled with distance to be sufficient grounds for grant of exemption from personal appearance of the accused at the trial. The Apex Court has also taken note of the fact that such exemption would not preclude the Magistrate from passing appropriate orders under section 205(2) Cr. P.C. if necessary for enforcing attendance of the accused. Sufficient grounds in the opinion of this Court existed for the petitioner to avail the benefit under Section 205 of Cr P C. The order dated 05.03.2014, passed by Judicial Magistrate 1st Class, Muzaffarpur, in Complaint case No. C-03/2009, Trial No.



2302 of 2014, therefore, rejecting his application under Section 205 of Cr P C is hereby quashed. The petitioner may be allowed to be represented through Pleader. The Trial Court, however, shall not be precluded from exercising its jurisdiction as contemplated under section 205(2) Cr P C in accordance with law.

8 Application stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.12.2019
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