**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P. (L) No. 2058 of 2011**

Axis Bank, Dhanbad through its Assistant Vice President-cum-Branch Head, Dhanbad, Mr. Satish Kumar, son of Sri Laxman Prasad, having its office at – Sri Ram Plaza, Bank More, P.O. & P.S. – Bank More, District – Dhanbad.

… … **Petitioner**

**V E R S U S**

Murlidhanr Tiwary, son of Late Ram Lakhan Tiwary, Resident of Shanstri Nagar, P.O. – Dhanbad, District – Dhanbad.

… ... **Respondent**

**CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK**

For the Petitioner :Mr. Shailesh, Advocate.
For the Respondent : Mr. Aashish Kumar, Advocate

**C.A.V. ON 29.09.2020** **PRONOUNCED ON 18.12.2020**

***Dr. S.N. Pathak, J.*** In view of outbreak of COVID-19 pandemic, case was taken up through Video Conferencing and heard at length on various dates, lastly on 29.09.2020 and Judgment was reserved and the same is being pronounced today. Concerned lawyers have no objection with regard to the proceeding which has been held through Video Conferencing and there is no complaint in respect to audio and video clarity and quality and after hearing at length, the matter is being disposed of finally.

**PRAYER**

2. Petitioner-Management has approached this Court with a prayer for quashing the order dated 12.02.2011, passed by Presiding Officer, Labour Court, Dhanbad in J.S.E. Case No. 1/2010, whereby and whereunder the complaint preferred by the respondent under Section 26(2) of the Bihar Shops & Establishment Act, 1953 read with Rule 21 of Jharkhand Shops & Establishment Rule, 2001 has been allowed and has further ordered for continuation of service of the respondent with full back wages.

**FACTUAL MATRIX**

3. The factual exposition as has been stated in the writ petition is that in order to avail security of the Bank, an agreement was entered into by and between the petitioner-Management and the service provider Company namely *Tiger Security Services Pvt. Ltd.*. Thereafter, on and from 02.06.2008, one Murlidhar Tiwary (respondent) was employed as a Gun Man to provide security to the premises of the concerned Bank with the terms of contract mentioned in the agreement. The said Gun Man (respondent) was to be paid salary etc. by the concerned Security Agency and he was under his direct control and supervision. Said Gun Man (respondent) was transferred to Jamshedpur with effect from 01.10.2009 with a direction to report for duties by 05.10.2009, which was duly acknowledged by him. However, instead of joining at his transferred place of posting, the respondent made a representation before the Manager of the concerned security agency seeking apology of his mistakes. Further, on 26.10.2009, the respondent made a complaint before the Labour Enforcement Officer. Upon filing of such complaint, notice was served upon the concerned security agency with a copy to the petitioner-Management. The said notice was duly replied by the security agency denying the charges leveled against them and it was clearly mentioned therein that the concerned Gun Man did not comply their order nor did he join at the transferred place of posting. Thereafter, the respondent preferred a complain under Section 26 of the Bihar Shops & Establishment Act, 1953 read with Rule 21 of the Jharkhand Shops & Establishment Rules, 2001 before the Presiding Officer, Labour Court, Dhanbad vide J.S.E. Case No. 1/2010. Upon receipt of notice, the concerned security agency filed its show-cause/ written statements again denying the charges leveled against them and further prayed that on the ground of same being time barred, the same is fit to be dismissed. After hearing the parties, the Presiding Officer, Labour Court, Dhanbad allowed the complaint filed by the respondent and further ordered for continuation of service of the respondent with full back wages. However, the petitioner-Management came to know about the said order only after receipt of legal notice sent by the respondent on 03.03.2011 through his lawyer. Being aggrieved by the said order, petitioner-

Management has knocked door of this Court.

**ARGUMENTS ON BEHALF OF THE PETITIONER-MANAGEMENT**

4. Mr. Shailesh, learned counsel appearing on behalf of the petitioner-Management vehemently argues that the impugned order dated 12.02.2011, passed by Presiding Officer, Labour Court, Dhanbad in J.S.E. Case No. 1/2010 is perverse, arbitrary and unjust and has been passed without appreciating facts and circumstances of the case. Grave procedural illegality has been committed in deciding the said complaint without condoning delay as required for filing an application under Section 26(2) of the Bihar Shops & Establishment Act, 1953 read with Section 26(4) thereof. Learned counsel further argues that the petitioner-Management does not come within the purview of the Jharkhand Shops & Establishment Act. The Labour Court has not conducted itself in a fair and judicious manner and without affording proper opportunity of hearing to the petitioner, has passed the impugned order and as such the same is fit to be quashed. Learned counsel emphatically argues that the Labour Court has erred in not conducting the fair and judicious enquiry as contemplated under Section 26(5)(a) of the Bihar Shops & Establishment Act, 1953. Learned counsel further argues that the Presiding Officer, Labour Court was duty bound to make a preliminary enquiry in order to establish nature of relationship between the petitioner and the respondent and in absence of same, the impugned order is fit to be interfered. It is the respondent-workman himself who is responsible for not joining the transferred place of posting and as such, the complaint itself was bad in the eyes of law. The transfer order directing the respondent to join at his transferred place of posting cannot be treated as an order of dismissal/ discharge/ termination as contemplated under Section 26 of the Bihar Shops & Establishment Act, 1953. Learned counsel further argues that from perusal of records of the case, it would be apparent that the concerned workman has concealed vital facts such as letter of appointment, order of transfer, mercy petition etc. and as such, in absence thereof, impugned order is fit to be interfered. The concerned workman also did not file rejoinder/ reply to the written statement/ show cause filed by his employer – Tiger Security Services. Learned counsel

further emphatically argued that finding of the Labour Court that the respondent was working under direct administrative and financial control of the petitioner is also perverse and fanciful in view of the fact that concerned workman was working as per agreement entered into between the Bank and Tiger Securing Services and the workman was engaged by the said security services.

To buttress his arguments, learned Counsel has heavily placed reliance on the decision passed in the case of ***Chandu Prasad Gupta Vs. Ranchi Handloom Emporium Pvt. Ltd.*** reported in ***2017 SCC OnLine Jhar 2808*** and by referring paragraph-6 thereof and submitted that entertaining of the complaint itself by the Labour Court was without jurisdiction and the impugned order is passed in excess of jurisdiction.

**ARGUMENTS ON BEHALF OF THE RESPONDENT - WORKMAN**

5. Mr. Aashish Kumar, learned Counsel appearing on behalf of the respondent-workman argues that the respondent-workman was continuously working in the concerned Branch of the Axis Bank since 06.04.2008 without any complaint from any corner. The concerned post of security guard is a permanent post and the work is perennial in nature under the direct control and supervision of the management of the petitioner – Bank. The petitioner-Management did not regularize the petitioner rather in order to deprive him from legitimate wages and other legal benefits, has been disbursing wages in the name of intermediaries i.e. the concerned security agency just to camouflage his legal entitlement and suddenly stopped his services with effect from 07.10.2009 without complying mandatory provisions of Sub Rule of Section 26 of the Jharkhand Shops and Establishment Act. The respondent had completed more than 240 days of service in a year and as such, he fulfills the criteria for his regularization. He could not have been terminated from the service without complying mandatory provisions of Rule 21 of the Jharkhand Shops & Establishment Act. It is established rule that the workers, who completed services for more than one year, can be terminated only by giving three months' prior notice and making payment of 15 days' for each completed years of services, which has not been followed in the instant case. Even after his

appearance, petitioner/Management chose not to participate in the proceeding before the Tribunal whereas the concerned security agency took the plea of limitation. Learned counsel further argues that the respondent was employed as a Gun Man at the Dhanbad Branch of Axis Bank which comes under the central affairs whereas out of state affairs, his service was transferred on 01.10.2009 with a direction to report for duty by 05.10.2009 at Jamshedpur, which is not sustainable in the eyes of law. Being aggrieved, the workman wrote a letter on 26.10.2009 to the Labour Enforcement Officer (Central) Dhanbad-III stating therein that he is unable to comply transfer order to report at Jamshedpur and thereafter, he demanded payment of salary for September, 2009 and payment of bonus for the periods upto 30.09.2009. Learned counsel further argues that at the time of his examination before the Tribunal, the respondent-workman had clearly stated that he was working within the precinct and premises of the concerned Branch of the Bank at Dhanbad since 06.04.2009 to the post of Security Guard with unblemished record of service. His job was permanent and perennial in nature as well as under the direct control and supervision of the Management of the Bank. The workman had claimed for regularization and payment of wages as well as admissible benefits given to the Bank employees but the Management manufactured the papers to camouflage the real issue.

**FINDINGS OF THE COURT**

6. Be that as it may, having gone through the rival submission of the parties across the bar and after examination of documents brought on record, it appears that Bank stopped the workman from working without following the principles of natural justice and without compliance of mandatory provisions of Sub Rule (1) of Section 26 of the Bihar Shops & Establishment Act. Workman had already completed more than 240 days of service in a year and, therefore, the mandatory compliance was necessary. Admittedly the workman worked from 06.04.2008 to 07.10.2009 and rendered service for about 18 to 19 months, which is stipulated by evidence and there is no reason to disbelieve his destiny as the same evidence was never rebutted by the respondents. As per Rule 21 of Jharkhand Shops &

Establishment Act, the security guard who has worked up to six months cannot be terminated without complying the mandatory rule. As per rule 26(1) of Bihar Shops & Establishment Act, 1953, service of a workman can be terminated only by giving (1) one month's prior notice or (2) salary of notice month, unless he had been dismissed under disciplinary action. The concerned workman had worked for more than 240 days and was in service of the management. For the ends of justice, instead of ordering for continuation in service, this Court thinks it fit and proper to direct the petitioner – Bank to pay minimum compensation of a sum of Rupees One Lac. (Rs. 1 Lc.) to the workman within a period of 12 weeks from the date of receipt/ production of a copy of this order.

7. In the circumstances, the order dated 12.02.2011, passed by Presiding Officer, Labour Court, Dhanbad in J.S.E. Case No. 1/2010, is modified to the extent that the management shall pay minimum compensation of a sum of Rupees One Lac. (Rs. 1 Lc.) to the workman within a period of 12 weeks from the date of receipt/ production of a copy of this order.

8. This writ petition is disposed of with the modification in Award as indicated above.

(**Dr. S.N. Pathak, J.**)

**High Court of Jharkhand at Ranchi**
**Dated - December 18, 2020**
RC/AFR