

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4114 of 1998

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THE MANAGEMENT OF BIHAR,FAL-SA

... .. Petitioner/s

Versus

THE STATE OF BIHAR and ORS

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sourendra Pandey, Advocate
For the State	:	Mr. Kinkar Kumar SC 9
For Respondent No. 3	:	Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 25-11-2021

Heard learned counsel for the petitioners.

In the instant petition, petitioner has prayed for following relief/reliefs:

“This is an application for quashing the award dated 24th July, 1995 passed in reference case no. 29 of 1993 by the learned Labour Court (Respondent no. 2) directing reinstatement of Respondent No. 3 with full back wages and also quashing the order dated 27.1.1998 passed in Misc. Case No. 2 of 1995 by the learned Labour Court dismissing the petition for setting aside the ex-parte award.”

In the instant petition, petitioner management questioned the validity of the award dated 24.07.1995 passed in reference Case No. 29 of 1993 of the Labour Court, Patna, by which order of termination of the respondent workman was held to be invalid and further it is ordered that respondent workman shall be reinstated



with full backwages. This Court stayed the award dated 24.07.1995 on 02.02.2000 whereas the present petition was presented in the year 1998 in respect of award dated 24.07.1995.

Respondent workman was appointed as daily wage worker with the petitioner management in the month of March, 1986 and his services was orally terminated in the month of August, 1987. Further he was taken back to duty on 05.08.1989 afresh. Thereafter, due to closer of the petitioner management in the month of April, 1990, the petitioner services were terminated on 12.05.1990 thus, petitioner raised internal dispute. State referred the dispute to the Labour Court. Reference is of the year 1993. Though the reference of the year 1993 was pending on the file of Labour Court till 1995, the petitioner management failed to appear or represented by its counsel thus, ex parte award was passed by the Labour Court on 24.07.1995. Petitioner preferred miscellaneous petition and it was rejected. From the month of July, 1995 till filing of the present petition in the year 1998 the petitioners have not implemented the award dated 24.07.1995. That apart interim order was granted on 02.02.2000.

Interim order was granted on 02.02.2000. Petitioner management being a part and parcel of the State Government and a Model employer should have reinstated the workman respondent



subjected to result of the litigation to be filed or after filing of the present petition till 02.02.2000 date on which interim order was granted. During pendency of the present petition workman had died in the result legal heirs have been brought on record.

Learned counsel for the petitioner submitted that question of violation of Section 25 F is not available to the respondent workman. Having regard to the fact that his afresh appointment was on 05.08.1989 and his services were terminated on 12.05.1990. The same was not appreciated by the Labour Court, therefore, the petitioner is not entitled to have the benefit under Section 25 F of the ID Act, and it is further submitted that termination of the petitioner is on the issue that the petitioner management was closed in the month of April, 1990 and all the daily wagers working as on the date of the closer of the petitioner Unit were sent home.

Per contra, learned counsel for the workman vehemently submitted that order of termination was in the month of August, 1987 pursuant to the earlier appointment in the year 1986. He could not raise a dispute due to financial constraint and that apart he was approaching the petitioner respondent management and they had reinstated the petitioner on 05.08.1989. Therefore, there is no infirmity in the award. That apart the



petitioners have not appeared in the dispute reference 1993 before the Labour Court and they had sufficient time for their appearance between 1993 to 1995. Therefore, there is no infirmity in the award dated 24.07.1995.

Heard learned counsel for the respective parties.

Undisputed facts are that petitioner was initially appointed on daily wage basis in the month of March, 1986 and his services were terminated in the month of August 1987. The respondent workman has not questioned the validity of order of termination in the month of August, 1987. He has accepted the fresh appointment on 05.08.1999 without any protest.

It is also undisputed that petitioner management was closed in the month of April, 1990 due to which petitioner's services were terminated on 12.05.1990 as he was only a daily wager. Due to passage of time workman has died and legal heirs have been brought on record. Therefore, ex parte award cannot be set aside and remand. Further order of termination is dated 12.05.1990, therefore, in order to give quietus to the litigation and in the light of the Apex Court decision in the case of **Bharat Sanchar Nigam Limited vs. Man Singh (2012) 1 Supreme Court Cases 558** it is sufficient to grant lumpsum amount and it is



quantified for the period from march 1986 to 12.05.1990 a sum of Rs. 3 lakhs.

The petitioner is hereby directed to pay lumpsum amount of Rs. 3 lakhs to the workman legal heirs within a period of three months from the date of receipt of this order to the above extent. The award dated 24.07.1995 is modified.

Petition is allowed in part.

If the petitioner failed to pay the aforesaid amount within the stipulated period, the aforesaid amount shall carry @ 6 % interest from the date of presentation of this petition.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2021
Transmission Date	NA

