

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.739 of 2019
In
Civil Writ Jurisdiction Case No.3337 of 2008

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1. Shila Devi Wife of Late Rama Prasad Gupta, Resident of village and P.O.- Parmanandpur, P.S.- Sonapur, District- Saran.
 2. Kanhaiya Prasad Gupta Son of Late Rama Prasad Gupta Resident of village and P.O.- Parmanandpur, P.S.- Sonapur, District- Saran.
 3. Mohan Sah Son of Late Rama Prasad Gupta, Resident of village and P.O.- Parmanandpur, P.S.- Sonapur, District- Saran.

... .. Appellant/s

Versus

1. M/S. Bata India Limited through its General manager, At and P.O.- Bataganj Digha, Patna.
2. The State of Bihar Through the Secretary, Department of Labour and Employment, New Secretariat, Patna.-1
3. The Presiding Officer, Labour Court, Baily Road, Patna-1

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dhananjay Mishra
For the Respondent/s : Mr. Ajay Kumar Rastogi (AAG10)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 06-07-2022

Heard Mr. Dhananjay Mishra, learned Advocate for
the appellant and Mr. Rohitab Das, for the State

Though Bata India Limited through its General
Manager was earlier noticed by this Court but there is no
appearance on its behalf.



The husband of the appellant had been appointed on permanent basis at Bataganj, Digha Factory. On account of his illness, he remained absent from duty continuously for more than 20 months. Because of the aforesaid absence of the husband of the appellant from duty for more than 20 months, he was proceeded against under Regulation 98(iii) of the Employees State Insurance (General) Regulations, 1950 (hereinafter referred to as "Regulations").

The workman was put to notice which he refused to accept. Later, on a separate notice, the workman replied, intimating the management that he had been on sick leave from 01.11.1993 till 21.07.1995. Thereafter he was given medical fitness certificate, certifying that he is fit to assume duty w.e.f 24.04.1995.

The management, however, chose to discharge the workman *vide* order dated 13.11.1995 under regulation 98(iii) of the Regulations, referred to above.

The matter was referred to the Labour Court under Section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication whether the termination of services of the



workman was justified and if not, to what relief was he entitled to.

It appears from the records that the Labour Court pronounced an Award on 02.08.2007, holding the termination of the workman to be indefensible and thus the order of the termination was set aside. The management of Bata India Limited was directed to reinstate the workman with full back-wages and with all other consequential benefits. The aforesaid Award was challenged before this Court *vide* C.W.J.C No. 3337 of 2008 by the management on the grounds that there was nothing in the Award which indicated any unfair or improper treatment to the employee or that the domestic inquiry report was in any manner perverse or unsustainable in the eyes of law.

The provisions contained in clause 19(b) of the Standing Orders of the management-company was also brought to the notice of the learned Single Judge. On the afore-noted grounds, it was, in the first instance urged that the referral by the State Government of the matter to the



Labour Court was improper and the consequent Award unsustainable in the eyes of law.

We find from the impugned judgment that the learned Single Judge took note of the Industrial Employment (Standing Orders) Act, 1946, which provision governs the conditions of employment of all permanent workmen. Sub-clause (b) of clause 19 provides that no workman will be discharged for protracted illness unless his absence on that account exceeds 6 months and provided that the workman has, from time to time, obtained leave from the company.

The relevant regulation of 1983 of the Regulations referred to above further indicates that if the condition of service of any employee so permits, an employer could discharge or reduce the rank on due notice to an employee who has been under medical treatment for some of the diseases which have been notified in the Regulation but only if the employee had been under such treatment for a continuous period of 18 months or more.

On a conjoint reading of Clause 98 of the Regulations and 19(b) of the Industrial Employment



(Standing Orders) Act, 1946, the learned Single Judge rightly came to the conclusion that in the event of the workman remaining absent from duty for having suffered from tuberculosis for more than 18 months, he was liable to be discharged as according to the management he would be unfit for any industrial employment.

The contention of the appellant that in view of the medical certificate by the ESI hospital to the workman that he is fit to join duty, he ought not to have been discharged, is not worthy of the acceptance. What is relevant is not the fitness of an employee on the date of discharge but of his remaining absent though, under treatment for more than 18 months in one go.

The learned Single Judge, therefore, found the Award, setting aside the termination of service of the workman and directing for his reinstatement with full back wages from 1990 to 12.11.1995, was not sustainable in the eyes of law.

We have found no impropriety in the domestic inquiry and therefore the observation of the learned Single



Judge that without the outcome of the domestic inquiry being assailable on any count, the Award passed by the Labour Court was not sustainable in the eyes of law.

Thus, in view of the findings of the inquiry report in terms of Regulation, 1983 of the Regulations, referred to above and Clause 19(b) of the Standing Orders, we do not find any fault-line in the judgment passed by the learned Single Judge.

We are, thus, constrained to dismiss this appeal but without any order as to costs.

The appeal is dismissed, accordingly.

It would be open for the appellant to approach the authorities for payment of his rightful dues, if it has not yet been paid.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

skm/-

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