

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3925 of 2021

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Satish Chandra Jha Son of Markandey Jha, Presently resident of, 68 Ramdev Nagar Society, Near Shanti Niketan School, Palanpur Patia, Bheshan, Surat Gujrat-395005. Permanent residence of Village-Bhatraghat, P.S.-Bisfi, District-Madhubani, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Bihar State Text Book Publishing Corporation, Budh Marg, Patna.
3. The Managing Director, Bihar State Text Book Publishing Corporation, Budh Marg, Patna.
4. The Bihar State Text Book Publishing Corporation, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Suman Kumar Mishra, Advocate.
For the Respondent/s	:	Mr. Rakesh Ambastha, AC to AAG-7
For the Corporation	:	Ms. Anukriti Jaipuriyar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

7 13-12-2022 Heard Mr. Suman Kumar Mishra, learned counsel

for the petitioner; Ms. Anukriti Jaipuriyar, learned counsel for

the Corporation and Mr. Rakesh Ambastha, learned AC to AAG-

7 for the State.

The present application has been filed for the
following reliefs:-

(i) For quashing the award dated



06.03.2018 passed in reference Case No. 09 of 1994 by Sri Ramji Singh Yadav, presiding Officer, Labour Court, Muzaffarpur, whereby Rs. 1 Lakh only compensation has been awarded to the petitioner which is inadequate and improper in the eye of law.

(ii) For direction to the respondents to enhance the compensation amount of the petitioner as the compensation amount awarded is much less as he was terminated from service without any notice and without following procedure of law, hence he is suffering from financial crises and unable to maintain the family.

(iii) For any other relief/reliefs, as deemed fit and proper with fact that circumstances of the case.

The short facts which led to the filing of the present writ application is that the petitioner was initially appointed on the post of Account Assistant on 19.12.1983 against a vacant and sanctioned post on monthly salary and he continuously discharged his duty till 10.04.1991 in the Corporation but all of a sudden, he was disengaged from service without assigning any reason and adopting any procedure of law.

It is further submitted that he along with other workmen filed a Title Suit No. 06/87/25/89 in the court of Munsif, Patna against their termination, which was dismissed with an observation that the petitioner has other alternative remedy. Thereafter, the petitioner along with other workmen



filed a case under Section 26(2) of Bihar Shops & Establishment Act and challenged the termination order during pendency of the aforesaid case the petitioner and other workmen were reinstated but again the management of the Corporation terminated their services.

It is next submitted that one similarly situated employee namely Kaushalendra Prasad Singh, who was also terminated from service but later on, he was reinstated and he was allowed to continue till the date of his retirement but discrimination has been caused to the petitioner.

The petitioner, thereupon, filed Reference Case No. 09/1994 before the Labour Court, Muzaffarpur for reinstatement and compensation thereof. Considering the entire aspect of the matter, the learned Labour Court, Muzaffarpur passed an award on 06.03.2018, allowing compensation of the sum of Rs. 1 Lakh in favour of the petitioner in lieu of reinstatement and back-wages.

Now the only grievance of the petitioner is with regard to insufficient quantum of compensation awarded to the petitioner.

A counter affidavit has been filed on behalf of the respondent corporation and by referring to the statements made



in the said counter affidavit, it is submitted that the petitioner worked as a casual worker on daily-wage from 19.12.1983 and his services was disengaged for the first time on 19.09.1986, thereafter, the services of the petitioner was again taken up from 26.09.1990 to 15.10.1990 on daily-wage basis according to the exigencies of the work. Later on, for some more time, the services of the petitioner was taken on daily-wage basis.

It is vehemently submitted that the petitioner worked as casual worker that too seasonal in nature. However, in the Reference Case No. 09 of 1994 on account of non-representation by the learned counsel for the Corporation, the compensation of the sum of Rs. 1 Lakh was awarded in favour of the petitioner on 06.03.2018.

It is next submitted that the petitioner having obtained the award in his favour, filed several representations for execution of the award granting compensation to him, which representations have been brought on record by way of annexure R/1 and R/2 to the counter affidavit. On the request made by the petitioner the amount of Rs. 1 Lakh was handed over through cheque no. 926807 on 02.06.2020 and the same has been readily accepted by the petitioner without any protest. It is next submitted that once the petitioner readily accepted the



compensation in terms of the award dated 06.03.2018, now he is assailing the award after two years by filing the present writ application, as the quantum of award was insufficient.

Having heard the learned counsels for the parties and considering the materials available on record, it is evident that at no point of time, the petitioner has made any objection with regard to the insufficient quantum, apart from the fact that it is the petitioner himself, who had filed application/representation for execution of the award and prior to the acceptance of the compensation, the petitioner has never assailed the award before this Court, there is admitted delay of more than two years.

Apart from the aforesaid facts, it is well settled that the doctrine of election is based on the rule of estoppel and the principle that one cannot approbate and reprobate is inherent in it. Law does not permit a person to both approbate and reprobate. The reliance may be taken on a judgement rendered by the Hon'ble Supreme Court in the case of ***R.N. Gosain A vs Yashpal Dhir reported in AIR 1993 SC 352.***

In view of the aforesaid facts, this court does not find any merit in the present writ application.

It is needless to say that if the petitioner has any other remedy available under law, he can avail that remedy.



Accordingly, the present writ application stands
dismissed.

(Harish Kumar, J)

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