

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.928 of 2019

In
Civil Writ Jurisdiction Case No.13191 of 2017

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M/s Popular Nursing Home, Through it trustee Abhisek Jaiswal Ashok
Raj Path, Chauhatta, Patna- 800004.

... .. Appellant/s

Versus

1. State of Bihar, through the Secretary Labor and Employment, New Secretariat, Patna.
2. The Commissioner of Labour, Appellate Authority under Payment of Gratuity Act 1972, New Secretariat, Patna- 1.
3. The Deputy Commissioner of Labour, Authority under Payment of Gratuity Act 1972, New Secretariat, Patna- 1.
4. Mahabir Ojha, S/o Sri Sankar Dayal Ojha C/o Sri Bishram Singh, N/19 professor Colony Chitra Gupta Nagar, Patna- 20

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Vijoy Nandan Sahay, Adv.
For the Respondent no. 4	:	Mr. Ramakant Sharma, Sr. Adv.
	:	Mr. Krishna Kant Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

(Per: **HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**)

5 12-04-2022

Heard Mr. Vijoy Nandan Sahay, the learned Advocate for the appellants and Mr. Ramakant Sharma, the learned Sr. Advocate assisted by Mr. Krishna Kant Singh, Advocate for private respondent no. 4.

The appellant has challenged the order of Deputy Labour Commissioner -cum- Controlling Authority dated 29.09.2011 in G.A. Case No. 4 of 2007 whereby the amount of



gratuity to be payable to the respondent no. 4 was assessed at Rs. 1, 36, 358/-, which was directed to be paid along with 10% simple interest within a period of 30 days; which order was sustained by the learned Single Judge in C.W.J.C. No. 13191 of 2017.

The appellant has challenged the aforesaid order of the learned Single Judge on the sole ground that admittedly the appellant has not worked after 1992 but taking his retirement date to be 2005, the gratuity has been calculated and has been directed to be paid.

The litigation is approximately 30 years old.

The private respondent no. 4 was terminated from service against which order of termination, he had filed a case under Section 26(2) of the Bihar Shops and Establishment Act, 1953, which was allowed by the Labour Court with a direction for his reinstatement with back wages.

The challenge to the aforesaid order of the Labour Court by the appellant in appeal could not be sustained but the appeal of the respondent no. 4 was allowed partially, ratifying part of the claim of the respondent no. 4.

Both the aforesaid orders in different appeals were put to challenge before this Court where the order in favour of the



private respondent no. 4 was sustained. However, it was only with respect to the period of his service till 1992 and not further.

The private respondent no. 4 did not report for joining after the verdict of the Labour Court whereafter the appellant / employer declared that the workman/respondent no. 4 had lost his lien on service.

The aforesaid decision and declaration of the employer / appellant was never challenged in any proceeding before any Court. However, the order of the Deputy Labour Commissioner dated 29.08.2011 whereby the gratuity payable to the private respondent no. 4 was assessed at Rs. 1, 36, 358/- was sought to be justified on the ground that in one of the LPA's, the issue with respect to the termination of the service of the private respondent no. 4 after 1992 could not be established.

The learned Single Judge, in the present instance, taking clue from the aforesaid observation of the L.P.A. Court, sustained the order of the Deputy Labour Commissioner directing for grant of gratuity to the private respondent no. 4 of the amount so assessed as has been referred to above, along with the interest thereupon.

For challenging the aforesaid assessment of the Deputy Labour Commissioner, the appellant / employer was



required to first deposit the amount of gratuity, which amount was deposited and thereafter withdrawn by the respondent no. 4

We are not in agreement with the learned Single Judge who has justified the grant of gratuity to the private respondent no. 4 as admittedly there is no evidence whatsoever in the entire records that he had worked anytime after 1992.

Gratuity is paid in lieu of service.

With the aforesaid view of the Bench, Mr. Ramakant Sharma, the learned senior Advocate for the private respondent no. 4 took an adjournment to revert to the respondent no. 4 to enquire whether he was agreeable for putting a quietus to all the litigation between the parties (employer and the workman). Today, Mr. Sharma, learned senior Advocate has intimated this Court that the respondent no. 4 is ready for settling the dispute forever. He agrees that if no objection is raised over payment of gratuity to him, he shall also withdraw all such litigation before different forums which is pending adjudication till date.

With such response of the respondent no. 4, Mr. Sahay, learned counsel for the appellant also does not wish to pursue this appeal any further.

Taking into account the holistic approach towards ending the dispute and giving a descent burial to all the litigation



which has brought profit to none, we observe that we have accepted the aforesaid proposal on behalf of the respondent no. 4 for not passing any order in the appeal, subject to the condition that such proposal shall not be disputed by the employer/ appellant and the respondent no. 4 shall withdraw all such cases pending before the different forums against his employer with respect to other reliefs.

We order accordingly.

The appeal stands disposed off.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

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