

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1104 of 2019

In
Civil Writ Jurisdiction Case No.5027 of 2017

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The Workmen Of Daya Engineering Works (Sleeper) Ltd., Manpur, Gaya, represented by The District Engineering Shramik Sangh (Unit), Daya Engineering Works (Sleeper) Ltd., Manpur, Gaya through its General Secretary (Sri Yadu Mistri former) now Sri Vineshwar Pandit (Male) aged about 60 Years S/o Fekhan Pandit, R/o Village- Belhrari, P.S.- Belagunj, District - Gaya.

... .. Appellant/s

Versus

1. Management Of Daya Engineering Works (Sleeper) Ltd., Manpur, Gaya through its authorized Signatory namely Diwakar Prasad Roy.
2. The Industrial Tribunal, Sharam Bhawan, Bailey road, Patna, through its presiding officer.
3. The State of Bihar through its Principal Secretary-Cum-commissioner, Deptt. of Labour, Bihar, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 1201 of 2019

In
Civil Writ Jurisdiction Case No.5027 of 2017

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Management Of Daya Engineering Works (Sleeper) Ltd. Manpur, Gaya through its Director namely Mukesh Kumar, aged 39 yrs (Male) Since Diwakar Prasad Roy, Authorised Signatory has left the Job of the Company P.S. Manpur, District- Gaya.

... .. Appellant/s

Versus

1. The Workmen Of Daya Engineering Works (Sleeper) Ltd. Manpur, Gaya represented by the District Engineering Shramik Sangh (Unit), Daya Engineering Works (Sleeper) Ltd. Manpur, Gaya through its General Secretary, Sri Yadu Mistri.
2. The Industrial Tribunal, Sharam Bhawan, Baily Road, Patna through its Presiding Officer.
3. The State of Bihar through its Principal Secretary-cum-Commissioner, Department of Labour, Bihar, Patna.

... .. Respondent/s

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Appearance :

(In Letters Patent Appeal No. 1104 of 2019)

For the Appellant/s : Mr.Pramod Kumar Sinha

For the Respondent/s : Mr.Ajay Kumar Rastogi (Aag10)



(In Letters Patent Appeal No. 1201 of 2019)

For the Appellant/s : Mr.Ashutosh Singh

For the Respondent/s : Mr.Ajay Kumar Rastogi (Aag10)

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

8 15-12-2022 Both the afore-mentioned appeals have been

heard together and are being disposed of by this common

order.

Heard Mr. Pramod Kumar Sinha, the learned

Advocate for the appellants in L.P.A. No. 1104 of 2019

and Mr. Ashutosh Singh, the learned Advocate for the

appellants in L.P.A. No. 1201 of 2019.

The challenge in both the appeals is to the

judgment by the learned Single Judge of this Court dated

05.08.2019 passed in C.W.J.C. No. 5207 of 2017

whereby, though the Award dated 30.09.2010 passed by

the Industrial Tribunal, Patna in Reference Case No. 1 of

2008 has been upheld, but instead of allowing it to remain

inviolable, an order has been passed directing the

management to pay to each of the dismissed members of



the Union/ employees of the Management, approximately 206 in number, Rs. 75,000/- towards their full and final settlement of dues in lieu of reinstatement and back-wages, as reinstatement according to the learned Single Judge, in the present set of circumstances, would be counter productive and would serve no purpose.

Mr. Sinha, the learned counsel for the Union has assailed the judgment on the ground that even though the position of law is well settled that in all cases, there cannot be a stock order of reinstatement with back-wages but in the present case, a practical approach was required to be adopted and the converse position could not have been applied in absolute terms.

Taking clue from the counter affidavit filed by the Management and pleadings in the L.P.A. No. 1201/2019, Mr. Sinha has urged that according to the own showing of the Management, the appellants/ workmen were permitted to join their duties but they were forced to abstain from working because of the pressure exerted by the Union.

Though, the appeal has been preferred by the



Union which has rebutted the afore-noted statement but while guarding interest of it's members, submits that they were prevented from joining the duty.

In that event, the ill health of the Company could not squarely be saddled on those workmen and, therefore, the Award in their favour for reinstatement with all back-wages ought not to have been reduced to a paltry amount of Rs. 75,000/- each to the 206 workmen/ members of the Union.

Mr. Ashutosh Singh, the learned counsel for Management, however, has submitted that though on paper, the Company remains in operation but the turnout is negligible. In fact, for period till 2020, the gates of the Company remained closed because of the stir of the workmen and their refusal to work notwithstanding the offer of the Management to allow them to join their duties.

It has further been submitted that the learned Single Judge ought to to have examined these aspects of the matter before either upholding the Award by the Industrial Tribunal or in quantifying the amount at such



figure.

After having heard the learned counsel for the appellants, we find that though the learned Single Judge has not disclosed the indices which were factored in, while coming to such ball-park figure of 75,000/- but care has been taken to take into account the circumstances under which the workmen were initiated in service and were ultimately dismissed for abstaining from work for a very long time, leading to the closure of the Company.

True it is that the learned Single Judge has not spelt out in detail the considerations, especially whether workmen were engaged in the interregnum in any other vocation but taking a holistic view of the matter, a figure of 75,000/- has been arrived at, which in the estimation of the learned Single Judge, would be justifiable, keeping in mind that the Company in question is on the brink of closure and that the workmen could not satisfy the learned Single Judge that they remained idle for all this while and did not earn any money from any other source.

In Allahabad Jal Sansthan v. Daya Shankar



Rai and another, (2005) 5 Supreme Court Cases

124, the Supreme Court has cautioned that law in this regard cannot be laid down in absolute terms with respect to Awarding full back-wages. Each case would depend on its special facts and the Labour Court or the Tribunal before which the industrial dispute is raised, would be under an obligation to take into account various relevant factors, viz. whether the initiation of service was in accordance with rules and statutes; whether the services were terminated on grounds of policy decision; whether there was any delay in raising the industrial dispute and such delay could exclusively be attributed to the workmen or whether the workmen were sitting idle in the interregnum or have obtained any other employment etc.

The list is long but definitely not exhaustive.

This had been the line of reasoning of the Supreme Court for quite some time, reflecting a paradigm shift in the approach of the Courts. In the yesteryears, the interest of workmen was zealously guarded in the name of social justice but lately it was discovered that a pragmatic



approach was necessary for balancing the interest of the workmen and the industry simultaneously or else, it would become difficult to carry on the work of industry.

In various cases decided by the Supreme Court namely; **(I) Workmen v. Outgoing Management of Subong Tea Estate, AIR 1967 SC 420; (II) Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa, (1976) 4 SCC 222; (III) Indian Railway Construction Company Ltd. v. Ajay Kumar, (2003) 4 SCC 579; (III) Nicks (India) Tools v. Ram Surat, (2004) 8 SCC 222;** the afore-noted reasoning gets very candidly reflected. The assessment in all such cases has been made on the basis of pleadings and evidence brought on record to take a decision whether reinstatement with full back-wages would be justified.

The principle underlying such reasoning was that it would not do any good by remaining avowedly hamstrung by the socialist point of view of law which, in the ultimate trickle down effect, has proven to be counter productive.



Tested on afore-noted principles, the learned Single Judge appears to have found out that in the absence of any evidence with respect to the justification of the Industry to dismiss its employees, the Award may not be interfered with but reinstatement with back-wages as directed by the Tribunal would not fit in the facts of the circumstances and the extant laws.

Taking into account every aspect of the matter which may not have been spelt out, a figure of Rs. 75,000/- was arrived at for all the workmen who were dismissed from service, to be paid by the Management of the Industry.

Mr. Pramod Sinha, the learned Advocate for the workmen/ Union has not been able to provide any information to us with respect to the individual members/ workmen who were dismissed from service, with respect to their profitable engagement in the interregnum. Likewise, the Management of the Industry also has not been able to fully demonstrate that it was because of the non co-operation of the workmen and their abstention



from duty that the order of removal was passed.

Under such circumstances, we do not find any plausible reason to interfere with the order passed by the learned Single Judge.

While saying so, we have taken note of the fact that many of the workmen had many years of service left and that the Industry still is operational.

Thus, both the appeals are dismissed.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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