

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.700 of 2018

In

Civil Writ Jurisdiction Case No.808 of 1997

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Bihar Rajya Vidtyut Parishad Filed Kamgar Union Through Its General
Secretary, Amrendra Prasad Mish Khas Mahal, Pani Tanki,
Chirayantanr, Patna.

... .. Appellant/s

Versus

1. The Presiding Officer, Industrial Tribunal and Ors
2. The Bihar State Electricity Board, through its Chairman, Vidyut Bhawan,
Bailey Road, Patna.
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road,
Patna.
4. The Commissioner of Labour, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amrendra Kumar Sinha No.-1, Advocate
For the Respondent/s : Mr. Ajay Kumar Rastogi (Aag10)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-11-2022

Heard Mr. Amrendra Kumar Sinha-I, learned

Advocate for the appellant and Mr. Vijoy Nandan Sahay for
the BSEB through its Chairman Vidyut Bhawan, Bailey
Road, Patna. The State is assisted by Mr. Naman Nayak,
learned Advocate.

The appellant which is a Union of workers has
approached this Court against the judgment passed by the



learned Single Judge in CWJC No. 808 of 1997, whereby the challenge to the award passed by the Tribunal, refusing to direct for absorption of the workers, who are members of the appellant association, in the services of the Electricity Board has been affirmed and upheld.

It appears from the records that an industrial dispute was raised regarding non-absorption of 616 contract labourers working in Muzaffarpur Thermal Power Station against different posts, who were not being absorbed in the regular service of the Electricity Board.

The issue generated a reference under Section 10(i)(d) of the Industrial Disputes Act, 1947 and the matter was referred to the Tribunal for its adjudication. The entire dispute is with respect to the answer of the Tribunal and the consequent award with respect to the first point of reference which *inter alia* had called upon the Tribunal to decide whether a workman in Schedule 'K' of Muzaffarpur Thermal Power Station, who was engaged in perennial nature of work despite the prohibition of the



Government for engaging contract labour for such kind of work, such worker earned the right to be absorbed in the services of the Electricity Board and if so, from which date.

The Tribunal appears to have rejected the contention of the appellant/Union and held that the documents furnished by the Union regarding the nature of work with which its members were engaged with, exhibited no strong proof that they have been working in the organization as contract labours against permanent and perennial nature of job. The Tribunal found that there was complete lack of evidence regarding workmen having been engaged against permanent/perennial nature of work or that they were qualified for the job which they had been doing and that it was also not established that their services were satisfactory.

The Tribunal was also in dark with respect to the adequate number of vacancies for the Union to clamour for absorption its members or that the services of such



labourers were so indispensable that there was no way but to accommodate them in the services of the Board.

On the Tribunal having considered all aspects of the matter, it was found by it that the total number of sanctioned posts of workmen cadre in the Muzaffarpur Thermal Power Station was only 575 and out of such number of posts, approximately 540 posts were occupied and the remaining posts required a very high level of training and expertise as such posts were of technical nature which only a properly trained operator or assistant operator in such power station could perform.

Any direction by the Tribunal for absorbing the workmen falling in the list of the Union against permanent/perennial of the Muzaffarpur Thermal Power Station would tantamount to carving out more number of sanctioned posts before giving any direction for absorption of workmen.

Mr. Amrendra Kumar, learned Advocate for the appellant/Union has assailed the award passed by the



Tribunal as also its affirmation by the learned Single Judge on the ground that the learned Tribunal in the award and the learned Single Judge while affirming the award travelled beyond the context of the reference, which was only for a determination of the right of the workmen engaged with Muzaffarpur Thermal Power Station and kept in Schedule 'K' of the organization which was against the perennial nature of work, to be absorbed in the regular service of the Board.

Mr. Kumar submits that both the courts did not consider that there was no dispute with respect to the job being of perennial nature, which had been entrusted to such workmen. The issue only related to the earning of the right to be absorbed against such perennial nature of job, especially when their engagement against such job was against the prescription of the Government. He, therefore, submitted that the tribunal as also the learned Single Judges were required to give their attention to the issue whether only because of the reason of a breach of



proscription, the workmen would lose their right of absorption in the same organization against the same kind of posts.

Such term of reference did not entail any discussion with respect to the job being of perennial nature, as there was no dispute regarding that.

The afore-noted ground is sought to be answered by Mr. V.N. Sahay, learned Advocate for the Board that there could be some justification for the appellant to have raised the issue which may factually have already been determined but since there had been a proscription against employment of any contract labourer against perennial nature of work, it would be otherwise presumed that they were not working against such jobs, unless it was proved to the contrary.

The Tribunal therefore, looked for an evidence with respect to the labourers having been employed against a permanent/perennial nature of work. In this context, Mr. Sahay seeks to support the line of reasoning



of the Tribunal in the award and consequently of the decision of the learned Single Judge.

We find from the impugned judgment that the learned Single Judge reminded himself of the limitations of a Court of Law operating under Article 226 of the Constitution of India regarding the scope of interference with an award passed by a statutory Tribunal.

The learned Single Judge appears to be absolutely unjustified in setting limits to his powers while testing the correctness of the award and holding that it had to confine itself only to any error apparent on the face of record in appreciation of evidence and was only required to see whether the Tribunal had acted without jurisdiction or that the principles of natural justice had been violated.

We find from going through the answer in the award to the reference that the Tribunal has not passed the award without jurisdiction and the procedural fairness has been followed while passing the award.



For the afore-noted reason, we do not consider it appropriate to make any interference with the learned Single Judge’s order.

The appeal thus fails and is dismissed.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

krishna/-

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