

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20678 of 2018

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Rakesh Kumar Sinha, Son of Late Ratneshwar Prasad, Resident of Village Bairaopatti, P.O. Milkichak, P.S. Bahadurpur, District- Darbhanga, Presently residing at Bodh Vihar Colony, Bhagwat Nagar, P.S. Sampatchak, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Labour Resources Department, State of Bihar, Bailey Road Patna.
2. The Labour Commissioner, Government of Bihar, Patna.
3. The Deputy Labour Commissioner, Government of Bihar, Patna
4. The Presiding Officer, Labour Court, Patna Situated at Niyojan Bhawan, Bailey Road Patna.
5. M/s USV Ltd., a Company registered under the Provisions of Companies Act.1956 having its Registered Office at Arvind Vittal, Gandhi Chock, B.S.D. Marg, Govandi, Mumbai, through its Managing Director.
6. M/S USV Ltd., a Company registered under the Provisions of Companies Act, 1956 having its Registered Office at Arvind Vittal, Gandhi Chock, B.S.D. Marg, Govandi, Mumbai, through its Senior Vice President, Human Resources, Sri Ramesh Balgi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mohit Agrawal, Advocate
		Mrs. Priya Gupta, Advocate
For the Respondent/s	:	Mr. Anil Kr. Singh, GP-26
For the Respondent No.6	:	Mr. Alok Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 21-12-2022

Heard Mr. Mohit Agrawal, learned counsel for the petitioner, Mr. Alok Kumar Sinha, learned counsel for respondent no.6 and Mr. Anil Kumar Singh, learned GP-26 of the State.

2. By invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution, the petitioner seeks quashing of the order dated 30.01.2017, passed by the learned



Presiding Officer, Labour Court, Patna and the award dated 31.01.2017 holding “No Dispute Award in Reference Case No.6 of 2015”. A further direction has been sought for upon the learned Labour Court, Patna to hear the Reference Case No. 06 of 2015 on merits, as the petitioner has not been able to file his written statement.

3. Short facts, which led to the filing of the present writ application is that the petitioner was appointed as Sales Representative on 22.09.1997 at Darbhanga, Bihar. In the year 2010, he was promoted as Area Business Manager in Pharma Team of Company vide promotion letter dated 26.07.2010, as contained in Annexure-1 to the writ petition.

4. The case of the petitioner is that on his request, he was transferred from Darbhanga Zone to Patna Zone on the ground of illness of his father and he, accordingly, joined at Patna Zone, pursuant to his transfer order. On 25.12.2014, the petitioner received email to attend a review meeting on 30.12.2014 and he was advised to come with the Sales Data and other requisite implementation feedback. However, when the petitioner returned after attending the said review meeting, he has been informed that his services stood terminated and all his office stationery and documents were taken from him. A letter of dismissal dated



01.01.2015 has been handed over to him, as contained in Annexure-3 to the writ petition.

5. On being aggrieved, the petitioner sent a legal notice on 16.02.2015 and subsequently on 10.03.2015. However, having found no response, the petitioner approached before the Deputy Labour Commissioner, Government of Bihar, Patna by filing an application on 23.07.2015.

6. The respondent employer appeared before the Deputy Labour Commissioner, Government of Bihar, Patna and filed its reply to the statement of claim filed by the petitioner and subsequently additional reply was also filed. It is further submitted that though the petitioner tried his best to settle the dispute amicably, however, the respondent remained adamant in justifying their actions and, as such, the petitioner submitted a letter dated 29.09.2015 before the Deputy Labour Commissioner, Government of Bihar, Patna for reference of the complaint/claim to the concerned Labour Court, as there existed no scope of settlement of dispute.

7. The Government of Bihar in the Department of Labour Resources vide its notification dated 28.12.2015 referred the dispute between the petitioner and respondent nos. 5 and 6 to the Labour Court, Patna in exercise of powers conferred under



Section 10(1)(c) of the Industrial Disputes Act, 1947, the copy of which has been annexed as Annexure-10. The learned Labour Court, Patna registered the said reference being Reference Case No. 06 of 2015 and issued notice to the petitioner as well as respondent employer. Both the parties appeared on 02.02.2016 and filed time petition for filing of their written statements along with the list of the witnesses and other documents. In compliance of the aforesaid, the respondent employer filed its written statement in a sealed envelop, which has been kept on record. The matter was thereafter taken up on various dates and the petitioner has been directed to file his written statement, however, the petitioner failed to appear and file written statement. Despite various opportunities given to the petitioner, the petitioner did not appear and subsequently the learned Labour Court vide its order dated 30.01.2017 having found that the petitioner has lost his interest in pursuing his case, reserved the Award and vide its order dated 31.01.2017 has been pleased to hold “No Dispute Award”.

8. Mr. Mohit Agrawal, learned counsel for the petitioner vehemently submitted that before passing the award dated 31.01.2017, no notice or any opportunity of hearing has been given to the petitioner. He submits that as the father of the petitioner was very ill and in order to get proper treatment, he took



his father to Delhi and was badly engaged in getting his treatment done, he could not attend the case, but at no point of time there had ever been deliberate or intentional laches on his part, rather none appearance was beyond his control. He further submits that the petitioner, on being aggrieved by the termination order, had been bona fide, pursuing his remedy before the Deputy Labour Commissioner, Government of Bihar, Patna to Labour Court, Patna, as he has never been informed with respect to any subsequent date, apart from the fact that even the copy of the Award was not handed over to him, due to which the petitioner under compulsion filed application under Right to Information Act seeking information as to the current status of the Reference Case No. 06 of 2015 vide application dated 16.07.2018. In reply to the said application, vide letter bearing no. 137 dated 19.07.2018 issued by the Presiding Officer-cum-Public Information Officer, Labour Court, Patna informing him that the Reference Case No. 06 of 2015 has been disposed of vide order dated 31.01.2017 by passing a “No Dispute Award”.

9. The petitioner having come to know assailed the award immediately by filing the present writ application on 12.10.2018. The further limb of the argument on behalf of the petitioner is that the respondent employer had submitted written statement in a



sealed envelop on 21.07.2016 itself, but the same has never opened and the dispute has been adjudicated merely on technical issue of non-appearance of the petitioner. He lastly submits that the cause for non-appearance of the petitioner before the learned Labour Court, Patna was due to none intimation of the further dates to the petitioner in the proceeding and as the order of termination is wholly illegal, the same is required to be adjudicated on merits and, as such, he prays to set aside the impugned award and remit the matter to the learned Labour Court, Patna for adjudication of the issue on merit.

10. Per contra, Mr. Alok Kumar Sinha, learned counsel appearing on behalf of respondent nos. 5 and 6 vehemently confronted the submissions made on behalf of the learned counsel for the petitioner and by drawing the attention of this Court towards the order passed by the learned Labour Court, Patna in Reference Case No. 06 of 2015 submits that from the order-sheet, it appears that the petitioner himself filed an application for reference of the dispute to the learned Labour Court, Patna and on his request the notification has been issued by the Government of Bihar in the Department of Labour Resources dated 28.12.2015 and, accordingly, the Reference Case has been registered. He further submits that the petitioner himself appeared before the



learned Labour Court on 02.02.2016, but, surprisingly, thereafter he did not appear on any of the dates, till the award was passed. He submitted that the petitioner has been allowed several opportunities to file written statement and the matter remained pending there at least for more than one year, but he did not choose to appear and, as such, there is no infirmity in the order passed by the learned Labour Court, Patna. He also submits that from the order-sheet it appears that the copy of the Award had already sent to the employer and the employee vide Memo No. 30 dated 27.02.2017.

11. Mr. Sinha further relied upon a judgment rendered by the Hon'ble Supreme Court in the case of **Nedungadi Bank Ltd. vs K.P. Madhavankutty and Ors.**, reported in **(2000) 2 SCC 455**. Reliance has been made on paragraph nos. 6 and 7, which are quoted herein below:

“6. Law does not prescribe any time-limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or



could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent.

7. In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances an industrial dispute did arise or was even apprehended after a lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become an industrial dispute and the appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming it as an industrial dispute. The Central Government lacked power to make reference both on the ground of delay in invoking the power under



section 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. The Bank was justified in thus moving the High Court seeking an order to quash the reference in question.”

12. Mr. Sinha also submits that the written statement filed by the respondent employer would have been kept in sealed envelop till written statement filed by the claimant and since the petitioner failed to file written statement and the list of witnesses, as such, there was no question of opening of the written statement filed by the employer, hence the submission made on behalf of the petitioner that the Reference ought to be decided on the basis of the materials available on record is wholly misconceived.

13. This Court heard the parties at length. Before parting with the final outcome, it would be relevant to quote the relevant extract of Section 10 (2) of the Industrial Disputes Act, 1947:

“10 (2-A). An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period



shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub- section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub- section had expired without such proceedings being completed.”

14. This Court is not oblivious of the Proviso to Rule (2-A), which clearly stipulates that no proceeding before a Labour Court shall lapse merely on the ground that any period specified under this Sub-Section had expired without such proceeding being completed, but the present fact is entirely different where the employee-petitioner having been entered his appearance, lost his interest and remained absent for a pretty long time of about one



year and, as such, the learned Labour Court has left with no option, but to pass the impugned order/award.

15. Admittedly, the reference of the dispute, as has been made by the State Government in pursuant to the request made by the petitioner and a notification issued by the State Government in exercise of the powers conferred under Sub-section (2-A) of Section 10 of the I.D. Act, the Governor of Bihar specified a period of three months from the date of receipt of this notification within which the Labour Court, Patna was asked to submit its award to this dispute to the State Government.

16. It is also admitted case of the parties that the petitioner personally appeared before the learned Labour Court, Patna on 02.02.2016 itself and he filed a time petition and thereafter he never appeared knowing fully well that the matter was to be adjudicated expeditiously.

17. From perusal of the order-sheet of Reference Case No. 06 of 2015 it appears that various opportunity was granted to the petitioner, nonetheless the matter also remained pending for more than a year, but the petitioner never chose to appear during the said period, till the award was passed.

18. This Court has also carefully gone through the averments made in the writ petition filed by the petitioner that on



account of illness of his father he was unable to pursue the Reference case, but neither any paper/medical prescription has been brought on record nor the relevant dates and time spent in the treatment of his father have been mentioned, which prima facie shows little concern and casual approach on the part of the petitioner.

19. This Court is also conscious of the fact that the service of the petitioner was terminated in the year 2015 and now more than seven years have elapsed and any interference in the award, which is the result of the laches on the part of the petitioner, would certainly disrupt the industrial peace and harmony. The Industrial Dispute Act was brought under Statute with the object to ensure social justice to both the employer and employees and advance the progress of Industry by bringing about the existence of harmony and cordial relationship between the parties. The object of the Act is to improve the service conditions of the Industrial labour so as to provide for the ordinary amenities of life and by the process to bring about the industrial peace and harmony, which is the ultimate pursuit of the Industrial Dispute Act.

20. In view of the aforesaid facts, this Court finds no reason for interference in the impugned order/award passed by the



learned Labour Court and, accordingly, the present writ application stands dismissed, sans any merit.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.01.2023
Transmission Date	NA

