

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.3 of 2019
In
Civil Writ Jurisdiction Case No.6146 of 2017

1. Pragatisheel Vidyut Karmi Sanyukta Sangharsh Morcha Bihar, Pramila Niwas, West Lohanipur (Near Kathpul) PO and PS Kadam Kuan, Dist.-Patna 800003 through its Chairman Mahesh Prasad Sinha aged about 66 years (Male)
2. Bihar Power Worker's Union, Pramila Niwas West Lohanipur (near Kathpul), P.O. and P.S.- Kadamkuan, District- Patna 800003 through its Acting General secretary, Manish Kumar Sharma, aged about 30 years (Male)

... .. Appellant/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Energy, Government of Bihar, Patna
2. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna
3. The Bihar State Power (Holding) Company Limited through its Chairman-cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna- 800021
4. South Bihar Power Distribution Company Limited through its Managing Director, Vidyut Bhawan, Bailey Road, Patna-800021
5. North Bihar Power Distribution Company Limited through its Managing Director, Vidyut Bhawan, Bailey Road, Patna- 800021
6. Labour Commissioner-cum Conciliation Officer, Bihar, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Banwari Sharma Mr. Nilesh Kumar Nirala
For the Respondent/s	:	Mr. Vinay Kisti Singh, Sr. Adv Mr. Akhileshwar Singh Mr. Venkatesh Kisti

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)
Date : 22-04-2024

In the present LPA, appellants have assailed the order of the learned single judge dated 06.12.2018 passed in CWJC No. 6146 of 2017. Moot question for consideration in the present lis



is whether members of the appellants are entitled to be absorbed or their services were required to be engaged by the Bihar State Power (holding) Company Limited or South Bihar Power Distribution Company limited or North Bihar Power Distribution Company limited. Members of the appellant services were engaged by the contractor (private party). The contractor (private party) had executed certain works including maintenance works released to the State power holding company. Once the contract was terminated and thereafter members of the appellant have any right over the respondent-company in seeking their services to be engaged or not. In this regard, there was a conciliation proceedings and it was failed. In the result, the members of the appellant were required to invoke jurisdiction of the concerned labour Court. The same has been taken note of by the learned Single judge and proceeded to dismiss CWJC No. 6146 of 2017 on 06.12.2018 while relegating the petitioners to invoke remedy before the labour Court.

2. Learned single judge order dated 06.12.2018 is the subject matter of the present LPA, learned counsel for the appellants vehemently contended that members of the appellant do not fall under the definition of labour. On the other hand, in view of the



statute namely the contract labour (Regulation and Abolition Act, 1970) would enure to the members of the appellant insofar as in not invoking jurisdiction of the labour court. Be that as it may, initially there was no master and servant relationship among the members of the appellant and respondent-company. Further, having regard to the length of service rendered by each of the members of the appellants' association or union with the contractor (private party) do not have a vested right to seek in engaging their services by the Respondent-company in a particular capacity. Respondent-company is one of the State owned company if any posts were required to be filled up and they were required to follow Article-14 and 16 of the Constitution. Merely members of the appellant union and their services were engaged by the contractor (private party) that does not enure to any kind of right. Therefore, even without resorting appellants/members of the appellants to labour court the members of the appellants have not made out a statutory vested right with them so as to engage their services by the company in any capacity. Accordingly, the present LPA stands dismissed.

3. At this stage, learned counsel for the appellants cited Hon'ble Supreme Court decision in the case of **Secretary, H.S.E.B Vs Suresh and others** reported in (1999) 3 SCC 601



(para 20 and 21), para 20 and 21 of the aforementioned decision reads as under:

21. Before we conclude, the other aspect of the matter as has been contended by the learned advocate appearing in support of the appeals ought to be noticed, to the effect that as a matter of fact the principal employer, namely, the Board has in fact applied for registration of establishment and there is no documentary evidence available in support thereof. Though, however, no such case has been made out nor the issue raised either before the Labour Court or before the High court, this Court, however, to subserve the ends of justice permitted the appellant to file documentary evidence in support of the same and as such three weeks' time was granted at the conclusion of the hearing on 13-1-1999 so that the same may be produced before the Court. We however wish to place on record that in the normal circumstances, no such opportunities are granted, especially at this stage of the proceeding, but by reason of special facts, which are singularly singular, this Court granted such an opportunity and as a matter of fact no such documentary evidence has seen the light of day even after such an opportunity to the appellant.

22. In that view of the matter, we do not see any merit in these appeals and the appeals therefore fail and are thus dismissed. No order however as to costs.

4. The aforementioned decision is not applicable to the case in hand for the reasons that subsequently in number of decisions



Hon'ble Supreme Court has held that a person whose services were engaged by the contractor has no vested right against principal employer insofar as employment is concerned. He may be having right in respect of non-compliance of service condition with the contractor. In other words, if the contractor fails to fulfill condition like non-payment of wages, ESI etc., in such an event worker can claim against the principal employer like in the present case Respondent-company and not appointment or engaging their services. Therefore, the aforementioned decision stands distinguished.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

vashudha/-

AFR/NAFR	NAFR
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