

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19605 of 2010

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1. The State of Bihar, through Chief Engineer (Mechanical) Water Resources, Govt. of Bihar, Patna
 2. The Executive Engineer (Mechanical) Irrigation Mechanical Division, Baunji, Banka.

... .. Petitioners

Versus

1. Bhupendra Prasad Sinha, S/o- Late Yugal Kishore Prasad, R/o- Village- Malaypur, P.O.- Malaypur, Distrcit – Jamui.
2. The Presiding Officer, Labour Court, Bhagalpur.

... .. Respondents

Appearance:

For the Petitioners	:	Mr. Sanjeev Kr. Singh, AC to SC21
For the Respondents	:	Mr. Jitendra Prasad Singh, Advocate
	:	Ms. Sripriya Sinha, Advocate
	:	Mr. Rajeev Kumar, Advocate

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date: 12-08-2024

1. This Writ Petition is filed seeking relief of nature of Certiorari for quashing the Award dated 19.05.1998, passed in Reference Case No. 02 of 1995 by the Presiding Officer, Labour Court, Bhagalpur.

2. The brief facts called out of the Writ Petition are that respondent No. 1, namely, Bhupendra Prasad Sinha was engaged on daily wages from 14.03.1981 in Sub-Divisional Office (Technical), Kalyanpur, Jamui and was subsequently disengaged from the work on 17.10.1982. Thereafter, respondent No. 1 preferred Reference Case No. 22 of 1988



which was allowed by the Labour Court and an Award was passed dated 05.09.1989 setting aside the removal of respondent No. 1. Pursuant of the Award dated 05.09.1989, respondent No. 1 was again engaged on 19.12.1990 as per the need on Muster Roll of the Department.

3. Subsequently, Irrigation Department, Govt. of Bihar directed all the appointing authorities to retrench the worker engaged temporarily on Muster Roll, for which the cut-off dated was mentioned as 01.08.1985. In compliance with the orders of the Bihar Government, respondent No. 1 was again disengaged from services w.e.f. 01.09.1993 with any prior notice.

4. It is specific contention of the Learned counsel for the petitioners that respondent No. 1 has been engaged for work as per the need and he did not work more than 90 days continuously and further he has not completed 240 days of continuous work during his full tenure of engagement. Later, respondent No. 1 preferred Reference under Section 10 of the Industrial Dispute Act, 1947 before the Labour Court and the said Court without considering the materials on record numbered it as Reference Case No. 02 of 1995. The Writ



Petitioners made their appearance and also filed the written statement in detail, contending that Section 10, Sub-Rule 2A of the Industrial Disputes Act, 1947 is not applicable to the employees of the Irrigation Department and as such, the re-engagement of respondent No. 1 ought to be rejected. But an Award was passed by the Labour Court, Bhagalpur on 19.05.1998.

5. It is also the specific contention of the Learned counsel for the petitioners that respondent No. 1 was not appointed to the post of 'Helper' in accordance with the rules, but was only engaged on the basis of the need of work as a temporary daily wage worker and that the Award passed by the Labour Court is arbitrary and illegal and it has to be rejected on the ground that the Water Resources Department do not come under the term/word 'Industry' and as such, the Labour Court has no jurisdiction to try the matter. It is also contended by the counsel for the petitioner that a detailed written statement was filed before the Labour Court and without considering the material objections, the Labour Court has passed the Award, which is liable to be set aside.



6. On the other hand, respondent No. 1 has filed a detailed counter, denying all the allegations made in the Writ Petition. It is specific contention of the Learned counsel for the respondent No. 1 that the Award was passed in the year 1998 and the Writ Petition was filed in the year 2010 and that there is inordinate delay of about 12 years for which the Writ Petition is liable to be dismissed, as there is no proper explanation on the part of the Writ Petitioners for the inordinate delay in challenging the Award. It is also contended by the counsel for respondent No. 1 that the first respondent was initially removed in the year 1982, for which he made Reference Case No. 22 of 1988, which was decided by the Labour Court *vide* Award dated 05.09.1989, holding that the termination of respondent No. 1 by the Department is illegal and as such, he is entitled for reinstatement on the post of 'Machine Helper' with pay and other benefits. It is also contended that pursuant to the order of the Labour Court, respondent No. 1 was again re-engaged on 19.12.1990, but again respondent No. 1 was removed from service without any valid reason w.e.f. 31.08.1993, for which he preferred a Reference Case bearing Reference Case No. 02 of 1995 and



after considering the entire materials on record and the rival contentions, an Award was passed by the Presiding Officer, Bhagalpur on 18.05.1998, holding that the removal of the respondent No. 1 is illegal and he is entitled to be reinstated with arrears of salary. It is further contended that initially respondent No. 1 was concerned to file ***CWJC No. 7163 of 1999*** for implementation of the Award as the Petitioner-Department reinstated the respondent No. 1 and the said Writ Petition was dismissed on 14.08.2003 as withdrawn.

7. Heard the Learned counsel for the petitioners as well as the Learned counsel for respondents.

8. The order dated 29.06.2012 of this Court transpires that there is an inordinate delay of 12 years in preferring the Writ application, as the Law Officer did not file an affidavit along with Writ petition. However, this Court directed respondent No. 1 to file counter affidavit. Further, order dated 24.03.2014 clearly discloses that petitioners were showing willingness to comply the order passed under the provisions of Section 17-B of the Industrial Disputes Act provided that the respondent No. 1 files necessary affidavit showing that he has nowhere been employed during the



pendency of this application. Further, the order also disclose that the petitioners shall not to take any coercive steps against respondent No. 1 for recovery of such amount from respondent No. 1 and the petitioners are ready to comply the part of the impugned order as per the provisions of Section 17-B of the Industrial Disputes Act.

9. At this juncture, it is contended by the Learned counsel for respondent No. 1 that he had filed an interlocutory application bearing I.A. No. 2720 of 2018, dated 05.04.2018 for vacating the stay order dated 24.3.2024 and 10.04.2014, in which it is contended that as per the petitioners, they shown their willingness to comply the part of the impugned order as per the provisions of Section 17-B, and this Court was pleased to stay the impugned order. Subsequent to the order dated 10.04.2014, the petitioners had paid the arrears and wages to the respondents on 15.05.2014 by way of a cheque. Thereafter, an amount of Rs. 9,874/- (Nine Thousand Eight Hundred Seventy Four) was paid by way of a Demand Draft dated 29.09.2015. It is specific contention of the respondent No. 1 that the petitioners had not paid the wages to respondent No. 1 as provided under Section 17-B of the Industrial



Disputes Act, which was one of the condition while granting stay and as such, the petitioners have violated the terms and conditions and, therefore, prayed to vacate the stay order passed by this Court.

10. Admittedly, no counter was filed to I.A. No. 2720 of 2018. However, a supplementary affidavit was filed by the petitioners on 03.07.2014, wherein it disclose that this Court have directed the petitioners to make payment under Section 17-B within four weeks and pursuant to that the Department has paid an amount of Rs. 1,58,344/- (One Lakh Fifty Eight Thousand Three Hundred Fourty Four) under the provisions of Section 17-B from 01.09.1992 to 18.05.2014. However, no Calculation Chart was filed along with the affidavit, as to how the petitioners have arrived to such calculation, for an amount of Rs. 1,58,344/-.

11. It is also the specific contention of the Learned counsel for the petitioners that the Labour Court, Bhagalpur has no jurisdiction to try the Reference Case and inspite of taking the objections in the written statement, an Award was passed by the Labour Court.



12. On perusal of record, it is evident that the written statement, which was filed before the Labour Court was not annexed with the Writ Petition. On perusal of the Award, it is evident that initially respondent No. 1, namely, Bhupendra Prasad Sinha, who was a daily wage worker of Irrigation Department (Division Mechanical No. 1) was removed from his work by the Management on 17.08.1992.

13. Being aggrieved by the retrenchment, respondent No. 1 has preferred Reference Case No. 22 of 1988 and Labour Court has passed order dated 05.09.1989, directing the management to reinstate respondent No. 1. Accordingly, the petitioners herein have re-engaged respondent No. 1 on 19.12.1990 as per the Muster Roll.

14. Admittedly, no objection was raised by the petitioners, as far as the jurisdiction of the Labour Court is concerned in Reference Case No. 22 of 1988. For the first time, the petitioners raise the point of jurisdiction of the Labour Court in the present Writ Petition. The Award was passed by the Presiding Officer, Labour Court, Bhagalpur in reference No. 02 of 1995 on 19.05.1998. The present Writ Petition was filed in the year 2010 i.e., after 12 years. Further,



the contentions of the Writ Petition does not disclose sufficient cause as to why the Writ Petition was preferred against the respondent No. 1 at a belated stage i.e. after 12 years. Admittedly, the Award was passed on 19.05.1998 and the same was referred to the Law Officer of the said Department, for filing the Writ Petition. The said Department took decisions to prefer Writ Petition on 16.10.1998. An affidavit was also signed by the Law Officer on 21.12.1998. In spite of it, the Writ Petition could be preferred by the petitioners only in the year 2010. Furthermore, the Award disclose that the Govt. of Bihar has decided to retrench all the employees who have not completed 240 days of work and the cut-off date was 01.08.1985. But the said proceedings are not placed before this Court along with the Writ Petition for the best reasons known to the petitioners.

15. Without perusal the orders passed by Bihar Government, this Court cannot come to a conclusion whether such decisions is valid in the eye of law or not? The contents of the Writ Petition further disclose that the respondent No. 1 was retrenched from the Department as he has not continuously worked for 240 days. Further, the contents of the



Writ Petition itself disclose that the petitioner initially was appointed on 14.03.1981 and he was disengaged from service on 17.10.1982.

16. Even if the cut-off date of 01.08.1985 is taken into consideration, the respondent No. 1 worked from 14.03.1981 to 17.08.1982 i.e. for 17 months, which disclose that the respondent No. 1 worked in the Irrigation Department for more than 510 days. Basing on the Reference Case No. 22 of 1988, an Award was passed by Labour Court 05.09.1989. Again respondent No. 1 was re-engaged on 19.12.1990 and the management has removed him from service on 01.09.1993. If the working days of the respondent No. 1 are counted, they all come together for more than 1012 days. Therefore, the contention of the petitioners that the respondent No. 1 did not work in the Department for continuously 240 days, therefore, the service of respondent No. 1 has been retrenched, cannot be a valid ground.

17. Admittedly, in the first spell, respondent No. 1 has continuously worked for more than 510 days and further in the 2nd spell, the respondent No. 1 worked from 19.12.1990 to 01.09.1993 i.e. continuously for more than 1012 days.



Therefore, the orders of the Bihar Government contending that if any person who will not work for continuous 240 days has to be retrenched will not affect case of the respondent No. 1 in any manner. Therefore, this Court finds that there is no irregularity in the orders passed by the Labour Court. As far as the point of jurisdiction is concerned it has to be raised before the concerned Court at the first instance. The petitioners did not raise the point of jurisdiction of Labour Court in Reference Case No. 22 of 1988 and therefore, they cannot raise his objections at subsequent stage in Reference case No. 02 of 1995.

18. Admittedly, the written statement of the petitioners (filed before the Labour Court in Reference Case No. 22 of 1998) is also not filed along with the Writ application to see whether any such objection was raised by the petitioners before Labour Court or not?

19. Therefore, this Court finds no merits in this Writ Petition.

20. With the aforesaid discussion, the Writ Petition stands dismissed as devoid of merits.



21. Interlocutory application(s), if any, shall also stand dispose of.

(G. Anupama Chakravarthy, J)

Shanu,Manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2024.
Transmission Date	NA

