

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1385 of 2018

In
Civil Writ Jurisdiction Case No.4292 of 2013

The Bihar State Road Transport Corporation Through The Administrator

... .. Appellant/s

Versus

1. The State Of Bihar through the Secretary Transport Department, Bihar, Patna.
2. The Presiding Officer, Labour Court,, Patna.
3. The Gaya Nath Thakur Son of Late Jadunandan Thakur Ex-Driver, Bihar State Road Transport Corporation, Bankipu Depot, Patn Resident of Village-Taoyabpur, P.O.-Nayaganj, P.S.-Deshri, District-Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. P.K. Verma, Sr. Advocate
Dr. Anand Kumar, Advocate

For the Respondent/s : Mr. Daya Nath Thakur, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-07-2024

The appeal is against the judgment of the learned Single Judge refusing to interfere with the award of the Labour Court, which was challenged in the writ petition. We heard Sri P.K. Verma, learned Senior Counsel appearing for the appellant-Corporation, and Mr. Daya Nath Thakur, learned Counsel for the party respondents.

2. The allegation of misconduct, on which the 3rd respondent was dismissed from service, was of unauthorized



absence; specifically of 129 days. The Labour Court considered the question on a reference made by the Government under Section 10(1)(c) of the Industrial Disputes Act, 1947. The Labour Court, by order dated 17.08.2007 found the enquiry to be vitiated as being unfair. The said order on the preliminary objection has not been challenged in the writ petition. It is trite that the employer who conducts a domestic enquiry and imposes a punishment is not required to challenge the preliminary order passed by the Labour Court; on a reference made by the State Government under the Industrial Disputes Act, 1947, before the final award is passed. The Hon'ble Supreme Court has held that such a preliminary order passed can be even challenged along with the final award.

3. In the present case, there is no such challenge, but the Management led evidence before the Labour Court. We notice that the primary contention of the 3rd respondent-workman was that he was not issued with a notice of enquiry. The 3rd respondent is said to have proceeded on leave in March, 1996, i.e., up to 31.03.1996. On reaching home, he was taken ill and was advised bedrest, upon which repeated requests for extension of leave was sent under the Certificate



of Posting. Later, the 3rd respondent appeared before the employer and joined on 09.08.1996. Exhibit-3 memo produced by the witness of the management itself showed that the Depot Superintendent wrote to the Divisional Manager about the joining application of the workman, which was forwarded along with his leave application, medical certificate, and the receipts of the Certificate of Posting. The Divisional Manager by Exhibit-2 dated 15.12.1997 allowed the 3rd respondent to join, but however, the said order is not served on the 3rd respondent. Later, the 3rd respondent was issued with a charge-sheet produced as Exhibit-1 bearing memo no. 372 of 1999. There was absolutely no evidence to show that it was served.

4. True, the second show-cause notice issued after enquiry was served on the workman and a dismissal order was passed. However, the enquiry carried out *ex-parte* was without notice to the workman.

5. In such circumstances, the Labour Court was justified in finding the enquiry to be faulty.

6. Having found the enquiry to be faulty, the Labour Court permitted the appellant-employer to adduce evidence. A clerk of the Corporation was alone examined



before the Labour Court. Exhibit-1, as indicated earlier, was the charge-sheet, Exhibit-2 the letter of the Divisional Manager to the Depot Superintendent on 15.12.1997, permitting the joining of the workman, which was in pursuance to the letter of the Depot Superintendent to the Divisional Manager dated 09.08.1996, produced as Exhibit-3. Exhibit-4 to 8 were respectively the deposition of the Depot Superintendent before the Inquiry Officer, reply to the second show-cause notice, dismissal order of workman and the letter communicating the dismissal order.

7. Admittedly, the deposition of the Depot Superintendent before the Inquiry Officer cannot be relied on by the Labour Court. As was noticed, the workman was dismissed *ex-parte* in the inquiry and had not even been issued the charge-sheet and in that circumstance, the evidence of the Depot Superintendent before the Inquiry Officer has no value; more so on the enquiry proceedings having been set aside. The employer could have examined the Depot Superintendent before the Labour Court, which was not done.

8. In fact, the records produced by the management itself would indicate that the workman had joined on 09.08.1996 and the Depot Superintendent had communicated



the same to the Divisional Manager, seeking sanction for allowing him to continue in the work. The Divisional Manager is said to have replied to Exhibit-3 letter of the Depot Superintendent only on 15.12.1997 by Exhibit-2 after more than one year.

9. The workman examined himself before the Labour Court and produced the documents to evidence that he had proceeded on leave validly and then, had sought for extension of leave by communications, transmitted under the Certificate of Posting. The receipts of the postal articles sent under Certificate of Posting were produced as Exhibit-A to A-5. The workman was not even cross-examined by the employer.

10. Based on the evidence led by the management, there could be no finding entered of unauthorized absence. The unauthorized absence of 129 days, is of the year 1996 between March and August of the said year. The workman had applied for further leave to the employer; which communications were proved before the Labour Court, on which there was no explanation or response by the Management. The further absence was not on account of the workman, nor can he be faulted since, admittedly, on



09.08.1996, he appeared before the Depot Superintendent and sought for permission to join by a written application. The Depot Superintendent sought directions from the Divisional Manager which was given after one year.

11. The Divisional Manager’s letter was never communicated to the workman. It is on the basis of the above facts that the Tribunal set aside the dismissal order dated 20.07.2001 and directed reinstatement of the workman with full back wages from 01.04.1996 onwards.

12. We find absolutely no reason to interfere with the award passed by the Labour Court, which has been affirmed by the learned Single Judge.

13. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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