

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9511 of 2008

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M/S Bennett Coleman & Co. Ltd., (Patna Establishment), A Public Limited Company Incorporated Under The Companies Act, 1956 Having Its Registered Office At D.N. Road, Bombay And Patna Establishment At Times House, Frazer Road, P.S. Kotwali Town And Town District- Patna Through The Assistant General Manager Of Patna Establishment.

... .. Petitioner/s

Versus

1. The Presiding Officer, Labour Court, Patna.

1A. The State Of Bihar Through Its Chief Secretary, Old Secretariat, Patna

2. Shri Harendra Pratap Singh, Son Of Shri. Bashishta Prasad Singh, R/O Vill-; Magahia Chock, Ps- Khadakpur, District- Munger.

3. Shri Sharad Ranjan Prasad, Son Of Shri Ramakant Prasad Singh, Vivek Vihar, Hanuman Nagar, East Of 109 MIG, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.- Sanjay Kumar Ojha, Adv.
For Respondent Nos.2&3:		Mr. Shashank Shekhar Singh, Adv.
For the Respondent/s	:	Mr. Aag2

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 09-02-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following reliefs:-

“That this is an application for issuance of a Writ in the nature of a Writ of Certiorari quashing the Award passed by the learned presiding Officer, Labour Court, Patna vide his Order dated 31.03.2008 in reference Case No. 34 of 1995 whereby and whereunder the learned Presiding Officer has directed reinstatement of respondent No. 2 and 3 herein with full back wages and consequential benefits after holding that there was no justification for closing of the Nav Bharat Times (Patna) and therefore, retrenchment of these two employees on this ground was not justified.”



3. The present writ petition has been filed by the petitioner assailing the award dated 31.03.2008 passed by the Presiding Officer, Labour Court wherein, the Labour Court has directed the petitioner to reinstate the respondent Nos. 2 & 3 herein with full back wages with all consequential benefits.

4. Learned counsel for the petitioner has stated that the petitioner's company is having many establishments for the purpose of publication of newspapers all over the country. That in the present case the respondent Nos. 2 & 3 were initially employed by the Nav Bharat Times (Patna) which is an independent unit. That due to discontinuation of publication of Nav Bharat Times, the authority had taken a decision to retrench the workmen who were working with the Nav Bharat Times and to that effect out of the total 32 workmen, 27 were retrenched under Section 25(F) of the Industrial Disputes Act, 1947. That and out of the nine cases which have been referred to the Labour Court, seven workers have settled their dispute and only the cases of respondent Nos. 2 & 3 remained to be adjudicated. Learned counsel has stated that in so far as the respondent Nos. 2 is concerned, he is gainfully employed since 09.06.1999 and in so far as the respondent No. 3 is concerned, he has already crossed the age of superannuation. Therefore the question of reinstating the respondent Nos. 2 & 3



does not arise. Learned counsel has stated that the Labour Court instead of directing the petitioner to reinstate the respondent Nos. 2 & 3 ought to grant the compensation. Learned counsel has prayed this Hon'ble Court to set aside the impugned award passed by the Labour Court. Learned counsel has relied on the judgment of Hon'ble Supreme Court in the case of ***Bharat Sanchar Nigam Limited Vs. Bhurumal*** reported in ***2014 7 SCC 177*** and in the case of ***Hari Nandan Prasad and Another Vs. Employer I/R To Management of Food Corporation of India and Another*** reported in ***2014 7 SCC 190*** to buttress his contentions.

5. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the Labour Court duly taking into consideration the evidence on record has given a finding of fact that which has not been disputed by the petitioner. Learned counsel has stated that unless and until the petitioner challenges the said finding of fact or establish that the finding is perverse, no interference by this Hon'ble Court is warranted. Further, it is stated that the respondent No. 3 was not employed from the date of termination of his service and he could not get any employment in any other newspaper establishment and therefore prayed this Court to dismiss the present CWJC.



6. Admittedly, in the present case, the Labour Court has framed the following issues;

“Question for determination is:-

- (i). Whether the reference is bad or incompetent in the eye of law?*
- (ii). Whether there is any justification or legal because of closing the industry?*
- (iii). Whether the retrenchment is justified or not?*
- (iv). Whether the union has authority to raise the issue or not?”*

7. On the basis of the evidence led by the parties has given the following findings on the above issues;

“Issue No. (i).

From oral and documentary evidence, I find that it has been admitted by the all the witnesses that publication of Navbharat Times was through BCCL. Management witness has stated that all the four wings Viz Navbharat Times of India, M/S Excel Publishing House Ltd., M/S Times Publishing House Ltd and M/S Pearl Printwell are different from BCCL but there is no documents in support of this oral evidence. There is no documents as to certificate of registration under Section BSE Act but even this document has not been proved by the management. Board of Director memorandum of article & association, Appointment letter & retrenchment letter shows that they are employees of BCCL. On the basis of the above evidence, I find that the citation of the management is not attracted because industry is not closed and it is part & parcel of the BCCL. There is functional integrity between the Navbharat Times & the BCCL. It has also come in evidence that the publication of Navbharat Times was controlled by the BCCL and it has wide publication across the country and it has more than 100 workers as such. This evidence has not been demolished in the cross-examination.

Issue No. (ii)

Considering the oral and documentary evidence, I find that that prior permission before closure was no obtained by the management and no primary evidence has been adduced regarding the loss of the company. Ext.-L is vague and is not primary evidence, rather, it is the photo copy and it doesn't bear the signature of any authority. There is no mention of the signatory beneath the initial. No reliance can be placed Exts. M to M/3. because there is no supportive document of the recital of the aforesaid Exts. In the absence of direct, positive and cogent evidence on the point of heavy loss, it is not



established whether the company has any justification for the close of the industry. Secondly, there is no compliance of u/s-25-0 which is a condition precedent to closure. So this issue is also decided in favour of the workers.

Issue No. (iii).

It is argued on behalf of the management that on the basis of the Ext.-1 and Ext.-1/1 full and final settlement has been given to the worker so termination is proper and valid. Counsel for the workers avers that the law requires that there must be compliance on and before the termination, from the termination of both the workers, it is not so. Considering the aforesaid fact & circumstances, I find that since Chapter V-B is operative in this case so it is not a case of compliance of section V-A of the I.D. Act, rather, there should have been compliance of V-B of the I.D. Act. Besides, there is also no compliance of u/s-25-F & 25-FFF. From Ext.-9 (M. Ext-Hsh/1), itself, it is manifest that D.D. dt- 13.3.1995 mentioned in the retrenchment letter dt- 20.3.1995 has not been tried to hand over to the worker prior to or on 20.3.1995. It has not been explained as to why the hand-to hand delivery of wages or compensation wages not made to the workers. It is also not clear as to why courier method has been adopted by the management. Therefore, termination order get vitiated.

Issue No. (iv).

It has been pleaded by the management that union is bogus and officer-bearer are not the representative of the workers. In support of this there has been no evidence because onus lies on the management to prove it. So this issue is also decided in favour of the worker.”

8. And finally came to the conclusion as below;

“In view of the facts & circumstances and regard being had to the contentions of both the parties I find and hold that the order of management suffers from illegality and is not sustainable in the eye of law. Termination of both the workers are hereby set aside. They are deemed to be employees from the very date of the termination order itself. Management is directed to reinstate the both workers with full back wages and other consequential benefits.”



9. The Hon'ble Supreme Court in the case of **Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan**, reported in **(2005) 3 SCC 193** has held as under;

“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

10. And in the case of **Krushna Narayan Wanjari v. Jai Bharti Shikshan Sansthan**, reported in **(2018) 12 SCC 620** has held as under;

After all, the Industrial Court had looked into the entire materials and had awarded the salary for the disputed period Unless the approach is wholly perverse in the sense that the Tribunal acted on no evidence, the High Court under Articles 226/227 is not justified in interfering with the award. It is not a court of first appeal to reappreciate the evidence.



Therefore, the appeal is allowed and the impugned orders are set aside and the order dated 14-3-2012 passed by the Industrial Court, Nagpur Bench, Maharashtra is restored”

11. Further, as seen from the record, the case has been filed before the Labour Court in the year 1995 and the award was passed on 31.03.2008, thereafter, the matter has been pending before this Court since last more than 16 years. At this point of time, this Court is of the opinion that no useful purpose would be achieved if the award is set aside and the matter remanded back to the authority concerned for passing orders afresh.

12. However duly taking into consideration the fact that the respondent No. 2 is gainfully employed since 09.06.1999, this Court is of the opinion that the award to the extent of the respondent No. 2 can be set aside and the same is accordingly set aside. In so far as the respondent No. 3 is concerned, as he had already crossed the age of superannuation, the petitioner is directed to calculate the back wages, retirement benefits and any other emoluments that the respondent No. 3 could have received had he been reinstated as per the award of the Labour Court and pay the said amounts as expeditiously as possible preferably within a period of four weeks from the date of receipt of the copy of this order.



13. With the above direction, the present writ petition stands allowed in part to the extent indicated.

(A. Abhishek Reddy, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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