

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7804 of 2015

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Amit Kumar Singh Son of Anirudh Singh resident of Brahmpura, Sonarpatti,
P.O.- M.I.T. , P.S.- Brahmpura, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Labour & Employment, Government of India, New Delhi.
2. The Chief Labour Commissioner (Central) New Delhi.
3. The Assistant Director, IR Imp-I Ministry of Labour, New Delhi,
4. The Regional Labour Commissioner, Central, Patna.
5. The Assistant Labour Commissioner Central Patna.
6. The Senior Manager, Human Resources, TATA AIG Life Insurance Company Ltd., 6th floor, Peninsula Tow
7. The Regional Sales Manager, Tata A.I.G. Life Insurance Company Ltd. , First Floor, Harihar, Chamber, Boring Road, Patna
8. The Branch Manager Sales, Tata AIG Life Insurance Company Ltd. , 2nd Floor, Om Shanti Complex in front of Zila School, P.O. Ramna, District Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Singh, Advocate
For the Union of India	:	Mr. R.K.Sharma, C.G.C.
For Private Respondent	:	M/s Pratap, Santosh Kumar, Advocates

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 16-02-2026

1. The petitioner has filed the instant application for the following relief(s):

“(i) For issuance of a writ in the nature of 'Certiorari' for quashing the award dated 12.09.2013, passed by the Presiding Officer, Central Government, and Industrial Tribunal No. (2) at Dhanbad in Reference No. 43 of 2012 and communicated to the in petitioner vide Reference No. 43/2012/771 dated 03.04.2014, whereby and where under it



has been ordered that the action of the management of Tata AIG Life Insurance Committee Ltd. in termination of service of the petitioner is quite legal, and justified and hence the workman is not entitled to any relief from any time except his any legal dues up to the date of his termination.

(ii) For directing the concerned respondents to allow the petitioner to discharge his duties continuously and treat him in service since the date of his appointment/joining i.e. 02.01.2008.

iii) To hold that the petitioner is in service all along and entitled to his salary and other benefits.

(iv) To direct the respondents to pay up to date due salary and other benefits to the petitioner since September, 2008 to which he is entitled.

(v) To direct the concerned respondents to grant all other service benefits which arises out of service jurisprudence and for any other relief/releifs to which the petitioner is entitled in the facts and circumstances of the case."

2. The brief facts as culled out of the petition are that the petitioner was appointed as Assistant Business Development Manager by the respondent-Management, Tata AIG Life Insurance Company Ltd., vide appointment letter dated



26.12.2007 and joined into service on 02.01.2008 in Muzaffarpur Branch. After completion of six months of satisfactory performance his services was confirmed as per the terms of the appointment and he became a permanent employee. It is his specific case that he discharged his duties diligently under the supervision of the Branch Sales Manager and contributed towards the enhancement of the company's business. He was getting salary regularly till August, 2008 but when he did not receive his salary for the month of September, 2008, he made inquiries and came to know that he was shown as an "absconder" since 15.09.2008 by the Branch Manager, which was not his knowledge and without any communication to him.

3. The petitioner asserts that no show cause notice, or termination letter was ever issued to him. According to him, he signed the attendance register till 29.09.2008. Thereafter, the system of putting attendance was allegedly discontinued. Despite his readiness to work, his salary was



withheld from September, 2008 onwards. Though he continued in service he was not paid and later terminated, which is impermissible in law.

4. The petitioner further submits that he made several representations to the authorities and also issued a legal notice dated 01.09.2010 seeking reinstatement and for payment of arrears of his salary. As there was no action, he approached the labour authorities. Conciliation proceedings were initiated but failed. Thereafter, in exercise of powers under Section 10 of the Industrial Disputes Act, 1947, the Central Government referred the said dispute for adjudication to the Central Government Industrial Tribunal No. 2, Dhanbad. Before the Tribunal, the petitioner specifically pleaded that he had not been issued any order of termination or suspension and that he was prevented from discharging his duties without authority of law. He contended that he had completed continuous service within the meaning of Section 25B of the Industrial Disputes Act, 1947 and that any retrenchment or



termination without compliance of Section 25F of the Act was illegal. It was also urged that even under Section 26 of the Shops and Establishments Act, an employee who had completed six months of service could not be terminated without following the prescribed procedure.

5. According to the petitioner, the management failed to produce any material to show that he was guilty of any misconduct or that any disciplinary proceeding had been initiated and no document was brought on record. It was argued that the Tribunal, without appreciating the pleadings and evidence adduced by the petitioner, mechanically accepted the stand of the management and upheld the termination on the basis of certain clauses in the appointment letter, thereby committing an error apparent on the face of the record.

6. The Learned counsel for the petitioner submits that the impugned award is wholly unsustainable in law and the finding of the Tribunal were perverse and unsupported by



material on record. In absence of any written order, the conclusion arrived by the Tribunal that the services of the petitioner were lawfully terminated was contrary to settled principles of service jurisprudence.

7. It is further submitted that even assuming that there was any misconduct or unauthorized absence, on the part of petitioner, the management was under a legal obligation to follow the principles of natural justice. Admittedly, show cause notice was not issued and no opportunity of hearing was afforded to the petitioner prior to the alleged termination. The management could not have exercised any discretionary power in an arbitrary manner, so as to deprive the petitioner of his livelihood without due process of law.

8. The Learned counsel emphasizes that the power of the employer is not absolute and must be exercised within the four corners of law. The management cannot be given absolute power to terminate a person without at least giving



opportunity to defend himself. In the present case, there is no iota of evidence to demonstrate that the petitioner was negligent towards his duty or is guilty of any misconduct, or had remained on unauthorized leave and prayed to allow the Writ petition.

9. A counter affidavit was filed on behalf of the respondent Nos. 1 to 5. The Learned counsel appearing on behalf of the respondent Nos. 1 to 5, submits that the impugned award dated 12.09.2013 passed by the Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad in Reference No. 43 of 2012 is legal and does not call for any interference.

10. It is contended that the Tribunal has considered the entire factual matrix, the pleadings of the parties, and the materials brought on record, and has passed the award strictly in accordance with the powers conferred under Section 11 and Section 11A of the Industrial Disputes Act, 1947. It is submitted that this Court, while exercising jurisdiction under Article 226 of the Constitution of



India, ought not reappreciate the evidence or sit in appeal over the findings of fact, recorded by the Tribunal.

11. The Learned counsel submits that the Central Government was the appropriate Government in relation to the establishment in question. The conciliation proceedings were conducted in terms of Section 12 of the Industrial Disputes Act, 1947. Since the dispute could not be resolved amicably, a report of failure of conciliation was submitted to the Ministry of Labour, Government of India. The dispute was, thereafter, for adjudication before the Industrial Tribunal in accordance with law.

12. It is further submitted that the petitioner was absent from duty for a prolonged period, without any intimation to the management. The respondent-management had issued letter to the petitioner regarding his long and unauthorized absence from his duties and requested him to rejoin his duties. The management had also taken note of his negligent conduct, unsatisfactory



performance and unprofessional behaviour. It is contended that despite such communications, the petitioner failed to resume duty, and therefore his services were terminated in accordance with the terms and conditions of his appointment. In view of such findings, the question of continuity in service or payment of salary for the alleged period does not arise.

13. It is further contended that the Tribunal is vested with wide powers under Section 11A of the Industrial Disputes Act to examine the legality and justification of an order of discharge or dismissal and to grant appropriate relief, including reinstatement, if it finds the action of the employer to be unjustified. In the present case, after evaluating the evidence and submissions, the Tribunal came to the conclusion that the termination was justified.

14. The Learned counsel emphasizes that sufficient opportunity was afforded to the petitioner during the adjudication proceedings. The award has been passed, after considering the



pleadings, documents and arguments advanced by the parties. The writ petition, according to the respondents, merely seeks reappreciation of facts which have already been duly examined and decided by the competent Tribunal and prayed to dismiss the Writ petition as it is devoid of merits.

15. A counter affidavit was also filed on behalf of the respondent Nos. 6 to 8.

16. It is submitted that the petitioner has not approached this Court with clean hands and has suppressed material facts relating to his conduct and the terms of his engagement. It is contended that the petitioner was appointed vide letter dated 26.12.2007 as Assistant Business Development Manager purely contractual basis subject to the terms and conditions stipulated in the appointment letter along with Annexure-I (Compensation Summary Sheet). His engagement was performance based on sales incentives, as per the policies of the Company.

17. The Learned counsel specifically denies the assertion that the petitioner has



became a permanent employee. The appointment was contractual and was governed strictly by the terms and conditions contained in the appointment letter. The relationship between the parties was regulated by those contractual stipulations.

18. It is contended that the petitioner's performance was unsatisfactory and unprofessional. The petitioner continued unauthorized absence from duty without permission from 15.09.2008. The Company, upon noticing his prolonged unauthorized absence, issued letters dated 20.11.2008 and 29.11.2008 calling him to rejoin his duties. Despite such communications, the petitioner neither joined the service nor furnished any satisfactory explanation for his absence.

19. It is further submitted that the unauthorized absence and negligent conduct of the petitioner amounted to persistent breach of the terms and conditions of appointment, particularly under paragraph 13 (a) to (d) of the appointment letter. Under the said Clauses, the management



was vested with discretionary power to terminate the services of the employee forthwith, without prior notice, in case of misconduct, negligence, or failure to comply with instructions and directions of the Company.

20. The Learned counsel submits that when no response was received from the petitioner despite repeated communications, the management was left with no option but to take a decision to terminate his services. Accordingly, by letter dated 09.12.2009, the petitioner was informed about the termination.

21. It is further argued that the petitioner, after absconding from duty, cannot claim salary for the said period, for which he did not discharge any work. Payment of salary to an employee who remained absent without authorization is not sustainable in law. The claim of continuity of service is also denied on the ground that his engagement was contractual and was terminated in accordance with the agreed terms.

22. The Learned counsel submits that



the petitioner woke up after a considerable lapse of time and initiated proceedings before the labour authorities. The respondents, however, participated in the proceedings and placed relevant documents before the Tribunal. The Learned Tribunal, after examining the materials and considering the arguments advanced, has given a reasoned finding that the termination was lawful and justified.

23. It is thus submitted that the award of the Tribunal does not suffer from any illegality or procedural irregularity warranting interference by this Court in exercise of its writ jurisdiction and, therefore, prayed to dismiss the writ petition as devoid of merit.

24. In rejoinder to the counter affidavit filed on behalf of respondent Nos. 6 to 8, the Learned counsel for the petitioner has reiterated and supplemented the stand taken in the writ petition.

25. The respondents have attempted to distort the fact as well as the true purport of the



appointment letter dated 26.12.2007. The respondents relied upon Clause 13 (a) to (d) of the appointment letter.

26. The Learned counsel for the petitioner submits that the petitioner has categorically denied receiving any letters dated 20.11.2008 and 29.11.2008, and also the termination letter dated 09.12.2009. It is asserted that none of these letters were served upon the petitioner.

27. It is further submitted that the respondents have failed to produce the said letters either before the conciliation authority, before the Tribunal, or even before this Court. It is pointed out that the written statement filed before the Assistant Labour Commissioner (Central)-cum-Conciliation Officer, Patna, do not support with letters addressed by the respondents. The petitioner submits that there is no material on record, to establish that the said letters ever issued or served. In absence of proof of service, the plea of unauthorized absence and lawful



termination is unsustainable.

28. Heard the Learned counsel for the petitioner and the Learned counsel appearing on behalf of the respondents. Perused the pleadings of the parties, the materials brought on record and the impugned award dated 12.09.2013 passed by the Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad in Reference No. 43 of 2012.

29. The petitioner has assailed the award whereby the Tribunal has held that the action of the management in terminating the services of the petitioner was legal and justified and that he was not entitled to any relief except his legal dues up to the date of termination.

30. The case of the petitioner is that he was appointed as Assistant Business Development Manager vide appointment letter dated 26.12.2007 and joined on 02.01.2008. According to him, after completion of six months of satisfactory service, his service was confirmed. It is his specific stand that he continued to perform his duties and had signed



the attendance register up to 29.09.2008. He asserts that no show cause notice, suspension order or termination letter was ever issued to him and that he was orally treated as an absconder without any communication. His salary was stopped from September, 2008. He contends that in absence of any written order of termination, he continued in service in the eye of law.

31. On the other hand, the respondents have contended that the petitioner's appointment was contractual and performance-based. It is their case that the petitioner absented himself from duty from 15.09.2008 without permission and that letters dated 20.11.2008 and 29.11.2008 were issued calling upon him to rejoin duty. It is further stated that due to unauthorized absence and unsatisfactory performance, his services were terminated vide letter dated 09.12.2009 in terms of Clause 13 of the appointment letter. The Tribunal, upon appreciation of the materials, upheld the action of the management.

32. Upon consideration of the rival



submissions and the materials on record, this Court finds that the core issue is whether the termination of the petitioner was effected in accordance with law and whether the Tribunal was justified in holding the same to be legal and justified?

33. From the records placed before this Court, it appears that no termination letter was brought on record to demonstrate that the services of the petitioner were terminated by a written order duly communicated to him. The alleged letters dated 20.11.2008, 29.11.2008 and 09.12.2009, which form the very foundation of the respondents' case, have not been satisfactorily proved to have been served upon the petitioner. There is no material to indicate the mode and manner of service of the said letters.

34. It is well settled that even where the terms of appointment confer certain powers upon the employer, such power cannot be exercised arbitrarily. An order of termination must be preceded by the principles of natural justice. In the present case, there is no material on record to



show that any show cause notice or opportunity of hearing was afforded to the petitioner before terminating his employment.

35. The Tribunal, while upholding the termination, has relied primarily upon the terms and conditions of the appointment letter without examining whether due process of law was followed and whether the alleged letters were duly served. In absence of proof of service of notice or termination order, the conclusion that the termination was legal and justified cannot be sustained.

36. This Court is conscious of the limited scope of interference under Article 226 of the Constitution of India in matters arising out of awards passed by Industrial Tribunals. However, where the finding is based on no evidence or where material aspects have not been considered, interference is warranted.

37. In the facts and circumstances of the present case, this Court is of the considered view that the impugned award dated 12.09.2013



suffers from legal infirmity and cannot be sustained.

38. Accordingly, the impugned award dated 12.09.2013 passed by the Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad in Reference No. 43 of 2012 is hereby quashed and set aside.

39. The writ petition is allowed. The petitioner shall be entitled to reinstatement in service with continuity of service. He shall also be entitled to all consequential benefits in accordance with law. The respondents are directed to pass appropriate orders within a reasonable period, preferably within twelve weeks from the date of receipt/production of a copy of this order.

40. Interlocutory Application(s), if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2026
Transmission Date	

