IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 2256 of 2019

Amar Kumar, son of Late Gauri Shankar Sinha **(died and substituted vide order dated 26.08.2026)**

i. Archana Aparajita, wife of Late Amar Kumar
ii. Anushka Singh, daughter of Late Amar Kumar
iii. Alakshya Singh, minor daughter of Late Amar Kumar, through Natural Guardian namely, Archana Aparajita (mother).

All resident of At & P.O. Nonpharwa, P.S. Patahi, District East Champaran (Bihar). **… … Petitioners**

Versus

1. M/s Ascend Telecom Infrastructure (Pvt.) Ltd., Bagmane Lake View, Ground Floor, B-Block, Bagrnane Tech Park, C.V. Raman Nagar, Bangalore, P.O. C.V. Raman Nagar, P.S. C.V. Raman Nagar, District Bangalore- 560 093, through its C.E.O. & Director
2. Circle Head, M/s. Ascend Telecom Infrastructure (Pvt.). Ltd., 710, 7U Floor, Eastern Mall, Dangra Toli Chowk, P.O. Lalpur, P.S. Lalpur, District Ranchi 834 001 (Jharkhand).
3. Regional Head, M/s. Ascend Telecom Infrastructure (Pvt.) Ltd., 34/1-C, 2nd Floor, Kabi Bharati Sarani, Lake Road, P.O. Lake Road, P.S. Lake Road, District Kolkata 700 029 (West Bengal).

… … Respondents

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mrs. Prerna Jhunjhunwala, Advocate
For the Respondents : Mr. Nipun Bakshi, Advocate
: Mr. Shubham Sinha, Advocate

11/04.05.2026 Heard the learned counsels appearing on behalf of the parties.

2. This writ petition has been filed challenging the judgment dated 21.01.2019 (Annexure-6) passed by the learned Presiding Officer, Labour Court, Ranchi in Bihar Shops & Establishment Case No. 10 of 2016 whereby the petition filed by the original petitioner under section 26 of the Bihar Shops and Establishment Act, 1953, has been dismissed.

3. The original petitioner had expired during the pendency of this writ petition and consequently, he has been substituted by his wife and daughters.

4. Learned counsel for the petitioner has submitted that the original petitioner namely, Amar Kumar claimed to be an employee

under the respondent-company within the meaning of ***Bihar Shops and Establishment Act, 1953 (hereinafter referred to as 'the Act of 1953').*** She submits that the petitioner was offered the post of Senior Executive (Level -5) by virtue of letter dated 15.05.2014 followed by letter of appointment dated 22.05.2014 in Jharkhand having office at Ranchi on gross salary of Rs. 41,250/- per month. She submits that the main job of the original petitioner was to acquire land throughout the State of Jharkhand as per the requirement of clients/service providers and to do all formalities with regard to lease agreement and the original petitioner was an employee. She further submits that the original petitioner continued to perform his work till June, 2016 and received monthly salary regularly till May, 2016. However, he was communicated the letter of termination dated 27.06.2015 and as per the case of the petitioner, the said termination letter is back dated. She submits that ultimately, the case was filed in the year 2016 under the aforesaid Act of 1953 challenging the order of termination.

5. It was the specific case of the original petitioner that the order of termination was stigmatic and was issued without following the mandate of law which has affected the future course of employment and no proceeding was drawn prior to the order of termination.

6. The notices were issued to the respondents herein by the learned court and as many as 5 issues were framed including the issue as to whether the complainant is an employee within the meaning of section 2(4) of the Act of 1953. The legality and validity of termination from service of the complainant was also one of the issues on merits. The issues framed by the learned Labour Court are as under:

> *"(i) Whether the memorandum of complainant is maintainable?*
> *(ii) Whether complainant is an employee within the meaning of Section 2(4) of the Act?*
> *(iii) Whether opposite party is an establishment within the meaning of Section 2(6) of the Act?*
> *(iv) Whether order of termination from service of the complainant is valid, justified and in conformity with the provisions of Section 26 of the Act?*

(v) Whether the complainant is entitled to the relief as prayed for?"

7. Learned counsel for the petitioner submits that the parties led both oral and documentary evidences on all the issues. However, the learned Labour Court, Ranchi has decided only issue nos. (i) and (ii) by holding that the original petitioner was not an employee within the meaning of the aforesaid act of 1953 and was holding a managerial post. Ultimately, the learned Labour Court held that the petition itself was not maintainable.

8. The learned counsel for the petitioner further submits that the findings of the learned Labour Court with respect to issue nos. (i) and (ii), which alone have been decided, are at paragraph 12 of the impugned judgment. She submits that the learned Labour Court has only selectively considered the materials on record and observed that the original petitioner had admitted that the original petitioner was doing all the work relating to land acquisition and was getting a salary of Rs. 41,250/- and the learned court noted that the original petitioner was designated as Senior Executive and therefore, he cannot be said to be a manager within the meaning of the aforesaid Act of 1953. The learned counsel has also submitted that although the learned court has recorded that there was complete non-compliance on the part of the management, inasmuch as, the management did not furnish the list of the employees who were to be exempted in terms of Item No. 5 of Schedule-I of the aforesaid Act of 1953, but in spite of that, the learned Court has observed that the original petitioner was working as a manager, hence not an employee within the meaning of the aforesaid Act of 1953 and hence the complaint itself was not maintainable .

9. The learned counsel has then submitted that the learned Court has not taken into consideration the materials placed on record, both oral and documentary, while giving the finding, nor has decided the case on merits. She submits that on account of non-consideration of the materials place before the learned labour court, the impugned order is perverse and hence cannot be sustained in the eyes of law and therefore, it calls for interference and the matter be remanded.

10. ***Learned counsel for the respondents ,*** on the other hand, has submitted that there are materials on record to show that the original petitioner was working as the head of the establishment and further, numerous documents were also placed by the management to show the nature of work being performed by the original petitioner. He submits that the evidence of the Management Witness No. 1 and reference to numerous documentary evidences reveal this aspect of the matter. He submits that upon considering the materials which have been led by the management, there can be no doubt that the original petitioner was working in managerial post.

11. However, during the course of arguments, it is not in dispute that the materials which have been placed on record from the side of the management, particularly the documentary evidences and also the oral evidences, have not been considered by the learned Labour Court while coming to a finding that the original petitioner was working in managerial capacity. It cannot be disputed that not only the evidence of the management was required to be considered, but also the evidence of the workman, both oral and documentary, was required to be considered, with respect to the nature of work being performed by the workman to come to a finding on the issue as to whether the workman would qualify as an employee within the meaning of aforesaid Act of 1953 and the Rules made thereunder.

12. This Court, upon going through the impugned order, finds that the learned Labour Court has not done the needful, inasmuch as, the materials placed on record have not been considered in totality and only some of the materials have been considered while coming to the finding that the original petitioner was not the employee of the respondent – company within the meaning of the aforesaid Act of 1953.

13. In view of the aforesaid facts and circumstances, this Court is of the considered view that the impugned order suffers from perversity on account of non-consideration of the materials placed on record from the side of the original petitioner as well as from the side of the management. This Court is of the view that in exercise of power under

Article 227 of the Constitution of India, there is no scope for this Court to appreciate the materials and come to a finding. Primarily this is the exercise to be conducted by the learned Court concerned. Suffice is to say that the impugned order calls for interference on account of perversity.

14. Having said as aforesaid, the impugned judgment being perverse, cannot be sustained in the eyes of law and accordingly, the judgment dated 21.01.2019 (Annexure-6) passed by the learned Presiding Officer, Labour Court, Ranchi in Bihar Shops & Establishment Case No. 10 of 2016 is set-aside.

15. The parties are directed to appear before the learned Labour Court on ***8th of June 2026 at 11.00 a.m.*** It is further directed that upon appearance of the parties, the learned Labour Court shall do the needful and pass fresh order considering the materials on record and considering every aspect of the matter and also decide all the issues which are involved in this case based on the materials already placed on record.

16. The needful be done within a period of three months from the date of appearance pursuant to this order.

17. In case the petitioners need any legal aid, the learned court shall do the needful and appoint a legal aid counsel.

18. This writ petition is disposed of with aforesaid observations and directions.

19. Pending interlocutory application, if any, are closed.

(Anubha Rawat Choudhary, J.)

Date of Order: 04.05.2026
Pankaj
Date of Uploading: 11.05.2026