

(2010) 09 JH CK 0006

Jharkhand High Court

Case No: Writ Petition (L) No. 3522 of 2006

Tata Engineering and
Locomotive Company Ltd. (Now
Tata Motors Ltd.)

APPELLANT

Vs

The State of Jharkhand and K.D.
Pandey

RESPONDENT

Date of Decision: Sept. 27, 2010

Acts Referred:

- Bihar Shops and Establishments Act, 1953 - Section 2(2), 26(6), 91
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Pradeep Kumar, J.

Heard the learned Counsel for petitioner - M/S Tata Engineering & Locomotive Company Ltd now Tata Motors Ltd., Jamshedpur and learned Counsel for the workman- Dr. K.D. Pandey.

2. The instant writ application is directed against the judgment dated 28.2.2006 passed by the Presiding Officer, Labour Court, Jamshedpur in B.S. Case No. 3 of 1997 by which judgment, learned Labour Court after considering all the evidence on record came to a finding that the respondent- Dr. K.d. Pandey was an employee working in the hospital being run by TATA motors for the treatment of workers of TATA motors factory as well as people in general and hence, he was employee within the meaning of Shops and Establishment Act, 1953, the court on the basis of the evidence came to a conclusive finding while deciding the issue No. 2 i.e. as to whether the applicant was guilty of misconduct of accepting illegal gratification. Learned Labour Court after discussing all the evidences also came to a conclusive finding at para 38 of the judgment that the management failed to prove by any

reliable evidence that Dr. K.D. Pandey has committed any misconduct as alleged by the management- petitioner and finally while deciding the issue that whether the punishing authority was competent to punish the applicant on the charge of misconduct, learned Labour Court has considered all the aspect came to a conclusive finding that the action of the management on 6th February, 1997 in terminating the service of the applicant-respondent in this writ application was mala fide, illegal and improper and also found that the Divisional Head cum Managing Director, Personal was not competent to terminate the service of the applicant and directed for reinstatement of the Respondent with full back wages with consequential benefits and continuing in service.

3. In this writ of certiorari , learned Counsel for the petitioner has again raised the point that the respondent was working as per the factory act, since petitioner- TATA Motors is running the factor and factory has opened the hospital which is incidental to the running of the factory. He has further submitted that since, the hospital is being run without any profit base for the employees as per Section 91 of the act, hence it will not be covered under the shops and establishment Act. He has further raised the point that employee concerned was terminated by invoking annexure-2 i.e. terms of agreement and hence, he cannot claim that his termination was not in accordance with law. He has also argued that respondent cannot be allowed to get full back wages since, learned Labour Court has failed to give any finding with regard to the fact that the workman was gainfully employed somewhere else or not. He has also argued that petitioner was holding a post of trust being appointed as Registrar of the hospital being run by TATA motors, as such he cannot be asked to be reinstated.

4. On the other hand learned Counsel for the respondent submits that now there is no question of reinstatement of respondent, since he has crossed the age of superannuation and that was the purpose of filing writ application in the year 2006 so that the respondent may not rejoin his service. However, respondent is entitled to get compensation in accordance with law. He has further submitted that now it has been settled by the judgment of the Hon"ble Supreme Court that the hospital run by TISCO or TELCO are establishment within the meaning of Shops and Establishment Act. He has relied in the judgment of the case [Tata Engineering and Locomotive Company Ltd. \(Now Tata Motors Ltd.\) Vs. The State of Jharkhand and K.D. Pandey](#) . He has further submitted that now since, petitioner has crossed the age of his superannuation, hence he is entitled for compensation in accordance with law.

5. In view of the judgment of the Supreme Court in the case of [Tata Engineering and Locomotive Company Ltd. \(Now Tata Motors Ltd.\) Vs. The State of Jharkhand and K.D. Pandey](#) , learned Counsel for the petitioner submits that it does not press the first point that hospital run by the petitioner- company is not covered u/s 26(2) of the Shops & Establishment Act and respondent is not an employee within the

meaning of shops and establishment act. He has further submitted that in view of the fact that the respondent has crossed the age of superannuation, compensation may be awarded to him equivalent to 3.33 years of salary including usual allowances as has been held in the case of *O.P. Bhandari v. Indian Tourism Development Corporation* reported in 1987 SC 111 under similar circumstances.

6. On the other hand learned Counsel for the respondent relied on the judgment reported in [Bihar Caustic and Chemicals Ltd. Vs. Kripa Pandey](#), where in a similar case, workman- respondent had crossed the age of superannuation and he was directed to be given 50% of the back wages in terms of the Labour Court award.

7. Thus, after hearing both parties and after going through the laws and judgments relied upon, I find that now it has been finally settled in the judgment of Supreme Court reported in the case of [Tata Engineering and Locomotive Company Ltd. \(Now Tata Motors Ltd.\) Vs. The State of Jharkhand and K.D. Pandey](#), by which judgment Hon'ble Supreme Court confirmed the judgment of the Division Bench of the Patna High Court where it has been held that Tata Main Hospital at Jamshedpur is an establishment within the meaning of Section 2(6) of the Bihar Shops and Establishment Act, 1951 and it is covered by the aforesaid act. The Hon'ble Supreme Court has found as under:

So far as the definition of business is concerned, it is clear from the facts that right from the beginning when the hospital was established, it was catering to the needs of the employees and their families at TISCO and its associated companies but at the same time it was open for the government servants and private patients also. The government servants and private patients were charged for their treatment in the Hospital.

8. Similar finding has been given by the Labour Court in the instant case that the hospital was catering to the needs of the workers and their families as well as to the general people on payment and accordingly, the Labour Court also found that it is an establishment within the meaning of the Shops and Establishment Act.

9. In that view of the matter, I find nothing to differ with the finding of the Labour Court. Moreover, the other finding are also based on the finding of the fact based on the evidence and it is now settled law of the judgment of the three judges bench of Supreme Court in the case reported in [Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives](#), as also another Judgment reported in [Mrs. Rena Drego Vs. Lalchand Soni, Etc.](#), that the High Court cannot interfere with the finding of the fact regard to the Subordinate Court or Tribunal while exercising its jurisdiction under Article 227. Its function is limited since, the subordinate court and Tribunal function within the limits of its authority. It cannot correct the mere error of fact and by examining all evidences and re-appreciation.

10. In that view of the matter, the finding of the fact arrived at by the Labour Court with regard to the fact that the management failed to prove that respondent-employee committed any misconduct and the finding that termination was illegal and accordingly, directed his reinstatement does not requires any interference by this Court and the same is accordingly, confirmed. However, since admittedly the respondent- workman, Dr. K.D.Pandey has crossed the age of his superannuation, there is no question of he being reinstated. In that view of the matter, the judgment of the Hon"ble Supreme Court as relied by the respondent in the case reported in [Bihar Caustic and Chemicals Ltd. Vs. Kripa Pandey](#), in the case of [Bihar Caustic and Chemicals Ltd. Vs. Kripa Pandey](#), where in the Hon"ble Supreme Court in a similar situation considering the workman has crossed the age of superannuation, directed in the ends of justice to make payment of back wages @ 50% will be applicable in the instant case.

11. Accordingly, the impugned judgment which is directed for reinstatement of the respondent with back wages is modified and for the ends of justice, since the respondent has crossed the age of superannuation, he will be given 50% of the back wages in terms of the Labour Court Award from the date of his termination till the date of his superannuation. The said amount shall be paid to the respondent within 3 months from the date of this judgment. If any payment has already been made as back wages , the same will be adjusted from the amount payable in terms of this order. The workman - respondent is also directed to fill up all the forms and complete the formalities for getting retirement benefits and other benefits.

12. With the aforesaid direction / modification in the impugned order , the application is dismissed.