

(2014) 05 JH CK 0041

Jharkhand High Court

Case No: LPA No. 545 of 2006

Ram Naresh Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: May 9, 2014

Acts Referred:

- Bihar Shops and Establishments Act, 1953 - Section 26, 26(2)
- Industrial Disputes Act, 1947 - Section 10(1)(c)

Citation: (2014) 3 LJLR 87

Hon'ble Judges: R. Banumathi, C.J; S. Chandrashekhar, J

Bench: Division Bench

Advocate: Kalyan Roy, Advocate for the Appellant; G.M. Mishra, Advocate for the Respondent

Judgement

R. Banumathi, C.J.

This Letters Patent Appeal is preferred against the order dated 21.7.2006 passed in CWJC No. 2669 of 1999(R), dismissing the writ petition and declining to issue direction for reinstatement of the appellant with full back wages. The Appellant was appointed on 3.9.1976 as a Security Guard by the 2nd respondent-Bharat Refractories Limited. The services of the appellant was terminated on 27.10.1980. Pursuant to the representation by the appellant, he was allowed to resume duties with effect from 6.9.1980 till 14.4.1981. On 15.4.1981, the appellant was again orally terminated by the Security Officer of the 2nd respondent without any notice and without following the principles of natural justice. The appellant filed an application under Section 26 of the Bihar Shops and Establishments Act and the same was registered as B.S.E. Case No. 1 of 1991. By order dated 26.6.1992 the Presiding Officer, Labour Court, Bokaro Steel City in B.S.E. Case No. 1 of 1991 dismissed the complaint holding that the Labour Court had no jurisdiction to entertain the complaint, in view of the fact that the provisions of Bihar Shops and Establishments Act, 1953 would not be applicable, in the facts and circumstances of the case. It was

observed that the appellant is at liberty to raise an industrial dispute and get the same referred under Section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication.

2. Being aggrieved by the dismissal of his application, the appellant filed CWJC No. 2669 of 1999. Vide order dated 21.7.2006, the learned Single Judge dismissed the writ petition holding that the Labour Court did not commit any wrong in deciding the question of jurisdiction as a preliminary issue. The learned Single Judge further held that the reason assigned by the Labour Court that the 2nd respondent-Company was engaged in production, manufacture and marketing of the Fire Bricks etc., which was under the control of the Union, and, therefore not a "Establishment" within the meaning of Bihar Shops and Establishments Act, is perfectly legal and valid and on those findings dismissed the writ petition.

3. Challenging The order of the Writ Court, the learned counsel for the appellant submitted that the learned Single Judge did not appreciate the order passed by the Labour Court in B.S.E. Case No. 4 of 1961 in respect of a similarly situated employee where the termination order was set aside and reinstatement with full back wages was allowed. It was further submitted that challenging the said order of the Labour Court, the management filed writ petition in CWJC No. 211 of 1985(R) and the same was dismissed on 10.7.1989 and the same was challenged by the Management by filing an intra Court appeal in L.P.A. No. 110 of 1989(F), which was also dismissed. The learned counsel further submitted that the finding of the Labour Court that an ex-employee of Bharat Refractories Limited cannot maintain a Complaint Petition under Section 26 of the Bihar Shops and Establishments Act is not justified and the learned Single Judge committed serious error in dismissing the writ petition without considering the merit of the case.

4. We have heard Mr. G.M. Mishra, learned counsel appearing for the 2nd respondent. Learned counsel for the respondent submitted that the appellant, Ram Naresh Singh, was terminated from service on 15.4.1981 and Section 26(2) of the Act prescribes the outer limit of 90 days for filing the application from the date of order of dismissal or discharge or termination of employment and the complaint filed in BSE Case No. 1/1991 was not maintainable. It was further submitted that by the order dated 26.6.1992 passed in BSE Case No. 1/1991, the Labour Court decided the preliminary issue regarding the maintainability of the complaint petition under Section 26 of the Act holding that respondent is not an establishment within the ambit of the Bihar Shops and Establishments Act and there is no reason warranting interference with the reasoned findings. It was further submitted that the case of the appellant, Ram Naresh Singh, stands entirely on a different footing and the appellant, Ram Naresh Singh, is not similarly situated as that of Ram Nath Sharma.

5. The Labour Court (in BSE Case No. 1 of 1991) while holding that the 2nd respondent is not an "establishment" within the meaning of Bihar Shops and Establishments Act has observed that the Parliament has taken under its control the

"Ceramics Industry" and, therefore the Parliament alone is empowered to enact laws for the Management and control of the employees of the 2nd respondent and, therefore the provisions of Bihar Shops and Establishments Act, 1953 cannot apply to the employees of the 2nd respondent and, therefore Labour Court has got no Jurisdiction to entertain the complaint under Section 26 of the Bihar Shops and Establishments Act.

6. Another Security Guard, namely Ram Nath Sharma, a similarly situated employee was also terminated like the appellant. The said Ram Nath Sharma filed a complaint under Section 26 of the Bihar Shops and Establishments Act before the Labour Court in B.S.E. Case No. 4 of 1981. In the said B.S.E. Case No. 4 of 1981, the Labour Court set aside the action of the 2nd respondent-Company in terminating the services of said Ram Nath Sharma and directed that he should be reinstated with full back wages and other benefits. That order was confirmed by the High Court in CWJC No. 211 of 1985(R), which was further confirmed by the Division Bench in L.P.A. No. 110 of 1989(R).

7. In the complaint petition filed by the appellant, even though the appellant has referred to the case of the said similarly placed employee Ram Nath Sharma and the order passed in B.S.E. Case No. 4 of 1981, which was affirmed by the High Court, the Labour Court committed error in not taking into consideration the finding referred in CWJC No. 211 of 1985(R). Without considering the finding in the case of Ram Nath Sharma, the Labour Court erred in saying that the provisions of Bihar Shops and Establishments Act, 1953 cannot apply and that it should not apply to the employees of the 2nd respondent-Company. In our considered view, the learned Single Judge ought to have considered the order passed in the case of similarly situated employee whose termination was set aside and ordered to be reinstated with full back wages.

8. It was contended that the case of Ram Nath Sharma is entirely different and is not similar to that of the appellant, Learned counsel for the respondent submitted that after tracing out the documents relating to Ram Nath Sharma, it was noticed that after the order was passed in BSE Case No. 4/1981, it was not the case of reinstatement but it was a case of fresh appointment and the said Ram Nath Sharma was appointed to the post of unskilled worker in the pay scale of Rs. 510-107570-11-636/-. It was further contended that when the appellant has approached the authorities under the Bihar Shops and Establishments Act in 1991 after ten years of his termination, the appellant cannot claim himself to be similarly situated as that of Ram Nath Sharma.

9. As far as the case of Ram Nath Sharma is concerned, in the supplementary counter-affidavit it is stated that Ram Nath Sharma was a daily rated employee working as Home guard on a daily wages of Rs. 13/- per day for the period from 14.4.1981 to 28.2.1985 and he was getting daily wages of Rs. 13/- per day. The termination order of the said Ram Nath Sharma was set aside by the Labour Court

in BSE Case No. 4 of 1981. The order passed in BSE Case No. 4/1981 was confirmed by the writ court in CWJC No. 211/1935(R) by order dated 18.7.1989. The order passed in CWJC No. 211/1985(R) was confirmed by the Division Bench in LPA No. 110/1989(R) by the Order dated 29.9.1989. Though the order of appointment of Ram Nath Sharma dated 16th March, 1991 is stated to be a fresh appointment, the fact remains that only after the management unsuccessfully challenged the order passed in CWJC No. 211/1985(R), the said Ram Nath Sharma was appointed.

10. As in the case of Ram Nath Sharma, the appellant was also engaged as daily rated employee as security guard from 3.9.1976 till 27.10.1980 and thereafter from 8.9.1980 till 14.4.1981, in our considered view, the appellant is similarly situated as that of Ram Nath Sharma. Following the judgment rendered in LPA No. 110/1985(R), the order of the learned Single Judge passed in CWJC No. 2669/1999(R) is liable to be interfered with.

11. As pointed out earlier, Ram Nath Sharma was reinstated in 1991 in the pay scale of Rs. 510-10/570-11-636/-. Had the appellant been reappointed, perhaps the appellant would have been reappointed in the said scale of pay. The services of the appellant were terminated way back in 1981. Now, he is already said to have attained the age of superannuation. The appellant is not working for more than three decades and, therefore the 2nd respondent cannot be directed to notionally reinstate the appellant and pay the back wages.

12. It is pertinent to note that the appellant has not adduced any evidence to show that he has not been gainfully employed over the years. In the facts and circumstances, the interest of justice will be met directing the respondent to pay a lump sum compensation of Rs. two lakhs in lieu of reappointment/reinstatement of the appellant. In the result, the order dated 21.7.2006 passed by the learned Single Judge in C.W.J.C. No. 2669/1999(R) is set aside and this LPA is partly allowed. The respondent-Management (now stated to be merged with Steel Authority of India) shall pay a lump sum compensation of Rs. two lakhs to the appellant in lieu of reappointment/reinstatement within a period of three months from the date of receipt of a copy of this order. On failure to pay the compensation within the stipulated period, the 2nd respondent shall pay interest at the rate of 6% thereafter.