Krishna Kumar Sharma Vs The State of Bihar and Others

Court: Patna High Court

Date of Decision: March 21, 1984

Acts Referred: Bihar Shops and Establishments Act, 1953 â€" Section 26, 26(1), 26(2)

Citation: (1984) PLJR 832

Hon'ble Judges: Uday Sinha, J; Satya Brata Sanyal, J

Bench: Division Bench

Advocate: D.N. Pandey, for the Appellant; Lakshmi Narain Mishra, for the Respondent

Judgement

Satya Brata Sanyal, J.
In this writ petition, the petitioner has prayed for quashing that part of the order by which the petitioner''s complaint

u/s 26 of the Bihar Shops and Establishments Act, 1953 (hereinafter referred to as ''the Act'') has been held to be barred by limitation in view of

the provisions of section 26(2) of the Act. The petitioner is said to be a muster roll employee of the Bihar State Electricity Board (respondent No.

2) and he was employed on the 10th April, 1974. He was, however, stopped to sign the attendance register with effect from the 25th January,

1977. The petitioner''s attendance was stopped from the said date. The petitioner made several representations to the authorities (Annexure-5

series) as to the reason for not taking his attendance, but his representations were not disposed of. Ultimately, he made a complaint on the 12th

May, 1978 to the Public Grievance Committee of the State Government (Annexure-6), whereupon the respondent-Board communicated to the

State authority on the 31st July, 1978 that his services had been terminated on and from the 25th January, 1977. The petitioner received a copy of

the said letter (Annexure-7) on the 22nd September, 1978, from the Chief Minister''s Secretariat, and, within three days of the receipt of the said

letter on the 25th September, 1978, the instant complaint u/s 26 of the Act was filed. The said complaint was entertained by the Labour Court and

the respondent-Board was asked to show cause as required under law; but no written statement was filed. The Board, however, participated in

the proceeding before the Labour Court and cross-examined the witnesses produced by the complainant in support of his complaint. The Labour

Court recorded the finding that the termination of the service of the petitioner on and from the 25th January, 1977, was without any reasonable

cause. The Labour Court, however, thereafter held that the petitioner had knowledge of his being shut out from work. Since the complaint was

filed on the 25th September, 1978, long after the said knowledge, it was barred by time. The Labour Court further held that no sufficient cause

had been shown by the petitioner for condonation of about one year"s delay in filing the complaint. Ultimately, because of its said finding on the

question of limitation, the complaint petition was dismissed.

2. Mr. Pandey, appearing for the petitioner-workman, contended that the Labour Court exceeded in its jurisdiction in dismissing the complaint on

the ground of limitation. According to the learned Counsel, he could know for the first time on the 22nd September, 1978 that his services had

been terminated from the letter of the Secretary of the Board. Prior to that, he was under the impression that he was wrongfully not allowed to sign

the attendance register. No order terminating his service was issued or served upon him. Therefore, the question of limitation does not arise at all.

He further contended that section 26 of the Act makes no distinction between various kinds of services, namely, whether one is permanent,

temporary, casual or probationary, etc. He submits that if a person be in whatsoever category-renders work for not less than six months, section

26 of the Act extends certain protection to such persons. The protection provided u/s 26 of the Act, according to the learned Counsel of the

petitioner, entitles them to one month"s notice or one month"s wages in lieu of such notice who have worked for not less than six months but upto

one year. The law entitles persons who have, however, worked for more than one year, to compensation as well, that is, 15 days" wages for every

completed year of service as provided under the second proviso to section 26(1) of the Act. The notice pay and the compensation is, however,

not payable, where the termination of service is for a misconduct. If it is for a misconduct, then the conduct must be enquired into and, only after

the completion of such an enquiry, the order of dismissal or discharge could be passed. Mr. Mishra, appearing for the Board, on the other hand,

contended that the petitioner was only a muster-roll daily, rated workman and he was, therefore, not entitled to any letter of termination or to any

notice to any compensation. He also submitted that the petitioner did not move the court with due diligence. On his own admission, according to

the learned Counsel, the petitioner was aware that his services had been terminated and, therefore, he ought to have filed the complaint within the

period laid down u/s 26(2) of the Act.

3. Section 26 of the Act is prefaced by the words ""Notice of the dismissal or discharge"". The said section deals with two kinds of situation; firstly,

where a person''s service is terminated for reasons other than misconduct, and, secondly, of cases where the termination is on account of

misconduct. In the first category of cases, it entitles the employee to a notice and further to compensation equivalent to fifteen days'' wages for

every completed year of service, but this is not allowable in case of misconduct. Sub-section (2) of section 26 of the Act contemplates that when

the termination is brought about either by dismissal or discharge or otherwise, the concerned person is entitled to make a complaint in writing in the

manner prescribed to the appropriate authority within ninety days of the receipt of the order of dismissal or discharge or termination of

employment. Sub-section (3) of section 26 also emphasises the receipt of an order of dismissal or discharge. Prior to the amendment of the Act,

the period of limitation prescribed was different. Rule 21 of the Bihar Shops and Establishment Rules, 1955 (hereinafter referred to as ''the Rules'')

lays down the procedure for filing a complaint. Rule 21(2) envisages that the complaint must be filed in the form of a memorandum setting forth

concisely the ground of objection to the order complained against and that the memorandum shall be accompanied by an affidavit. The

memorandum is further required to bear a court fee. After all this is done, the court is required to issue notice to the person complained against.

4. Section 26 of the Act confers benefit upon any employee who has been in employment continuously for a period not less than six months. This

section does not take notice of the character or the kind of services rendered by an employee. What it envisages is continuity of service for a given

period. If it be for not less than six months, section 26 provides for certain benefits as well as confers a right on an employee to make complaint to

the concerned authority within a certain period from the receipt of the order of termination. The scheme of section 26 and rule 21, in my opinion,

particularly in cases of persons in continuous employment for not less than six months, contemplates bringing about disengagement only by a

written order of termination. The words ""receipt of the order of dismissal or discharge or termination"" in section 26(2) read along with the prefix of

section 26 ""Notice of the dismissal or discharge"" exclude termination of the services of such persons by an oral order. If the termination of such an

employee is brought about by an oral order, I fail to conceive how a memorandum of complaint challenging the grounds of the order of dismissal

can at all be made. Further, it would bring about uncertainty as to the date wherefrom the period of limitation is required to be reckoned. It is,

therefore, manifest that the termination of service of a person continuously working for not less than six months can only be effected by a written

order, duly communicated. Admittedly, in this case, there has been no written order of dismissal. There has been no communication of such a

written order to the petitioner at any time prior to the filing of the complaint. The petitioner was forwarded a copy of the order vide Ex. 2 on the

22nd September, 1978. The complaint was filed within three days therefrom. The question, therefore, arises-whether in those circumstances the

Labour Court was justified in coming to the conclusion that the petition of complaint is barred by time.

5. Limitation starts running as provided under the Act from the receipt of the order of dismissal discharge/termination. The respondents have not

been able to show the receipt of any such order prior to the 22nd September, 1978. Further, there could be no receipt of the order of discharge

by the petitioner as the respondents themselves admit that there was no written order of termination of service as the petitioner was a muster-roll

employee. As there has been no written order duly communicated terminating the services of the petitioner, there can be no question of limitation at

all arising in this case. The limitation, if any, will run from the date when he received the letter terminating his service from the Grievance Committee,

that is, 22nd September, 1978.

6. A question may arise--Can a workman make inoperative the period of limitation by avoiding receipt of an order of dismissal or discharge? This

question, however, does not arise in the present case. According to the respondents, since the petitioner was a muster-roll workman, there was no

need of a written order of dismissal either to be notified or to be communicated to the workman concerned. Learned Counsel has placed before us

the Standing Orders of the respondent-Board which show that the workmen have been classified into five categories, namely, permanent,

probationer, temporary, casual and apprentice. There is no classification of muster-roll workmen in the Standing Orders. I have stated earlier,

section 26 makes no distinction between various classes of employees. One has to be only an employee u/s 2(4) of the Act. Section 26 gives

certain protection to ""employees"" who have worked for not less than six months continuously. Admittedly, the petitioner has worked for about

three years continuously. He was, as such, not only entitled to a notice and/or notice pay u/s 26 of the Act, but he was also entitled to a

compensation for fifteen days'' average wages for every completed year of service. The Labour Court has found that there was no reasonable

cause of termination of the petitioner''s service. That being the finding of the Labour Court, such termination was required to be preceded by a

mandatory notice as envisaged u/s 26(1) of the Act as well as compensation payable under the second proviso to section 26(1). None of these

things having been complied with, the termination per se is bad.

7. The finding of the Labour Court that the petition of complaint is barred by time for the reasons aforesaid is fit to be quashed. Admittedly, there

being no written order of dismissal or discharge, nor the dismissal or discharge having been notified, nor the same having been communicated and

received by the workman, there is no question of any limitation arising in respect of the petition of complaint entertained by the Labour court.

8. As I have found that the complaint petition could not have been treated as barred by limitation, the consequential relief flows from the order of

the Labour Court itself. Admittedly, the termination was not preceded by notice or notice pay accompanied by any compensation as envisaged

under the second proviso to section 26(1) of the Act. The result would be that the petitioner would be deemed to be continuing in service

throughout out the period and would be entitled to all consequential relief flowing from the continuity of service.

9. In the result, the order of the Labour Court in so far as it held that the petition of complaint is barred by time is quashed and the respondents are

directed to treat the petitioner as continuing in service and give all benefits arising out of the continuity of service till date. The petition is,

accordingly, allowed.

The petitioner shall also be entitled to costs; hearing fee Rs. 100/- (one hundred) only.

Uday Sinha, J.

I agree to the order proposed. I would, however, like to add that the Board has to thank itself for the result of this application. No written

statement was filed on behalf of the Board before the authority under the Bihar Shops and Establishment Act. In that view of the matter, the

conclusion in regard to the removal of the petitioner from service without a reasonable cause had to be a foregone conclusion. The question

whether a daily-rated workman can thwart the object of section 26 of the Act seems to be pertinent; but in that situation the employer should take

precaution of pasting or putting up the termination order on the notice board. There is no averment that anything of the kind was done. In that view

of the matter, I agree with my learned Brother that the petition must be allowed.