

NavIn Kumar Patra and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-03-1998

Judge : Prasun Kumar Deb, J.

Appeal No. : C.W.J.C. No. 3513 of 1997 (R)

Appellant : NavIn Kumar Patra and ors.

Respondent : State of Bihar and ors.

Disposition : Petition Dismissed

Prior history : Prasun Kumar Deb, J. 1. The petitioners were the workmen under Respondent No. 5. Their grievance is that the factory premises of Respondent No. 5 had declared lock out without giving any notice as required under Section 25 of the Industrial Disputes Act, 1947 (the Act) and the petitioners along with other workmen had been forcefully asked to take voluntary retirement under Voluntary Retirement Scheme being prepared by the authorities of Respondent No. 5 Prayer has been made for declaration th

Judgement :

Prasun Kumar Deb, J.

1. The petitioners were the workmen under Respondent No. 5. Their grievance is that the factory premises of Respondent No. 5 had declared lock out without giving

any notice as required under Section 25 of the Industrial Disputes Act, 1947 (the Act) and the petitioners along with other workmen had been forcefully asked to take voluntary retirement under Voluntary Retirement Scheme being prepared by the authorities of Respondent No. 5 Prayer has been made for declaration that the impugned notice dated 9,10.1997 as contained in Annexure-2 issued under the signature of Respondent No. 7 regarding closure of the factory is unlawful, improper and without jurisdiction and also for declaring the notice of voluntary Retirement Scheme dated 20.2.1997 as contained in Annexure-1 being unlawful, opposed to the public policy and hit by Section 23 of the Contract Act.

2. The main point involved in this writ application is whether the closure of the factory being declared by the notice as contained in Annexure-2 is illegal as the same is in contravention of Section 25O of the Act under Chapter V-B or under Section 25FFA under Chapter V-A of the Act,

3. For maintainability of the writ petition, another prayer has been made from the side of the petitioners for directing the Respondents Nos. 1 to 4 for taking action against the private respondents i.e. Respondents Nos. 5 to 8 as contemplated under the provisions of the Act. The petitioners' contention is that the private respondents had set up their factory and employed the petitioners along with many other workmen after taking permission from the State of Bihar and after getting better offer, they are trying to shift their factory to Manglore without taking permission from the State Government. How far the permission is necessary is dependent upon the provisions of the Act.

4. Some factual points are necessary to decide whether such permission is necessary or not as contemplated under Chapter V-A or Chapter V-B of the Act. Section 25FFA of Chapter V-A of the Act is applicable when the factory has got workmen upto the limit of 50. In that case, a notice is required to be given to the Labour authorities before the closure prior to 60 days. But if the number of workmen is 100 and above then Chapter V-B is applicable and under Section 25O, permission of the State Government is necessary. Some consequential affects are there in both the sections. If Section 25FFA of the Act is applicable then the only requirement is to give notice to the State Government and closure is to be made

after the expiry of the period of notice, but if any violation is there then there are penal provision against the employer. But under Section 25O of Chapter V-B, prior permission is necessary and more stringent policy are there for the purpose of closure. In the writ petition or in its rejoinder, no where it has been mentioned as to the number of workmen in the factory on the date the closure notice has been given or prior to it. On the other hand, in the counter-affidavit, it was specifically stated that the number was less than fifty and, as such, Section 25FFA of the Act was applicable. It appears from the side of the workmen that the matter has already been raised before the Labour authorities as contained in Annexure-4 and the matter is completely within the jurisdiction of the Labour authorities to decide as to what action is to be taken either under Chapter V-A or V-B of the Act. Such jurisdiction of the Labour authorities cannot be taken under the writ jurisdiction of this Court. When the matter is under enquiry then the State Government is aware through the Labour Department and further direction from this Court is not necessary.

5. Mr. A.K. Sinha, Senior Advocate, appearing for and on behalf of the petitioners have raised various points regarding public policy and also the maintainability of the writ petition. According to him, even if the petitioners have taken voluntary retirement forcefully and such forceful act has been objected by them, then they come within the purview of the definition of the workmen' under the Act but even if applicable to the petitioners, then also, that is concerned about the industrial dispute within the arena of the Labour Department and the Industrial Tribunal. For the purpose of writ jurisdiction, there remains limited scope for taking action against the private authorities as barred under Article-12 of the Constitution of India. When there is a prayer for directing the State authorities to take action then in that sense, there may be scope of maintainability of the writ petition under Article 226 of the Constitution of India but as I have already mentioned above that when the matter has already been raised before the Labour authorities, the same may be pursued by the petitioners and until and unless some decision is arrived at, this Court cannot enter into that field exclusively within the jurisdiction of the Act.

6. Mr. K.D. Chatterjee, Senior Advocate, appearing for and on behalf of the private respondents, has submitted that the factual aspect regarding the number of workmen at the relevant time was the crux of the action to be taken by the State Government and when the matter is already within the seisin of the State Government, even if this writ petition is maintainable then also this Court cannot pass any order as the Labour Department is in seisin of the matter and thus such disputed fact regarding the number of workmen can only be decided by the Labour department, when the matter has already been raised therein.

7. Thus I find that this writ petition is premature and the same is rejected. The interim order of stay passed by this Court on 14.1.1998 is hereby withdrawn. But it is made clear that Respondent No. 4 before whom the matter is now pending should take immediate action, if necessary, on the allegation being raised as contemplated under Annexure-4 and it is desirable that the should take action if not already taken within 15 days next on the completion of enquiry from the date of receipt of a copy of this order.

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