

Arbind Kumar Vs. B.S.E.B. and ors.

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Court : Patna

Decided On : Apr-20-2005

Judge : Rajendra Prasad and Rekha Kumari, JJ.

Acts : Industrial Dispute Act, 1947; Code of Civil Procedure (CPC) - Sections 114;
[Constitution of India](#) - Articles 226 and 227

Appeal No. : Civil Review No. 51 of 2003

Appellant : Arbind Kumar

Respondent : B.S.E.B. and ors.

Advocate for Def. : Mihir Kumar Jha, Adv.

Advocate for Pet/Ap. : Manu Shankar Mishra, Adv.

Disposition : Petition dismissed

Prior history : 1. Having heard learned counsel Mr. Manu Shankar Mishra appearing for the petitioner and learned counsel Mr. Mihir Kumar Jha appearing for the respondents on the point of limitation and finding sufficient cause for not preferring this review petition within the period of limitation prescribed by law we condone the delay in filing the review petition and proceed to hear learned counsel Mr. Manu Shankar Mishra appearing for the petitioner and learned counsel Mr. Mihir Kumar Jha appearing for the

Judgement :

1. Having heard learned counsel Mr. Manu Shankar Mishra appearing for the petitioner and learned counsel Mr. Mihir Kumar Jha appearing for the respondents on the point of limitation and finding sufficient cause for not preferring this review petition within the period of limitation prescribed by law we condone the delay in filing the review petition and proceed to hear learned counsel Mr. Manu Shankar Mishra appearing for the petitioner and learned counsel Mr. Mihir Kumar Jha appearing for the respondents on the point of admission.

2. The petitioner filed a writ petition under Articles 226 and 227 of the [Constitution of India](#) bearing CWJC No. 11604/93 in this Court for quashing the order dated 25.9.1993, contained in Annexure 14/1, issued under the signature of the Secretary, Bihar State Electricity Board, Patna cancelling the appointment of the petitioner as unskilled khalasi as well as the consequential order dated 1.10.1993 (Annexure 14) issued by the General Manager-cum-Chief Engineer, Bhagalpur Area Electricity Board, communicating the aforesaid order to the petitioner.

3. As it appears the substance of the petition was that the petitioner was initially appointed as Typist on a contingent basis on 3.8.1988 and he continued as such. On 29.3.1989, the Bihar State Electricity Board (hereinafter referred to as the 'Board') took a policy decision for regularisation of the services of the persons continuing on contingent/muster-roll basis' for a year or more and for the said purpose a Committee was duly constituted Superintending Engineer, Electrical Circle, Dumka sent a list of eligible persons including the petitioner to the Deputy Director of Personnel, Bhagalpur for regularisation of services but no decision was taken in the matter. On 29.1.1992 the petitioner was appointed provisionally as unskilled khalasi vide Annexure 4. On 24.2.1992 the appointment of the petitioner as unskilled khalasi made on 29.1.1992 by the General Manager was cancelled. Thereafter, the petitioner had come to this Court in CWJC No. 3322/92 challenging the order dated 24.2.1992 whereby and whereunder this Court quashed the aforesaid order on the ground that the said order was passed in violation of principles of natural justice with an observation that if the authorities concerned want to proceed further in the matter then they may pass a fresh order after

observing the principles of natural justice. It further appears that even after order of termination of the petitioner having been quashed by this Court this petitioner was not allowed to join and so petitioner represented the matter before the concerned authority. In the meantime on 25.6.1993 petitioner was served a show cause notice as to why his services be not terminated and after consideration of show cause filed by this petitioner the petitioner was again terminated vide order dated 25.9.1993 (Annexure 14/1 of the writ petition). The petitioner challenged the aforesaid order dated 25.9.1993 on the ground that in view of the policy decision of the authority the services of the petitioner should have been regularised as he had worked more than one year and that similarly situated persons have been regularised. The said writ petition challenging order dated 25.9.1993 was dismissed on merit. It further appears that the petitioner assailed order dated 10.5.1995 passed by learned Single Judge in CWJC No. 11604 of 1993 in L.P. A. No. 581 of 1995 which was also dismissed by order dated 17.1.2003.

4. By filing the instant review petition under Section 114 of the Code of Civil Procedure read with Clause 10 of the Letters Patent of the High Court of Judicature at Patna the petitioner sought review of order dated 17.1.2003 passed in L.P.A. No. 581 of 1995.

5. As many as eighteen grounds for filing this review petition appear to have been taken in this review petition which are produced below and they are :

(I) For that there are few apparent errors of record in the impugned order.

(II) For that the learned Single Judge as well as the appellate Court committed an error of record that the petitioner has not completed one year before 23.3.1989 as the petitioner was engaged on contingent basis on 22.2.1989.

(III) For that the petitioner has been appointed on the post of Khalasi on regular pay scale and not on daily wage basis as recorded in the impugned order.

(IV) For that the petitioner has contended in the letter patent appeal that he was engaged on contingent basis on 22.2.1988 and not on 28.3.1988 as recorded in the impugned order.

- (V) For that the petitioner was never disengaged on 29.3.1989 as recorded in the impugned order.
- (VI) For that the petitioner sought setting aside of impugned order dated 25.9.1993 and 1.10.1993 (Annexure 14/1 and 14/a) where by his regularisation based on policy decision (Annexure 2) was cancelled.
- (VII) For that the letter patent appeal has been filed as learned Single Judge has not applied his judicial mind with respect to sanction letter contained in Annexure A, B and C of the counter affidavit of the respondent.
- (VIII) For that the aforesaid L.P.A. has been filed against the inference drawn by the learned Single Judge with respect to letter dated 23.11.1989 (as contained in Annexure F) and his coming to the conclusion that aforesaid letter has clarified that policy decision of the respondent of regularisation of service vide Annexure 2 was not applicable in the case of person engaged on contingent basis.
- (IX) For that the learned Single Judge missed to appreciate that respondent have given different ground in their counter affidavit in defending the impugned order dated 25.9.1993 whereas in the same impugned order altogether different ground has been given for cancellation of appointment of the petitioner as unskilled khalasi.
- (X) For that in the impugned order of the writ the respondent have cancelled the appointment of the, petitioner on the post of unskilled khalasi on the ground that it was violation of order dated 24.7.1981 which has imposed ban on engagement of a person without prior approval of the Chairman of the Board and the same was not done in the case of the petitioner.
- (XI) For that in the counter affidavit filed by the respondent it has been stated that the appointment of the petitioner was illegal on the ground of letter dated 29.11.1989 (Annexure E).
- (XII) For that the respondent defended the cancellation of appointment of the petitioner on the ground of letter dated 23.11.1989 (Annexure E) in their supplementary counter affidavit.

(XIII) For that the respondent contended in the letter patent appeal that since the senior to petitioner were not regularised hence the case of the petitioner could not be regularised.

(XIV) For that the petitioner has been appointed on the post of khalasi vide order No. 110, dated 29.1.1992 (as contained Annexure 4) and mentioning of Word provisional was due to tradition of such appointment letter as has been done in the case of others moreover the same was provisional as requisite papers were to be verified.

(XV) For that the petitioner has not received intermittent engagement rather since 22.2.1988 to 28.1.1992 (as evident from Annexure 18) was engaged on contingent basis for typing work barring few days in between and thereafter he was appointed on the post of unskilled khalasi on 29.1.1992 and hence neither he was engaged casually nor job he performed in above said period was casual or temporary.

(XVI) For that it is evident from the record of the case that the petitioner discharged continuous service within the meaning of the Industrial Dispute Act, 1947.

(XVII) For that it is also evident from letter dated 1.10.1993 (as contained in Annexure 4) that the respondent No. 3 has treated the petitioner as workman while cancelling the appointment of the petitioner as he was given salary of one month and other related benefit as per statutory provision of Industrial Dispute Act, 1947.

(XVIII) For that if the impugned order is not reviewed it will cause miscarriage of justice to the petitioner.

6. Though so many grounds for filing this review petition appear to have been taken the main thrust of contention of learned counsel Mr. Manu Shankar Mishra appearing for the petitioner is that the finding of Division Bench that the petitioner may have received intermittent engagement by the Board is an apparent error of record. To substantiate his contention learned counsel referred Annexure 6 to CWJC No. 11604/1993 whereby and whereunder in CWJC No. 3322 of 1992 the Division Bench had set aside the order of termination dated 24.2.1992 of the

petitioner and contended that as the Division Bench in CWJC No. 3322/1992 had set aside the order of termination dated 24.2.1992 of the petitioner as illegal and as per Division Bench the legal position was that the petitioner continues as usual the finding by the Division Bench in L.P.A. No. 581 of 1995 that the petitioner may have received intermittent engagement by the Board is an apparent error of record and so the order of Division Bench passed in L.P.A. No. 581/1995 may be reviewed.

As against this learned counsel Mr. Mihir Kumar Jha, appearing for the respondents contended that finding of Division Bench that the petitioner may have received intermittent engagement by the Board cannot be termed as an apparent error of record as the said finding was on merit. It was further contended that one of the grounds of filing this review petition taken by the petitioner that not only the Appellate Court but also the learned Single Judge had committed an error of record indicates that though the petitioner had knowledge that error of record was also committed by the learned Single Judge but no such review petition was filed before the learned Single Judge and so review petition of Division Bench for the same apparent error of record cannot be maintainable. The further contention of the learned counsel for the respondents was that it was known to the petitioner that there had been apparent error of record in the judgment of learned Single Judge and so the petitioner should have preferred a review petition before learned Single Judge itself and as no such review petition was preferred before learned Single Judge and Division Bench decided the matter on merit no review petition for reviewing the order of Division Bench shall lie.

7. We have heard learned counsel for the parties and also have gone through the judgment passed in L.P.A. No. 581 of 1995. We find neither any mistake or error apparent on the face of the record or any other sufficient reason so as to review order dated 17.1.2003 passed in L.P.A. No. 581 of 1995.

In the result, the review petition is dismissed in limine.

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