

Pramod Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-12-2001

Judge : Radha Mohan Prasad, J.

Appeal No. : Civil Writ Jurisdiction Case No. 1140 of 1991

Appellant : Pramod Kumar

Respondent : The State of Bihar and ors.

Disposition : Petition Dismissed

Judgement :

Radha Mohan Prasad, J.

1. In this writ petition the petitioner has challenged the validity of the Award dated 8-11-1990 passed by the Presiding Officer, Labour Court, Chapra in Case No. 1/91 to the extent whereby the Labour Court has upheld the validity of his termination and further held that except this petitioner all other workmen are entitled to reinstatement with full back wages and consequential benefits.

2. In short, the relevant facts are that at the instance of the petitioner and 7 other workmen who were terminated from the services of the respondent Bank, namely Chapra District Central Co-operative Bank Ltd. Chapra (hereinafter to be referred to as 'the Bank') the dispute was referred to the Labour Court under Section

10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as 'the Act'). The Labour Court vide impugned order contained in Annexure-1, on consideration of facts and circumstances and the evidence held that the termination of the workmen except the petitioner is not proper and justified and in view of the discussions made therein held that all the workmen except the petitioner are entitled to payment of full back wages with consequential benefits vide Annexure-1. The Labour Court held that provisions of Section 25F of the Act will come into play and non-compliance of the said provisions will render the retrenchment as invalid.

3. In so far as the case of the petitioner is concerned the Labour Court held that as compared to others he was not appointed, no appointment letter was issued, nor there is any acceptance of his joining in the bank and hence he could not come under the definition of workmen. In this regard he referred to the evidence of MW/1.

4. Despite service of notice the respondent Bank has neither entered appearance nor filed any counter-affidavit in the present case.

5. Learned Counsel for the petitioner, however, submitted that in view of the statement of the petitioner on oath who was examined as WW/2 that he had worked from 17-12-1987 to 6-3-1989 and that there are documents and registers available in the office of the bank to show that he worked, the respondent Bank was obliged to produce the said documents. This having not been done by the respondent-Bank, the Labour Court has erred in law in rejecting the Claim of the petitioner.

6. This Court is unable to accept the said submission of the learned Counsel for the petitioner. Merely because the petitioner in his evidence stated that he had worked w.e.f. 17-12-1987 to 6-3-1989 and that there are documents and register available in the office of the Bank to show that he worked during the said period, the respondent Bank was not obliged to produce any document to dispute the said statement of the petitioner. Particularly in view of the specific denial by the Management Witness No. 1 who categorically stated that neither any appointment letter was issued nor any joining report was received in the Head Office of the

Bank. Besides this he also stated that the petitioner never marked attendance in the register of the Bank. In fact, the onus was on the petitioner to prove his case in order to get any benefit of the provisions contained in Section 25F of the Act. It is not the case of the petitioner that he ever filed any application before the Labour Court seeking appropriate direction against the respondent Bank to produce any document or register which according to him was relevant to show that he continuously worked during the period 17-12-1987 to 6-3-1989 and was paid remuneration for the same regularly. Labour Court has rightly considered that, if for the sake of argument it is assumed that the petitioner had worked in the Bank even then it is to be seen whether he had any authority to do the work in the Bank and whether he was duly appointed in the Bank or whether his joining report was accepted and paid for the alleged work done by him. In the absence of evidence the Labour Court has answered them in negative and thus, has rightly held that the petitioner cannot come under the definition of workman thus, obviously the provisions contained in Section 25F of the Act is not at all attracted in his case.

7. According, this Court does not find any infirmity in the impugned order warranting interference. The writ petition is thus dismissed but without cost.