

Suresh Prasad and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-10-2004

Judge : R.S. Garg, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 12, Rule 6; [Industrial Disputes Act, 1947](#) - Sections 11A

Appeal No. : Civil Writ Jurisdiction Case No. 11294 of 2003

Appellant : Suresh Prasad and ors.

Respondent : The State of Bihar and ors.

Advocate for Pet/Ap. : Prem Kumar Jha, Adv.

Disposition : Petition dismissed

Judgement :

R.S. Garg, J.

1. Heard learned counsel for the petitioners.

2. On the last date it was submitted before the Court that the matter is not proceeding before the Labour Court and the petitioners who are terminated employees are suffering a great hardship. This Court called for a report from the concerned Labour Court. The Presiding Officer, Industrial. Tribunal, Patna, has

sent the report. According to him, office of the Labour Court is vacant but since after passing of the impugned order on 16.6.2003, the present petitioners made an application before the Labour Court that they want to file a writ petition in the High Court and thereafter they went on making prayers for adjournments of the case enabling them to file the stay order from the High Court. When these facts were brought to the notice of the learned counsel for the petitioners, he submitted that the petitioners never prayed for time to produce the stay order but in fact they prayed for time on the ground that the matter is pending in the High Court. The fact remains that the matter was adjourned because of the prayers made by the petitioners and not because of the lapses on the part of the management or on the part of the Presiding Officer of the Court.

3. Coming to the merits of the matter, it has to be seen that a reference was made by the State Government into the validity of the termination of the petitioners. The management appeared before the Labour Court and filed its reply. In its reply, they submitted that no show cause was given, no charge-sheet was served and no inquiry was made. It was submitted by them that looking to the surcharged atmosphere and the misconduct on the part of the employees in mishandling the Vice Chairman of the establishment, they had to terminate their services. It was further pleaded that though they were justified in terminating the services but if the Court finds that without an inquiry services could not be terminated then they be given opportunity to lead evidence in Court to justify the order of termination.

4. It appears that they made an application or prayer to the Court for an opportunity to lead evidence. It appears that thereafter, one Mr. Gogte, a witness for the management was examined in Court on 18.8.2000 and 8.3.2000. Before he could be cross examined an application was filed under Section 11A of the Industrial Disputes Act read with Rule 6 Order XII of the Code of Civil Procedure submitting, inter alia that if, the provisions of law before issuing the order of termination have not been observed then the order of termination be declared to the null and void and on the strength of the admission made in the written statement a final order be passed in favour of the applicants by the Labour Court. The application was hotly contested and by the impugned order dated 16.6.2003, the said application has been rejected.

5. Learned counsel for the petitioners submitted that from a fair understanding and perusal of Section 11A of the Industrial Disputes Act read with Rule 6 Order XII of the Code of Civil Procedure it would be clear that when an admission is made then on the strength of the admission, a decree can be granted or an order can be passed.

6. True it is that if there is absolute and complete admission without any reservation on the part of the person making the admission, then on the strength of such admission, a final order can be passed but in case a qualified admission is made or where certain rights are reserved by the person making the admission then on the basis of such admission a final order cannot be passed.

7. In the present case it appears from the records that the Management prayed for an opportunity to lead evidence to justify the termination and such opportunity had already been given. Even otherwise in the matter of Workman of Firestone Tyre and Rubber Company of India (P) Ltd. v. Management, AIR 1973 SC 1227 the Supreme Court has observed that even if no inquiry has been held by an employer or after the inquiry held by him is found to be defective, the tribunal, in order to satisfy itself, about the legality and validity of the order has to give an opportunity to the employer and the employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action and then to the employee to adduce evidence to the contrary.

8. When the Court was in the midst of its dictation the counsel got up and said that Section 11A of the Industrial Disputes Act has been brought in the book subsequent to the judgment of the Supreme Court, therefore, effect of Section 11A of the Act would not be diluted or whittled down by the said judgment of the Supreme Court.

9. Section 11A of the Industrial Disputes Act provides as follows :-

'11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in

the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

10. Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

11. It confers powers on the Labour Court and Tribunal etc that when it is satisfied that an order of discharge or dismissal was not justified, it may by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions as he thinks fit.

12. In the opinion of this Court Section 11A of the Act would not dilute the judgment of the Supreme Court. If for some technical reasons the inquiry is held to be bad then proper opportunity will have to be given to the employer to justify the action taken by it.

13. It was next submitted that as no charge-sheet was submitted against the petitioner and they were not placed under suspension, their right has been adversely affected. It is also the argument that because of straight termination, their right of appeal is lost.

14. In the opinion of this Court this argument is an argument of frustration. It is not necessary in the administrative world to place a person under suspension and pay him subsistence allowance for the period ad in finitum. The right of appeal accrues in favour of a person if final orders are passed. If the right of appeal was available to the petitioners then after receiving the orders of termination they could certainly prefer the appeal if the law permitted them. In the present matter, the petitioners chose the forum of reference by the coming to the Labour Court.

15. It was then submitted that the orders passed by the employers were contrary to the standing orders and provisions of law. In the opinion of this Court this question is not required to be considered by this Court at this stage. It would be for the Labour Court to consider the same. The question before this Court simply is whether the Court below was justified in rejecting the petitioners application filed under Rule 6 Order XII of the Code of Civil Procedure read with Section 11A of the Industrial Disputes Act.

16. After going through the records and findings recorded by the Court below, I am unable to hold that the Court below was unjustified in rejecting the application. Even for the sake of repetition I must again observe if the admission is absolute and complete and is unqualified only then a decree can be granted on the basis of the admission. In the present case, I do not find such admission infavour of the petitioners.

17. The petition is dismissed.

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