

Raj Kishore (Substituted) Vs. State of Bihar and ors.

Raj Kishore (Substituted) Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/136502

Court : Patna

Decided On : Jul-27-1999

Judge : Narayan Roy, J.

Appeal No. : C.W.J.C. No. 5075 of 1990

Appellant : Raj Kishore (Substituted)

Respondent : State of Bihar and ors.

Advocate for Def. : Mr. K.N. Gupta

Advocate for Pet/Ap. : Mr. D.N. Pandey

Disposition : Application Dismissed

Judgement :

Narayan Roy, J.

1. Heard Mr. D.N. Pandey, learned Counsel for the petitioner and Mr. K.N. Gupta, learned Counsel for the respondent No. 2.
2. An order passed under Section 33(2)(b) of the Industrial Disputes Act (hereinafter referred to as 'the Act') is under challenge in this writ application.
3. Learned Counsel appearing on behalf of the petitioner submitted that the application for approval under Section 33(2)(b) of the Act was filed, before the

petitioner was dismissed. Learned Counsel further submitted that the petitioner was dismissed without paying one month salary to him, as required under the Proviso to Section 33(2)(b) of the Act. Lastly, learned Counsel for the petitioner submitted that there was no fair inquiry and there was denial of principles of natural justice to the petitioner and, therefore, approval accorded by the respondent No. 3, Deputy Labour Commissioner, Muzaffarpur as contained in Annexure-1 is wholly unwarranted and without jurisdiction. Learned Counsel further submitted that the petitioner was dismissed from service on 1-10-89 whereas the application under Section 33(2)(b) of the Act was filed by the employer on 30-9-89 before taking action against the petitioner.

4. A counter-affidavit has been filed on behalf of the respondent No. 2 controverting the statements made in the writ application. Learned Counsel appearing on behalf of the respondent No. 2 submitted that the petitioner was dismissed on 30th September, 1989 and simultaneously an application was filed by the employer before the respondent No. 3 under Section 33(2)(b) of the Act. Learned Counsel further submitted that before the order of dismissal was passed by the employer, so far as the petitioner is concerned, one month salary was already paid to him and, therefore, requirements of law, as envisaged under Section 33(2)(b) of the Act and its proviso have already been complied with. Learned Counsel further submitted that there was fair inquiry and the petitioner was afforded sufficient opportunity to defend himself and, thus, principles of natural justice was follows.

5. From Annexure-A to the counter-affidavit, it would appear that vide letter dated 30th. September, 1989, the petitioner was communicated that he has been dismissed from service with effect from 30th September, 1989 and one month salary along with rest of the subsistence allowance for the period of suspension has already been sent to him through money order. The petitioner was also informed by this letter that in case any other dues is there, he may approach the officer concerned for getting necessary payment.

6. From Annexure-1 to the writ application which is the order of approval under Section 33(2)(b) of the Act, it would appear that the learned Deputy Labour

Commissioner, respondent No. 3 having received the application of the employer on 30th September, 1989 heard the matter on 31-10-89, 2-12-89, 30-12-89 and 1-2-90. It also appears from Annexure-1 that both the sides were heard in the matter and they produced the defence in writing and at the same time, on behalf of the employer entire record of the domestic inquiry was produced for perusal. It would also appear from Annexure-1 that the Deputy Labour Commissioner, respondent No. 3, has scrutinised the matter and has held that the inquiry held by the employer was in accordance with the Standing Order and rules and the principles of natural justice was adhered to. The learned Deputy Labour Commissioner, prima facie as it appears, was satisfied that it was a case of dismissal based on legal evidence and action of the employer was in bona fide.

7. There is nothing on record to show nor any statement has been made in the writ application categorically that one month salary was not paid to the petitioner before the order of dismissal dated 30th September, 1989 was passed in compliance of proviso to Sub-section (2)(b) of Section 33 of the Act rather it is evident from Annexure-A to the counter-affidavit that in compliance of Section 33(2)(b) of the Act, one month salary was paid to the petitioner.

8. I have discussed above that the, petitioner was dismissed on 30th September, 1989 and simultaneously an application was filed before the authority concerned for according approval under Section 33(2)(b) of the Act.

9. It is settled that an application for approval under Section 33(2)(b) of the Act should be filed immediately to show that it was part of the action for which the approval was sought for. Admittedly, in this case application for approval was immediately filed after taking action against the petitioner and filing of the application and taking action against the petitioner must be, therefore, held to be simultaneously. In this connection, reference can be made to the case of Strawboard Manufacturing Company v. Gobind : (1962)ILLJ420SC .

10. In view of the discussions aforesaid, I find no force in the submissions of the learned Counsel for the petitioner and it must be held that requirements of Section 33(2)(b) of the Act are fully complied with.

11. In the result, I find not merit in this application. It is, thus, dismissed but no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com