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Shishir Kumar Mukherjee Vs. Management of Bata Shoe Store

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Court : Jharkhand

Decided On : Aug-07-2015

Appellant : Shishir Kumar Mukherjee

Respondent : Management of Bata Shoe Store

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(L) No. 3253 of 2007 Shishir Kumar Mukherjee, son of late Bamapada Mukherjee, resident of village & P.O. Pandadih, P.S. Sonahatu, District Ranchi ... Petitioner Versus Management of Bata Shoe Store, Lower Bazar Branch, Main Road, Ranchi through its Manager ... ... Respondent CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioner : Mr. Ashok Kumar Pandey, Advocate For the Respondent : Mr. Dhirendra Kumar Deo, Advocate Order No. 06 Dated: 07.08.2015 Aggrieved by award dated 26.09.2006 in Reference Case No. 3 of 2004, the present writ petition has been filed.

2. The brief facts narrated in the writ petition are that, the petitioner was employed as Peon in the year, 1986 and thereafter, he was designated as Shop Assistant in Bata Shoe Store, Ranchi. On the allegation of active trade union activities, the petitioner was terminated from service on 04.07.1994. This gave rise to an industrial dispute which culminated into award dated 12.11.1998 in Reference Case No. 15 of 1996 holding the termination illegal. The respondent was directed to reinstate the petitioner with full back wages from the date of termination, that is, 04.07.1994. The award challenged by the respondent in C.W.J.C. No. 2411 of

1999(R) was dismissed on 21.03.2001. The Letters Patent Appeal preferred by the respondent against dismissal of writ petition also stood dismissed on 13.06.2001. Thereafter, the petitioner was permitted to join on 29.06.2001. A demand was raised by the Union on behalf of the petitioner for regularisation of his service with effect from 04.07.1994 and for payment of arrears of salary. After the conciliation failed, the 2 following reference was made vide notification dated 24.03.2004. Whether not to regularise the services of Shri Shishir Kumar Mukherjee, Shop Assistant, M/s Bata Shoe Store, Lower Bazar, Main Road, Ranchi is justified? If yes, then since when & what other relief he is entitled to?

3. In support of the claim of the workman two witnesses were examined. The management also examined two witnesses. The Labour Court answered the reference in negative vide award dated 26.09.2005.

4. Heard the learned counsel for the parties.

5. The learned counsel for the petitioner submits that this Court in C.W.J.C. No. 2421 of 1999(R) affirmed the finding of Labour Court that the workman worked regularly and he was paid salary from the fund of the management and therefore, it was not open to the respondent to challenge appointment of the petitioner. It is further submitted that the management filed written statement admitting that the petitioner was employed by it and he continued to work with M/s Bata Shoe Store and therefore, the petitioner was entitled for regularisation. Per contra, the learned counsel for the respondent submits that the petitioner was not a regularly appointed workman and therefore, he cannot claim wages equal to the regular workman and thus, he is not entitled for regularisation.

6. I have carefully considered the contentions of the learned counsel for the parties and perused the documents on record.

7. Before the Labour Court the workman examined himself and he admitted that he was appointed on a temporary post. He was not appointed through a selection process and he did not produce his educational qualification certificate. He admitted that no advertisement was issued and he was appointed by the Shop Manager. The management took a stand that appointment of 3 the petitioner was

illegal. He does not possess the requisite qualification of salesman. The petitioner did not produce appointment letter and W.W.2 admitted that during festive season adhoc appointments are made. The Labour Court in award dated 12.11.1998 has recorded as under: In the instant case admittedly the concerned workman was not appointed according to Rules laid down in Ext. A. Admittedly Ext. A is not applicable in the case of temporary appointment. Admittedly the concerned workman was appointed by the manager who had power to appoint and the concerned workman was being paid from the fund of Bata India Ltd. It is not in dispute that prior to termination of temporary workman also compliance of provision of Section 25F is mandatory. In case of removal from service of temporary workman without complying provision of Section 25F, the concerned workman is entitled for reinstatement with back wages as termination is void ab initio and the concerned workman is deemed to be in service. Thus the concerned workman is entitled for relief of reinstatement with full back wages and consequential benefits.

8. The aforesaid finding in award dated 12.11.1998 was not challenged by the workman. The award was challenged by the respondentM/s Tata Shoe Store and it failed. Thus, the findings recorded by the Labour Court in award dated 12.11.1998 stood confirmed after dismissal of L.P.A. No. 212 of 2001. As noticed above, in award dated 12.11.1998 the Labour court has held that the workman was not appointed according to Rules and he was appointed by a person who had not authority to appoint him. The standing order of the respondentCompany has been held not applicable in case of temporary appointment. For a technical reason the termination order dated 04.07.1994 was held illegal. The petitioner raised a grievance that in pursuance of award dated 12.11.1998 he should have been appointed as regular employee. On appreciation of evidence led by the parties, the 4 Labour Court came to a conclusion that the petitioner is not entitled for regularisation. In Syed Yakoob v. K. S. Radhakrishnan reported in AIR 1964 SC 477, the Supreme Court has observed as under:

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued

for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.....

9. Considering the above facts, no ground is made out for 5 interference with award dated 26.09.2006 and accordingly, the writ petition is dismissed. (Shree Chandrashekhar, J.) Manish/N.A.F.R.

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