

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.593 of 2018

In

Civil Writ Jurisdiction Case No.12436 of 2017

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Bihar State Rajya Path Parivartan Nigam Karamchari Sangathan Son of Late Suresh Mishra, Parmanand Niketan, Annie Besant Road, P.S.- Pirbahore, District- Patna.

... ... Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Transport Department, Bihar.
3. The Bihar State Road Transport Corporation, through its Managing Director, Sultan Palace, Birchand
4. The Administrator, Bihar State Road Transport Corporation, Sultan Palace, Birchand Patel Path, Patna
5. The Labour Commissioner, Bihar.

... ... Respondent/s

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Respondent-Corporation facing severe financial crunch not in a position to regularize the remaining employees as per settlement dated 11.07.1988. (Para-31) there was a settlement between the appellant-Union and 'the Corporation' in the year 1988 and then in the year 1990- Union choose not to avail remedy under Industrial Disputes Act, as directed by this court in CWJC No. 12926/09 to enforce the settlement arrived at- no right to be regularized as arising from the settlement- No interference is required in the reasoned order LPA dismissed. (Para-31,39,40)

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- 5. The Labour Commissioner, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Siddhartha Prasad, Advocate
For the Respondent/s : Mr. P.K. Verma, Sr. Advocate
For the Nigam : Dr. Anand Kumar, Advocate
For the State : Mr. Naman Nayak, AC to AAG-13

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 05-10-2023

Heard the parties.

2. The present appeal has been preferred by the Bihar State Rajya Path Parivahan Nigam Karmchari Sangathan (henceforth for short ‘the Union’) through its General Secretary assailing the order dated 02.04.2018 passed by the Hon’ble



Single Judge in C.W.J.C. No. 12436 of 2017 by which the writ application was dismissed holding that the grievance raised by the writ petitioner was already considered and negated in CWJC No. 12926 of 2009 stating therein that the members of the petitioner- Association have no right of continuity considering the dismal financial condition of the Corporation.

3. The appellant-Union is representing the casual workers engaged in the Bihar State Road Transport Corporation (henceforth for short 'the Corporation').

4. The case as narrated by the appellant-writ petitioner is/are that:

5. Altogether 925 persons were appointed in 'the Corporation' on the casual basis prior to 1985. Out of them, 425 were regularized in the first phase subsequent to the settlement arrived at in the year 1988, but the remaining 500 members who were supposed to be taken in the second phase were not considered by 'the Corporation'.

6. It is important to note that the first round of litigation started in the year 1985 when the petitioner-Union approached this Court by filing writ application bearing CW.J.C No. 3460 of 1985 with the prayer for regularization of their services. The said writ application was dismissed vide an order



dated 02.09.1985.

7. Against the said order of dismissal, Civil Appeal no. 1509 of 1987 was preferred before the Hon'ble Supreme Court of India. It was disposed of on 16.12.1987 with three fold directions:

a) to prepare reasonable scheme for the regularization of casual employees who have been working for more than a year;

b) the salaries and allowances be paid to them at par with the minimum pay in the pay scale of regularly paid employees in the corresponding cadres of the Corporation;

c) to pay all the arrears payable pursuant to the order.

8. Subsequent to the said order, a Review petition (C) no. 381/1988 was preferred by respondents. However, side by side the respondent authorities also took steps for an amicable settlement with the petitioner-Union and finally they entered into an agreement/settlement on 11.07.1988 whereby it was agreed to regularize 425 casual labourers in the first phase.

9. In view of the compromise arrived at between the parties, Hon'ble Apex Court declined to interfere/entertain the review application and disposed it of on 30.10.1990.

10. However, as the respondents failed to act further, a



letter was sent by the Union to the then Hon'ble the Chief Justice, Patna High Court. It came to be registered as CWJC No. 973 of 1993 which was disposed of vide an order dated 21.02.1994 directing the respondents to implement the order of Hon'ble Apex court in four months. The SLP preferred by the State Government against the order dated 21.02.1994 was also dismissed by the Hon'ble Apex Court.

11. However, as no regularization process took place and 'the Corporation' vide an order dated 02.09.2009 instead decided for the removal of the casual workers w.c.f 10.09.2009 citing its financial condition. The claim of the petitioner-Union is/was that till then, work was being taken by 'the Corporation' intermittently and they were not permanently disengaged at any point of time.

12. Being aggrieved with the said order dated 02.09.2009, C.W.J.C No. 12926 of 2009 was preferred before Patna High Court. It was disposed of vide an order dated 06.10.2009 with the observations/directions that 'the Corporation' will look into the aspect that no statutory mandate is violated and if any person claims that they have been paid less than the Minimum Wages Act, then it would be open for them to raise those claims and 'the Corporation' would be bound to



consider the same. The other observations given by the Writ Court against the removal was that it would be open for the employees to take steps under the Industrial Dispute Act.

13. Aggrieved by the said order dated 06.10.2009 passed in C.W.J.C No. 12926 of 2009, the appellant -Union filed LP.A no. 1412 of 2009 which too came to be dismissed vide an order dated 08.04.2010.

14. Against the said order dated 08.04.2010 passed in LP.A No. 1412 of 2009, appellant-Union preferred SLP (Civil) No. 22998 of 2010. It was disposed of on 16.02.2015/ 16.03.2015 with the observation that appellant may approach the Commissioner of Labour for settlement of their claims.

15. It would be relevant to state here that thereafter the appellant-Union filed Contempt Petition (Civil) no. 481 of 2016 before the Hon'ble Apex court as respondents were not taking steps towards the compliance of order dated 16.02.2015/16.03.2015 passed in SLP (Civil) No. 22998 of 2010.

16. During the pendency of contempt application, Commissioner of Labour, Bihar Patna passed the impugned order dated 23.09.2016 with the direction to retrench the members of appellant-Union under 25 N(A) of Industrial



Disputes Act with following observations:

(i) the dues payment will be made in accordance with the Minimum Wages Act as fixed by the Bihar Government;

(ii) Gratuity amount will be paid in terms of payment of Gratuity Act, 1972.

17. Thereafter the contempt application taken up was directed to be closed by the Hon'be Apex Court vide an order dated 17.07.2017 after taking note of the said order dated 23.09.2016 passed by Labour Commissioner with further observation:

It would be open for the petitioner to challenge the order passed by the Commissioner of Labour in accordance with law.

18. The appellant-petitioner thereafter moved in writ petition before the Patna High Court with the following prayers:

i) to issue writ in the nature of certiorari to quash memo no. 3/D- 39/2015-310 dated 23.09.2016 passed by the Labour Commissioner, Bihar (respondent no 5) in an arbitrary manner and misconstruing/misinterpreting the order dated 16.02.2015 read with order dated 16.03.2015 passed by Hon'ble Apex court in Special Leave to Appeal (C) no. 22998/2010 by invoking section 25



N (a) of the Industrial Dispute Act to retrench them and further prayer to make payment of due amount on the basis of minimum wages fixed by Bihar Government.

ii) to issue writ to quash the newspaper publication issued by 'the Corporation' in consequence of the order dated 23.09.2016 passed by respondent no. 5;

iii) to issue further writ in the nature of mandamus directing the respondents especially respondent no. 5 to Act in a manner circumscribed by Hon'ble Apex Court in Special Leave to Appeal (C) no. 22998/2010 as well as the earlier settlement made in the year 1988 and 1990.

iv) to issue writ in the nature of mandamus directing respondent no. 5 to consider the settlement of the year 1988 and 1990 and if "corporation" is proposing for one time settlement then the long service rendered be also considered and the settlement be done after giving a proper and reasonable compensation so that they may be able to maintain their livelihood.

19. The matter was taken up by the writ court on 02.04.2018 and having gone through the facts of the case, the Hon'ble Single Judge dismissed the writ petition. It is essential to incorporate the relevant paragraphs of the order which read as follows:



“I have heard learned counsel for the parties and perused the record.

In my opinion, the writ petition raising several issues cannot be entertained in view of the fact that the grievances raised by the petitioner were already considered earlier by this Court in CWJC No.12926 of 2009 in which it was clearly held that the members of the petitioner association have no right of continuity more so in the dismal financial situation of the Corporation. This Court also observed that it would be open to the petitioner to take remedy under the Industrial Disputes Act, if they are so advised. The order passed by the learned Single Judge was affirmed by the Bench and in the appeal preferred before the Supreme Court also no relief was granted to the petitioner and the order of this Court was not interfered with. However, the Supreme Court gave liberty to the petitioner to approach the Commissioner of Labour for settlement of claim. After the Labour Commissioner passed the order when the petitioner raised the issue before the Supreme Court in contempt petition, the Supreme Court did not find any merit in the plea of the petitioner regarding disobedience of the order passed by the Supreme Court. However, while closing the contempt petition, the Supreme Court observed that the petitioner may challenge the order passed by the Commissioner of Labour in appropriate proceeding in accordance with law.



Thus, the issues apart from the order of the Commissioner Labour raised by the petitioner in the writ petition has already attained finality. So far as challenge to the legality of the order of the Commissioner of Labour is concerned, the petitioner has efficacious statutory remedy under the Industrial Disputes Act which has been enacted with a view to provide a special procedure for resolving industrial disputes between the workmen and the employer. It is well settled law that the High Court ordinarily would not entertain a petition under Section 226 if an effective statutory remedy is available to the aggrieved person. No case has been made out by the petitioner in order to enable me to entertain the writ petition in spite of availability of alternative efficacious remedy.

Accordingly, the writ petition is dismissed with liberty to the petitioner to challenge the order passed by the Commissioner of Labour in accordance with law before the appropriate forum”.

20. Aggrieved, the present appeal.

21. Heard learned Counsel for the parties.

22. Learned Counsel appearing for the appellant-writ petitioner submits that the respondents having entered into a settlement on 11.07.1988, when 425 out of 925 casual ‘Samwahak’ and 162 casual helpers were regularized in the first



phase on 15.08.1988; it cannot be allowed to go back from its agreement.

23. The further submission is that on 08.08.1990, another agreement was entered between the Union and 'the Corporation' relating to the regularization of the casual workers till the list is exhausted.

24. However, as they went back from their words, CWJC No. 12926 of 2009 was filed which was dismissed on 06.10.2009 (Annexure-6 to the writ petition) with the following observations:

“The last grievance of the petitioner’s Union is that their members’ service have now been terminated. It is not in dispute that the members of petitioner’s Union are not permanent or regularised employees of the Corporation. They are casual workers or daily wages. They have no right of continuity more so in the decimal financial situation of the Corporation. It is open to them to take such remedial measure as may be available to them under the Industrial Disputes Act, if they are so advised.

With these observations and directions, the writ petition stands disposed of”



25. The LPA No. 1412 of 2009 preferred was dismissed on 08.04.2010 and in the SLP vide SLP (C) No. 22998 of 2010 so filed, the Hon'ble Apex Court on 16.02.2015 left the issues open for the Labour Commissioner to decide the same. This was further clarified vide an order dated 16.03.2015 which read as follows:

“ In view of the order dated 16th of February, 2015 these proceedings are ended with a clarification that the petitioner may approach the Commissioner of Labour for settlement of the claim.

The Special Leave Petition is disposed of.”

26. Learned Counsel for the appellant-petitioner submits that the Labour Commissioner in its order dated 23.09.2016 completely overlooked the settlement held earlier in the matter. He further submits that the respondents could not have been allowed to use the mechanism of pick and choose in regularizing the services of the some of the casual workers while ignoring the others.

27. Further, the Hon'ble Single Judge failed to take into account the observation of the Hon'ble Apex Court to the



Labour Commissioner to consider the case for settlement of the claim.

28. The next submission put forward by the learned counsel is that most of the members have crossed 50 years of age and thus cannot be engaged in other jobs, have been paid lump sum amount and thus have put their future in dark. Here we cannot but notice, the claims arose as on 1985 and the direction of the Hon'ble Supreme Court to frame a scheme was in the year 1987. We are almost 36 years from the date of the directions issued and 38 years from the date on which the claims arose in the year 1985. Even a 25 year old, in the year 1985 would be past the age of 60 as of now. There is not even one person aggrieved who is arrayed as petitioner in the writ petition. The General Secretary of the appellant is now 66 years old. In the year 2016 when the impugned order was passed every one would have crossed 50 years of age.

29. We have heard the contentions put forward by the learned counsel for the appellant and also perused the records of the case. Though there indeed was a settlement between the appellant-Union and 'the Corporation' in the year 1988 and then in the year 1990, the fact remains that once 'the Corporation' vide its letter dated 02.09.2009 stopped taking work from the



casual workers effective 10.09.2009 due to its weak financial condition, the appellant-Union approached the Patna High Court in CWJC No. 12926 of 2009 which was dismissed on 06.10.2009 with an observation that they are free to take remedial measure under the Industrial Disputes Act.

30. The appellant-Union instead chose to prefer appeal vide LPA No. 1412 of 2009 which came to be disposed of on 08.04.2010. The appellate Court declined to interfere with the order of the Hon'ble Single Judge. The appellant-petitioner thereafter filed SLP (C) no. 22998 of 2010. It was taken up by the Hon'ble Apex Court on 16.02.2015.

The Hon'ble Apex Court in its order dated 16.02.2015 held as follows:

“After hearing Mr. Nagendra Rai, learned Senior Counsel appearing for the petitioner and Ms. Aparna Jha, learned counsel appearing for Bihar State Road Transport Corporation/Respondent Nos. 2 and 3, we find that by virtue of the earlier orders of this Court dated 16.12.1987, a settlement was reached on 11.7.1988 by the Corporation with its Union, which provided for regularization of 425 casual Samwahak and 162 casual helpers by 15.8.1988 and the rest of the casual employees in the second phase. However, it is stated that out of 587 employees who were to be regularized in the First Phase by 15.8.1988, only 377 came to be



regularized leaving 210 casual employees who are now being represented by the petitioner. The Division Bench having declined to grant any relief, the petitioners have come forward with this special leave petition. In the course of hearing, taking note of the stand of the respondent-Corporation that the Corporation is facing severe financial crunch and is not in a position to regularize the remaining employees covered by the Settlement dated 11.7.1988, we suggested that the issue can be left to the Commissioner of Labour to decide as to whether the members of the petitioners for whom relief is claimed based on 11.7.1988 are covered by the Settlement and in which event by way of one time settlement what is the amount that can be paid taking into consideration their long service rendered prior to 1987.

Learned counsel appearing for the Corporation seeks time to get instructions on the above suggestion.

Call this matter next week.”

31. From the perusal of the aforesaid order dated 16.02.2015, it is clear that the Hon'ble Apex Court took into account the stand of the respondent-Corporation that it is facing severe financial crunch and is not in a position to regularize the remaining employees as per the settlement dated 11.07.1988. In that background, it observed that the matter be sent to the



Labour Commissioner to decide whether in case of such petitioners who were part of 11.07.1988 settlement, one time settlement can be made.

32. The matter was once again taken up by the Hon'ble Apex Court on 16.03.2015 and the following order was passed:

“In view of the order dated 16th of February, 2015 these proceedings are ended with a clarification that the petitioner may approach the Commissioner of Labour for settlement of the Claim.

The Special Leave petition is disposed of.”

33. As the respondents thereafter sat over the matter, Contempt Petition (Civil) No. 481 of 2016 was preferred before the Hon'ble Apex Court.

34. This followed the order dated 23.09.2016 by the Labour Commissioner, Bihar, Patna whereby and whereunder after detailing out the entire history, it passed the following order:

(i) the Corporation shall make notice payments of three months in terms of section 25-N(1)(a) of the Industrial Dispute Act, 1947 to the retrenched workmen;



(ii) it shall also pay the dues amount in case the payments have not been made as per the wages prescribed by the State Government and

(iii) it shall pay the gratuity amount in terms of the payment of Gratuity Act, 1972.

35. Thus while passing the order dated 23.09.2016, the Labour Commissioner beside making directions for the payment for three months under Section 25A(a) of the Industrial Disputes Act also acknowledged their entitlement for payment of the due amount for which they have worked and the payment under the Gratuity Act, 1972.

36. The Hon'ble Apex Court thereafter took up the contempt petition and vide an order dated 17.07.2017 observed that *the Court had not given any direction for regularization of the services of the petitioner, they may challenge the same in appropriate proceedings in accordance with law (Annexure-11 to the petition). It thus closed the contempt petition.*

37. The petitioner-Union thereafter preferred CWJC no. 12436 of 2017 which was dismissed by the Hon'ble Single Judge on 02.04.2018 by a reasoned order which has now been challenged in the present appeal.



38. Having gone through the facts of the case, the submissions put forward by the learned counsel counsel for the appellants, we hold that in view of the admitted fact that ‘the Corporation’ was facing severe financial crunch, as no direction was given by Hon’ble the Apex Court for their regularization, the stand of the Honble Single Judge in upholding the decision of the Labour Commissioner as contained in memo no. 3/D-39/2015-310 dated 23.09.2016 cannot be faulted upon.

39. The time has now come to close the matter as the respondent-Corporation being in dire straits, it cannot be forced to consider regularization of the members of the appellant-Union. The petitioner-Union and their members did not choose the resort of availing the remedies under the Industrial Disputes Act, as directed by this Court on 16.10.2009; in CWJC No. 12926 of 2009, to enforce the settlement arrived at. The order dated dated 16.02.2015 in SLP (C) No. 22998 of 2010 led to the Hon’ble Supreme Court directing the Labour Commissioner to consider an one time settlement. The Hon’ble Supreme Court ordered thus taking into account the dire financial condition of the Corporation; in effect putting to nought any right to be regularized as arising from the settlement.

40. No interference is required in the reasoned order



dated 02.04.2018 passed by the writ Court in CWJC No. 12436 of 2017.

41. The LPA No. 593 of 2018 stands dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18.10.2023
Transmission Date	

