

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL REVIEW No.16 of 2020

In

Letters Patent Appeal No.691 of 2017

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Sri Uma Shankar Ram, Son of Sri Lalgiram Ex Staff Clerk Bank of India, Resident of Village- Bharhria, Post Office- Deohalia, Police Station Ramgarh, District- Rohtas (Sasaram).

.....Petitioner.

Versus

1. The Bank of India through the Chairman and Managing Director, having the office at Head Office, Star House C-5 G-Block Bandra Kurla Complex, Bandra East, Mumbai.
2. The Zonal Managers Bank of India having his office at Zonal Office Chhatrapati Shivaji Maharaj Tower Birchand Patel Marg, Patna.
3. The Union of India through the Secretary Ministry of Labour and Employment, New Delhi.
4. The Chief Labour Commissioner (Central) New Delhi.
5. The Assistant Director, I.R. (IMPI), Ministry of Labour and Employment, New Delhi.
6. The Regional Labour Commissioner (Central), Patna, Bihar.
7. The Assistant Labour Commissioner (Central) Ministry of Labour, Government of India, Maurya Lok Complex, Block -A, 2nd Floor, Dak Banglow, Patna, Bihar.

.....Opposite Parties.

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Cases referred:

- Shah Babulal Khimji Versus Jayaben D. Kania & Another, (1981) 4 SCC 8
- Sh. Jogendrasinhji Vijaysinghji Versus State of Gujarat and others reported in AIR 2015 Supreme Court 3623
- Shahu Shikshan Prasarak Mandal and Ors. Vs. Lata P. Kore and Ors. reported in MANU/SC/4178/2008
- Employer in Relation to Management of Central Mine Planning and Design Institute Ltd. Versus Union of India (UOI) and others reported in MANU/SC/0053/2001

Review petition - filed to determine the question of law as to whether LPA is maintainable or not.

Award of Industrial tribunal was challenged before the learned Single judge. LPA was filed against the order of learned Single judge which was dismissed as not maintainable.

Held - Hon'ble Supreme Court has held that order passed under Section 17-B of the Industrial Disputes Act is a Judgment within the meaning of Clause-10 of the Letters Patent of Patna and is, therefore, appealable. The cited decision is squarely applicable to the case in hand to entertain the LPA. (Para 9)

Civil review is allowed. (Para 10)

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Appearance :
For the Petitioner : Mr. Birendra Kumar Jha, Advocate.
For the UOI : Mr. Ratnesh Kumar, Senior CGC.
Mr. Aditya Anand, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 09-07-2024

On the previous occasion, having regard to the involvement of question of law, Mr. Pratik Kumar Sinha, learned counsel, submitted that he would assist in the matter. Accordingly, we have permitted him to address the matter on



question of law as to whether L.P.A. is maintainable or not?

2. The present Civil Review No.16 of 2020 is arising out of L.P.A. No.691 of 2017. Coordinate Bench on 13.12.2019 proceeded to dispose of the L.P.A. No.691 of 2017 as not maintainable against the order of the learned Single Judge under Article 226 of the Constitution of India. Coordinate Bench relied on a decision of the Hon'ble Supreme Court in the case of **Shah Babulal Khimji Versus Jayaben D. Kania & Another, (1981) 4 SCC 8.**

3. Brief facts of the case are that appellant-Civil Review Petitioner was an employee of Bank of India. He was dismissed from service, resultantly, he raised industrial dispute. Dispute was referred vide Reference No.90 of 1997. The Central Government Industrial Tribunal (No.2) at Dhanbad proceeded to pass award against the appellant-Civil Review Petitioner. The award dated 19.12.2011 and its communication to the appellant dated 05.07.2012 was the subject matter of litigation in C.W.J.C. No.17124 of 2012. Such writ petition was filed under Articles 226 and 227 of the Constitution of India. Writ petition was dismissed while affirming the award passed by the Central Government Industrial Tribunal (No.2) at Dhanbad dated 19.12.2011. Thus, L.P.A. No.691 of 2017 was



filed. Coordinate Bench dismissed the L.P.A. No.691 of 2017 on the score that L.P.A. is not maintainable. Hence, the present Civil Review No.16 of 2020 involves on the question of law as to whether L.P.A. is maintainable or not?

4. Learned counsel Mr. Pratik Kumar Sinha submitted that Coordinate Bench has committed error in rejecting the L.P.A. on the score that this L.P.A. is not maintainable with reference to the decision of the Hon'ble Supreme Court in the case of **Shah Babulal Khimji Versus Jayaben D. Kania & Another, (1981) 4 SCC 8.**

5. Learned counsel Mr. Pratik Kumar Sinha cited umpteen number of decisions in which it is interpreted Articles 226 and 227 of the Constitution of India and intra-court appeal/L.P.A. On this issue, he has cited the following decisions:

(i). **Sh. Jogendrasinhji Vijaysinghji Versus State of Gujarat and others reported in AIR 2015 Supreme Court 3623 (paras-6, 7, 14, 15 and 21).**

(ii). **Shahu Shikshan Prasarak Mandal and Ors. Vs. Lata P. Kore and Ors. reported in MANU/SC/4178/2008 (Civil Appeal No.5801 of 2008 (Arising out of SLP (C) No.16811 of 2006) decided on 23.09.2008 (paras-8 and 11)).**

(iii). **Employer in Relation to Management of Central Mine Planning and Design Institute Ltd.**



Versus Union of India (UOI) and others reported in MANU/SC/0053/2001 (Appeal (civil) 880 of 2001, SLP (C) 14516 of 1999, decided on 25.01.2001(paras-7, 9, 11, 13 and 14).

6. It is pointed out that even in respect of rejection of application under Section 17-B of the Industrial Disputes Act, passed by the Single Judge is amenable to Letters Patent Appeal. The Hon'ble Supreme Court has taken note of Clause-10 of the Letters Patent of the Patna High Court.

7. Core issue involved in the present lis is whether L.P.A. against the order of the learned Single Judge is maintainable insofar as challenge to the award of the Central Government Industrial Tribunal before the learned Single and further amenable under L.P.A. or not?

8. In the case of **Employer in Relation to Management of Central Mine Planning and Design Institute Ltd.** (supra), it is a case from the Division Bench of the High Court of Judicature at Patna, Ranchi Bench, L.P.A. No.177 of 1999 (R), decided on 9th August, 1999. In this case, the learned Single Judge has allowed the application under Section 17-B of the Industrial Disputes Act. Feeling aggrieved, by the employer, L.P.A. jurisdiction was invoked under Clause-10 of the Patna High Court Rules. L.P.A. Bench had decided to



the extent that L.P.A. is not maintainable. Feeling aggrieved by the L.P.A. Bench decision, Management preferred an appeal before the Hon'ble Supreme Court and it is numbered as Appeal (Civil) 880 of 2001, SLP (C) 14516 of 1999 decided on 25.01.2001. It is relevant to reproduce paragraphs 7 to 11 and 18 of the Judgment and it read as under:

“7. The short question that arises in this appeal is: Whether LPA No. 177 of 1999 (R), against the order of the learned Single Judge passed on an application under Section 17B of the I.D. Act, under Clause 10 of the Letters Patent of Patna, before the Division Bench of the High Court, is maintainable?

8. We may mention here that Clause 15 of the Letters Patent of Calcutta, Bombay and Madras is in wisdom terminus Clause 10 of the Letters Patent of Allahabad, Patna, Punjab & Haryana and Madhya Pradesh. It will be useful to read it here:

“15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.—

And we do further ordain that an appeal shall lie to the said High Court



of Judicature at Madras, Bombay, Fort William in Bengal from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of a revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, on or after the first day of February 1929 in the exercise of appellate



jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us. Our heirs or successors in Our or Their Privy Council, as hereinafter provided.”

Underline Supplied.

9. A close reading of the provision, quoted above, shows that it has three limbs; the first limb specifies the type of judgments of one judge of the High Court which is appealable in that High Court and the categories of judgments/orders which are excluded from its ambit; the second limb provides that notwithstanding anything provided in the first limb, an appeal shall lie to that High Court from judgment of one judge of the High Court or one judge of any Division Court, pursuant to Section 108 of the Government of India Act (now Article 225 of the Constitution of India), on or after



February 1, 1929, passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court where the judge who passed the judgment declares that the case is a fit one for appeal; and the third limb says that the right of appeal from other judgments of judges of the said High Court or such Division Court shall be to “us, our heirs or successors in our or their Privy Council, as hereinafter provided.”

10. Here, we are concerned with the type of judgments mentioned in the first limb.

11. The above analysis of Clause 15 of the Letters Patent will equally apply to Clause 10 of the Letters Patent of Patna. It follows that an appeal shall lie to a larger Bench of the High Court of Judicature at Patna from a judgment of one judge of the said High Court or one judge of any Division Court pursuant to Article 225 of the Constitution of India. The following categories of judgment are excluded from the appealable judgments under the first limb of Clause 10 of the Letters Patent:



“(i) a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a court subject to superintendence of the said High Court in other words no letters patent appeal lies to the High Court from a judgment of one judge of the High Court passed in second appeal;

(ii) an order made by one judge of the High Court in exercise of revisional jurisdiction; and

(iii) a sentence or order passed or made in exercise of power under the provisions of Section 107 of the Government of India Act, 1915 (now Article 227 of the Constitution of India) or in exercise of criminal jurisdiction.

Underline Supplied.

18. Adverting to the facts of this case. Section 17B of the I.D. Act confers valuable rights on the workmen and correspondingly imposes an onerous obligations on the employer. The order in question passed by the learned Single Judge determines the entitlement of the workmen to receive benefits and imposes an obligation on the



appellant to pay such benefits provided in the said section. That order cannot but be ‘judgment’ within the meaning of Clause 10 of Letters Patent, Patna. The High Court is obviously in error in holding that the said order is not judgment within the meaning of Clause 10 of the Letters Patent of Patna.”

9. The Hon’ble Supreme Court in the aforementioned decision held that order passed under Section 17-B of the Industrial Disputes Act on April 26, 1999 is a Judgment within the meaning of Clause-10 of the Letters Patent of Patna and is, therefore, appealable. The cited decision is squarely applicable to the case in hand to entertain the L.P.A. Thus, Coordinate Bench has committed error on the question of law insofar as in not entertaining the Letters Patent Appeal. The appellant-Civil Review Petitioner has made out a case so as to interfere with the Coordinate Bench Order dated 13.12.2019 passed in L.P.A. No.691 of 2017. Accordingly, the order dated 13.12.2019 passed by the Coordinate Bench in L.P.A. No.691 of 2017 stands recalled while restoring L.P.A. No.691 of 2017.

10. The present Civil Review No.16 of 2020 stands allowed.



11. Registry is hereby directed to list L.P.A. No.691 of 2017 before the concerned Roster Bench at the earliest.

12. We are extremely grateful to Mr. Pratik Kumar Sinha, learned counsel, for contributing his valuable time, his assistance in this matter and his appreciation is placed on record.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-Gaurav S.

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.07.2024.
Transmission Date	NA

