

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.643 of 2017

In
Civil Writ Jurisdiction Case No.15055 of 2012

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Bihar College of Pharmacy, New Bailey Road, Patna through Rajendra Kumar, the Chairman, Bihar College of Pharmacy, New Bailey Road, P.S. Khajpura, Dist. Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources Department, Bihar, Patna.
2. The Principal Secretary, Labour Resources Department, Bihar, Patna.
3. Kumar Ram Baran, Son of Late Yodhan Singh, Resident of Village- Sakra, P.O.- Siswan, P.S.- Hasua, District- Nawada.
4. The Learned Presiding Officer, Labour Court, Patna.
5. The Union of India through the Labour and Employment Department, Jaisalmer House, Mansingh Road, New Delhi.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Arun Kumar
For the Respondent/s : Mr.Ajay Kumar Rastogi-AAG10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 21-10-2019

Heard learned counsel for the parties.

The appellant is challenging the order dated 7.3.2017 passed in C.W.J.C. No. 15055 of 2012 by which the writ application filed by the petitioner has been rejected affirming the order of the Labour Court, Patna dated 19.1.2012 passed in Misc. Case No. 8 of 2005.

Kumar Ram Baran, the respondent no.3, claiming to be an employee of the Bihar College of Pharmacy (hereinafter to be referred to as 'the Pharmacy College') filed an application under



Section 33(c)(2) of the Industrial Dispute Act, 1947 (in short 'I.D. Act') for computation of arrears of salary which the workman is entitled to receive and the same should be computed in terms of the money.

The Pharmacy College was established in the year 1979 which was running under the control of Institute of Rural Adult Education and Primary Medical Training. As per claim made by the respondent no.3, the Pharmacy College was engaged in commercial and industrial activities. They were charging heavy fee from the students for imparting them medical education. They were also engaged in purchasing and selling of machineries, equipment tools, plants etc. to general public. The respondent no.3 was appointed as a Clerk by the competent authority. Accordingly, he joined the service in the year 1980. A claim has been made by the respondent no.3 that he has not been paid salary for the period from June, 1990 to April, 1994 amounting Rs. 52,795.10, from September, 1998 to February, 2000 amounting Rs. 63,360.00, from May, 2000 to December, 2000 amounting R. 28,160.00, from June, 2001 to July, 2001 amounting Rs. 7,040.00, from September, 2001 to June, 2002 amounting Rs. 38,000.00 and from November, 2002 to January, 2003 amounting Rs. 11,400.00 and the total amount has been claimed as Rs. 2,00,755.10 and claimed that the respondent no.3 was entitled for payment of salary from Pharmacy College. It has further been stated that when



the respondent no.3 made a demand for payment of salary, the authority of the appellant gave an assurance for payment of the same but, ultimately, the respondent no.3 did not receive the amount claimed in the application filed under Section 33(c)(2) of the Industrial Dispute Act. The case was registered whereafter notice was issued to the appellant, in turn, the Vakalatnama was filed on its behalf on 14.9.2005 but, no show-cause was filed whereafter the Labour Court passed the ex-parte order on 16.1.2006 against the appellant. On 26.4.2007, an application was filed on behalf of the opposite party to recall the ex-parte order which was dismissed on 26.4.2007. Again one application was filed on 26.9.2007 to recall the ex-parte order which was allowed on payment of cost of Rs. 300/- and, accordingly, the ex-parte order was recalled. The Labour Court directed to file show-cause, documents and list of witness but, nothing was filed by the appellant nor the cost of Rs. 300/- was deposited and, ultimately, the appellant vide order dated 25.4.2008 was debarred to file show-cause, documents and list of witnesses. Again an application dated 20.5.2008 was filed by the appellant to recall the order dated 25.4.2008 which was rejected vide order dated 8.8.2008 and the case was fixed for ex-parte argument whereafter one petition was filed again by the appellant for review of the order dated 8.8.2008. The said petition was again rejected vide order dated 1.10.2008 and the case was fixed for ex-parte argument. In the



meantime, the appellant filed writ application before this Court being CWJC No. 2792 of 2009 and this Court vide order dated 2.3.2009 stayed the further proceeding of the Misc. Case No. 8 of 2005 and, accordingly, the proceeding was kept in abeyance. The writ petition subsequently vide order dated 30.8.2011 was dismissed for want of prosecution whereafter the Labour Court has passed the order.

Learned counsel for the appellant has taken a point that the appellant is not an industry within the meaning of Section 2(j) of the Industrial Dispute Act as well as the respondent no.3 also does not fall within the definition of workman as provided under Section 2(s) of the Industrial Dispute Act as the appellant organization is imparting education as also involved in the commercial activity which has been stated in the application under Section 33(c)(2) and the issue is no longer res integra, it has already been decided in the case of *Raj Kumar Vs. Director of Education & Ors.* reported in **(2016) 6 SCC 541** wherein the issue came for consideration as to whether the educational institution comes within the meaning of Section 2(j) of the Industrial Dispute Act. The Hon'ble Apex Court examining the definition of industry has arrived to a finding that the educational institution is an industry but, the teachers does not fall under the definition of workman rather other than teachers are the workman within the definition of Section 2(s) of the Industrial Dispute Act. It is made clear that now the Industrial Dispute Act has



been amended in the year 1982 but, the amended definition of industry as per Section 2(j) has not been enforced and the definition of industry remains intact. The appellant has submitted that the claim of money has not been adjudicated upon by making reference as per Section 10 of the Industrial Dispute Act and, as such, the proceeding under Section 33(c)(2) is completely without jurisdiction and has placed reliance on three judgments, in the case of *Kishore Kumar Ambashtha & Ors. Vs. The State of Bihar & Anr.* reported in 2016 (4) *PLJR 929*, *M/s Arun Chemicals Industries Vs. The Certificate Officer, Bhagalpur* reported in 2009 (1) *PLJR 682* and *Prem Kumar Singh & Ors. Vs. The State of Bihar & Ors.* reported in 2009 (3) *PLJR 131* but, in the present case, the respondent no.3 has appeared and proved his case by bringing on record the oral and documentary evidence which has been discussed by the Labour Court in paragraph no.5 of the order. The workman has proved the dues chart of teacher and non-teaching staff (Ext.-1), Joint application of the workman regarding the demand of dues salary etc. (Ext.-2), Signature of principal on a proposal of Bihar College of Pharmacy dated 17.6.2002 (Ext.-3), Signature of Chairman on Ext.-2 (Ext.-3/1), Application of Kumar Ram Baran dated 6.9.2004 (Ext.-4), Application of Kumar Ram Baran dated 8.11.2004 (Ext.-4/1), Acquittance Roll of April, 1990 (Ext.-5), Acquittance Roll of May, 1994 (Ext.-5/1), Acquittance Roll of May 1995 (Ext.-5/2 and



Acquittance Roll of July 2001 (Ext.-5/3) and respondent no.3 has himself appeared in the dock and proved his case.

The appellant again made a complaint that they were not given chance to participate in the proceeding but, in a calculated manner, firstly they have filed a Vakalatnama, allowed proceeding to continue ex-parte whereafter ex-parte order was passed, thereafter an application for recall of the ex-parte order was filed, firstly it was rejected but, at the second instance, it was allowed on payment of cost of Rs. 300/- and the appellant was allowed to file written statement including list of witnesses and the list of documents but, no step was taken, ultimately, again, the case was fixed for ex-parte order which was challenged before this Court in the writ application, proceeding of the Labour Court was stayed but, ultimately, the petition was dismissed for non-prosecution. So in that manner, the appellant was given chance every time to participate in the proceeding but, on failure to avail an opportunity ultimately, the Labour Court has passed the ex-parte order and directed for payment of amount in favor of the respondent no.3. It is also clear that the claim made by the respondent no.3 has not been challenged. The appellant cannot blame either the Labour Court or this Court for the ex-parte order, if they want to give blame, they should blame themselves for not extending cooperation in the matter to participate in the proceeding.



From the records, it appears that the workman has proved his case by a valid piece of evidence by bringing the Acquittance roll as well as the chart prepared by the Accountant comprising list of teaching and non-teaching staffs and, inasmuch as, he appeared and examined himself as P.W.1.

In that view of the matter, there is no dispute left for dis-entitlement of salary to the respondent no.3.

This Court does not find any merit in this appeal and the same is, accordingly, dismissed. Hence, the judgment and the order of learned Single Judge is affirmed.

(Shivaji Pandey, J)

(Partha Sarthy, J)

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