

A M/S. BIHAR CAUSTIC & CHEMICALS LTD.

v.

KRIPA PANDEY

(Civil Appeal No. 1389 of 2001)

JANUARY 18, 2008

B

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

*Labour Laws:*

*Industrial Disputes Act, 1947; ss. 2(s) & 10:*

C

*Termination – Workman engaged by contractor serving the appellant-company – Termination of services of workman by the company – Held: Specific stand of appellant that respondent was not its employee but employee of the contractor was neither considered by Labour Court nor by High Court while ordering reinstatement of the workman in question – Since workman reinstated and superannuated thereafter, ends of justice would be best served by directing payment of only 50% of back wages to him in terms of award of Labour Court – Directions issued – Contract Labour (Regulation and Abolition) Act, 1970 – Engagement of labour.*

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**According to the respondent, he was working in the appellant's factory continuously for certain period and allegedly his services were terminated by the appellant-company. The dispute was referred to the Labour Court for adjudication. The Labour Court held that termination of the services of the workman in question was illegal and unjustified; and that the respondent was entitled to reinstatement and back wages from the date of the institution of the claim. The Writ petition filed by the company was dismissed by the Single Judge of the High Court. The Letters Patent Appeal was dismissed by the Division Bench of the High Court. Hence the present appeal.**

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Appellant contended that during pendency of the appeal respondent was reinstated and superannuated on 6.3.2006; and that High Court's direction for payment of back wages was not proper. A

Partly allowing the appeal, the Court B

HELD: Considering the facts that the specific stand of the appellant about the respondent being employee of the Contractor was not considered by the Labour Court and the High Court, in normal course this Court would have remitted the matter to the High Court for consideration of that aspect. But taking into account the fact that even after reinstatement, the respondent has superannuated, ends of justice would be best served if 50% of the back wages in terms of the Labour Court Court's award is paid to the respondent. If any payment has already been made as back wages, the same shall be adjusted from the amount payable in terms of this order. (Para – 9) [921-A-C] C D

CIVILAPPELLATE JURISDICTION : Civil Appeal No.1389 of 2001. E

From the Judgment and final Order dated 29.6.2000 of the High Court of Judicature at Patna, Ranchi Bench, Ranchi in LPA No. 484 of 1999 (R).

Ashok Grover, Praveen Kumar for the Appellant. F

R.R. Dubey, Pawan Upadhyay, Santosh Mishra, Shiv Mangal Sharma, Rohit Yadav, Shubhra Goyal and Sharmila Upadhyay for the Respondent.

The Judgment of the Court was delivered by G

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of the Division Bench of the Patna High Court dismissing the Letters Patent Appeal filed by the appellant. Challenge in the Letters Patent Appeal was to the judgment of the learned Single Judge of the said High Court. Before the H

A High Court challenge was to the award of the Labour Court, Ranchi in Reference Case No.41/85. The respondent had raised a dispute, inter alia, alleging illegal termination. According to him he was working in the appellant's factory continuously from 1.8.1983 to 12.8.1984 and he was removed from service on 21.9.1984 without any reason. Following dispute was referred to the Labour Court for adjudication:

"Whether the termination of services of Shri Kripa Pandey, Driver by the management is proper and justified? If not, whether he is entitled to reinstatement and/or any other relief."

2. The aforesaid reference was made by notification dated 1.11.1985. Stand of the appellant before the Labour Court was that during the period from 1981 to 1984 when the factory of the appellant was under construction it had engaged several contractors including one M/s Mishra Brothers for the purpose of various works for construction of the factory. During the aforesaid period the said Contractor who was authorized to engage contract labour under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'Contract Labour Act') by licence deed dated 13.3.1982 engaged the respondent as a tractor driver. It was the case of the appellant that at no point of time respondent was employee of the appellant and there was no relationship of employer and employee between them. No appointment letter was ever issued to the respondent by the appellant. The respondent used to get salary from the Contractor. After construction of the work was completed in 1984, the appellant did not require services of the contractor and in turn the contractor did not require the services of the employees including respondent engaged by it.

3. In the written statement filed before the Labour Court the above plea was taken and it was stated that the respondent was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (in short 'the Act') and, therefore, the reference as made was maintainable in law. Before the

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Labour Court the contractor was also examined and he stated that the respondent was working under his contract and he was employed by him and, therefore, he paid the wages to him. In the gate pass it was clearly mentioned that he was the employee of the Contractor. A

4. The Labour Court held that the termination was illegal and unjustified and the respondent was entitled to reinstatement and back wages from the date of the institution of claim i.e. 28.11.1985. B

5. Writ petition was filed before the High Court and as noted above, it was dismissed by the learned Single Judge. The Division Bench dismissed the Letters Patent Appeal. C

6. In support of the appeal, learned counsel for the appellant submitted that no finding on the plea taken by the appellant regarding the respondent being employed by the contractor has been recorded and the plea has not been considered. Additionally, after this Court granted leave and the stay was restricted to payment of back wages, respondent was reinstated on 21.3.2001 and superannuated on 6.3.2006. According to his own case, he was getting Rs.400/- p.m. It is unbelievable that he was not employed elsewhere. Further, during the pendency of the writ petition and Letters Patent Appeal, payment in terms of Section 17-B was being made. Therefore, it is submitted that direction of back wages is not in order. D E

7. Learned counsel for the respondent on the other hand submitted that on the plea taken by the appellant that respondent was gainfully employed, an inquiry was conducted and it was concluded that the respondent was not gainfully employed. F

8. Few dates need to be noted. G

Date of reference is 1.11.1985 and the case was registered by Labour Court on 20.11.1985. The award is dated 28.7.1989. It was published on 30.10.1989. The learned Single Judge dismissed the writ petition on 7.10.1999 and the Letters Patent Appeal was dismissed on 29.6.2000. H

- A 9. Considering the facts that the specific stand of the appellant about the respondent being employee of the Contractor was not considered by the Labour Court and the High Court, in normal course we would have remitted the matter to the High Court for consideration of that aspect. But taking
- B into account the fact that even after reinstatement, the respondent has superannuated, ends of justice would be best served if 50% of the back wages in terms of the Labour Court Court's award is paid to the respondent. The payment shall be made within three months. If any payment has already been
- C made as back wages, the same shall be adjusted from the amount payable in terms of this order.

10. The appeal is allowed to the aforesaid extent with no order as to costs.

- D S.K.S. Appeal partly allowed.