IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20943 of 2019

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General Manager, Barauni Thermal Power Station, at and P.O.-Barauni, District-Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Department of Labour and Employment, New Secretariat, Patna-1.
2. The Presiding Officer, Labour Court, Begusarai.
3. The General Secretary, Bihar Vidyut Kamgar Sangh, Patel Nagar, Patna-3.
4. Bhibhu Shankar Sharma, Son of Late S.N. Sharma, Resident of Village and Post-Chintamani Chak, Mokama, District-Patna-803302.
5. Mahendra Mallick, Son of Late Bipat Mallick, Resident of Village-Dih, P.S.-Birpur, District-Begusarai.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Vijoy Nandan Sahay, Advocate
For the State : Mr. Parijat Saurav, AC to Ex AAG 10
For the Respondent : Dr. Kumar Binode Bariar, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 12-02-2026

1. The petitioners have filed the Writ petition for the following relief:

" For quashing the Award dated 27.06.2018 passed in Reference Case No.23 of 2019 by the Presiding Officer, Labour Court, Begusarai, Respondent no.2 by which the Court reinstated two workmen out of six in service with back wages committing an error that the College run by the petitioner in the Barauni Thermal premises which was closed for last so

many years and there was no post on which the workman was reinstated in service and directed to be re-appointed in closed establishment the dispute was raised in a closed establishment which can not be an Industrial Dispute under the Act."

2. It is the second round of litigation. At the outset, the petitioner has filed CWJC No. 8790 of 2008 assailing the award dated 18.12.2007 passed by the Presiding Officer, Labour Court Begusarai in Reference Case No. 23 of 1994 by which termination of service of respondent nos. 4 and 5, namely Bibhu Shankar Sharma and Mahendra Mallick has been held to be improper and unjustified and it has been held that both the workmen are fit to be adjusted with all consequential benefits in any other branch of the Management. This Court on considering the contentions and merits of both the parties has passed a detailed order dated 29.03.2018 in CWJC No. 8790 of 2008. The relevant part of the judgment is quoted herein below for better

appreciation:

> “9. Without going into merits of the submissions made on behalf of the parties, I would straightway come to the operative part of the impugned award dated 18.12.2007 passed by the learned Presiding Officer of the Labour Court, Begusarai. The first part of the award states that the termination of the workmen, namely, Bibhu Shankar Sharma and Mahendra Mallick by the Management was unjustified and illegal. The second part of the award is that both the workmen are fit to be taken back into services but because the college run by the Management in which they were employed has been closed, they were fit to be employed with all consequential benefits in any other branch of the Management.
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> 10. The question is as to whether the award passed by the Labour Court can be termed to be a valid award. In order to find out the answer, it would be essential to see what an award is? The award in a quasi judicial proceeding is the end product of the adjudication process.
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> 11. Section 2(b) of the I.D. Act stipulates “award” means an interim or a

final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A.

12. Thus, an order shall be deemed to be an award in terms of Section 2(b) of the I.D. Act under the following circumstances:-(a) it is an interim or final determination of an industrial dispute or (b) it is an interim or final determination of any question relating to such dispute and (c) such interim or final determination is made by a Labour Court, an Industrial Tribunal or a National Tribunal, or (d) it is an arbitration award under Section 10-A.

13. The first part of the definition of the award specifies the determination final or interim. The second part pertains to determination of any question relating to dispute.

14. Leaving some issues to be settled by the parties themselves without determination by the Labour Court cannot be termed to be a valid award. The expression „determination of any dispute" means an adjudication of the dispute on

relevant materials.

15. The Supreme Court in Cox and Kings Ltd. vs. Workmen [1977(1) LLJ 471 SC] laid down twofold tests for a decision of the tribunal to fall within the definition of award. First, it must be adjudication of a question or point relating to industrial dispute, which has been specified in the order of reference or is incidental thereto; and secondly, such adjudication must be on merits.

16. The determination also implies that the adjudicator has to adjudicate upon the whole dispute as referred to him. An adjudicator cannot determine only the part of the dispute by leaving rest to be determined by the parties. The award must be certain, in the sense that the parties must know what they are required to do in terms of the award. In an award, there should finally be directions necessary for proper implementation of the award.

17. In the present case, as seen above, two issues were referred before the Labour Court. The first was as to whether the termination of services of the respondent nos. 4 and 5 was proper and justified and the second was if termination

of services of the respondent nos. 4 and 5 was not proper and justified, then what relief they were entitled to. So far as the first issue is concerned, the Labour Court had definitely held that the termination of respondent nos. 4 and 5 was improper and unjustified, but so far as the second issue regarding the relief to which they were entitled to is concerned, the Labour Court had left the matter open to the discretion of the parties after holding that they are fit to be engaged in any other running branch of the Management.

18. In the opinion of this Court, such an award cannot be termed to be a valid award. There is no final determination of the second issue referred to the Labour Court. The Labour Court could not have determined only part of the dispute by leaving the rest to be determined by the parties themselves. The error committed by the Labour Court is certainly an apparent error of law.

19. In that view of the matter, the award dated 18.12.2007 passed by the learned Presiding Officer, Labour Court, Begusarai in Reference Case No. 23 of 1994 is set aside. The matter is remanded back to the Labour Court, Begusarai to

decide the case afresh on the basis of the evidences already led before it after hearing the oral and written submissions which may be made on behalf of the parties.

20. Registry is directed to send back the record to the Labour Court forthwith through special messenger along with a copy of this judgment. Since the parties are being represented through their respective counsel, no notice shall be required to be issued by the Labour Court. The Labour Court shall fix a date of hearing on 16th April 2018 and shall decide the reference made to it within two months from the date of first hearing.

21. With the aforesaid observations and directions, the writ petition stands disposed of."

3. Upon the judgment dated 29.03.2018 passed in CWJC No. 8790 of 2008, the Presiding Officer, Labour Court, Begusarai, vide order dated 27.06.2018 has passed the Award in Reference Case No. 23/1994, which is presently challenged before this Court. By order dated 27.06.2018, the Presiding Officer has observed that while passing

the award in the case, it is determined that the termination of service of the workers Upendra Mahto, Gena Prasad Yadav, Md. Akhlaq, Mahesh Mahto and Mantu Pal by the management is fair and legal and they are not entitled to get any relief but the termination of service of workers Vibhu Shankar and Mahendra Mallick by the management is unfair and illegal. Both these workers are entitled to be re-appointed to their posts along with arrears. Since the College of Management had already been closed, in such a situation, the Management should appoint them in its establishment with all the benefits due to them at that time.

4. The case of the workmen respondent nos. 4 and 5 before the Labour Court was that respondent no. 4 Bibhu Shankar was engaged in December, 1983 by the Management of BTPS and was terminated in June, 1991 whereas respondent no. 5 Mahendra Mallick was engaged in 1982 and was terminated in July, 1992. Their contention was that they were working as contingent workers and

were directly controlled by the BTPS and paid directly at the departmental cash counter. The matter of their regularization was taken up with the Chairman of the BTPS, but their claim was never resolved. Thereafter, their claim for regularization was taken up with the General Manager of the BTPS. A representation in this regard was also given to the Deputy Labour Commissioner, Begusarai. During discussion, the local Management assured to regularize their services in conciliation proceeding held on 17.10.1989 before the Deputy Labour Commissioner, Begusarai and it was agreed by the Management that the issue of regularization would be finalized within a month, but when the matter still remained pending, conciliation proceeding was held by the Labour Superintendent, Begusarai on 13.05.1991. However, instead of regularizing the services of respondent nos. 4 and 5, the Management terminated their services during pendency of the conciliation proceeding. They contended that the termination was wholly illegal,

unjustified and unsustainable as no notice in terms of Section 25-F of the Industrial Dispute Act was given to them prior to order of termination.

5. The Learned counsel for the petitioner contended that the impugned Award is illegal, perverse, and unsustainable in law, as the respondent Nos. 4 and 5 were never employees of Bihar State Electricity Board or Barauni Thermal Power Station (BTPS). There existed no employer–employee relationship. It is further submitted that the workmen were engaged purely on contractual/daily wage basis through contractors for ancillary works such as cleaning and sweeping in the Intermediate College run at BTPS premises. It is further contended that the Intermediate College was closed with effect from 24.09.1991 pursuant to Board’s Office Order No. IXA-Sch. 2002/90 (P.F.) EB-6133, and consequently all contractual arrangements came to an end, by efflux of time. Since the termination occurred due to closure of establishment, it does not amount to retrenchment under Section 2(oo) of the Industrial

Disputes Act, 1947, and therefore Section 25-F is not applicable. No individual appointment orders were issued in the names of the workmen; funds were sanctioned for contractual work and not against specific posts.

6. The Learned counsel for the petitioner submitted that the services of the workmen were never regularized, and appointments in other units of BTPS were made only through proper selection processes. The industrial dispute was raised after closure of the establishment, rendering the reference itself invalid in law. The dispute was raised by an unrecognized and unregistered union, namely Bihar Vidyut Kamgar Sangh.

7. The Learned counsel for the petitioner submitted that the Respondent no. 4 had earlier filed a writ petition seeking regularization and had admitted therein that his engagement was contractual and had come to an end. It is further submitted that Reinstatement in a closed establishment is impermissible in law, and at best the workmen could only be entitled to closure

compensation.

8. It is contended that the Labour Court committed a serious error in holding that teaching staff fall within the definition of “workman” under the Act.

9. The Learned counsel for the petitioner lastly submitted that the impugned Award amounts to granting relief contrary to statutory provisions, particularly Sections 2(oo) and 25-F of the Industrial Disputes Act. The Labour Court ignored the settled law that contractual termination on closure does not constitute retrenchment. The direction for reinstatement in an establishment which had ceased to exist is ex facie illegal. The Award is liable to be quashed as the Labour Court exceeded its jurisdiction and ignored material evidence.

10. The Learned counsel for the petitioner submits that respondent nos. 4 and 5 were never regular employees of the petitioner-Management and were engaged on a contractual/daily wage basis. It is contended that the Intermediate

College, where they were engaged, stood closed with effect from 24.09.1991, and therefore the question of reinstatement does not arise. It is further argued that the termination was on account of closure and would not amount to retrenchment under Section 2(oo) of the Industrial Disputes Act, 1947, and hence Section 25-F would have no application.

11. The Intermediate College stood closed with effect from 24.09.1991 pursuant to Office Order No. IXA-Sch. 2002/90 (P.F.) EB-6133, and consequently all contractual arrangements came to an end by efflux of time. The termination was on account of closure of the establishment and, therefore, does not amount to retrenchment within the meaning of Section 2(oo) of the Act. Consequently, Section 25-F has no application.

12. It is further argued that reinstatement in a closed establishment is impermissible in law. At best, the workmen could claim closure compensation. The industrial dispute was raised after closure of the establishment and through an

unrecognized union.

13. It is submitted that the Labour Court exceeded its jurisdiction in directing appointment in another establishment of the Management. The direction for reinstatement with back wages in a non-existent establishment is ex facie illegal and unsustainable.

14. A counter affidavit was filed on behalf of the respondent State. The Learned counsel appearing for the State submits that upon failure of conciliation, the competent authority of the Labour Resources Department rightly referred the dispute for adjudication under Section 10 of the Industrial Disputes Act. It is further submitted that the Labour Court adjudicated the dispute after issuing notices to the parties and appreciating oral and documentary evidence. The State has no role in examining the legality of the Award, and is only a formal party to the proceedings. It is further stated that no specific allegations have been made against the State in the writ petition as such the State is only a formal party-respondent in the

present case.

15. The respondent Nos. 4 and 5 have also filed counter affidavit. The Learned counsel for respondent nos. 4 and 5 submitted that Respondent nos. 4 and 5 are “workmen” within the meaning of Section 2(s) of the Industrial Disputes Act, and the petitioner is an “industry” under Section 2(j). The dispute regarding termination squarely falls within the definition of “industrial dispute” under Section 2(k).

16. It is further submitted that the Labour Court has, upon remand by this Court, finally adjudicated both issues—legality of termination and relief—strictly in accordance with the directions issued on 29.03.2018. The termination was effected during pendency of conciliation proceedings, without compliance of mandatory provisions of Section 25-F, rendering the same void ab initio. The plea of contractual termination under Section 2(oo)(bb) was never pleaded or proved by the Management before the Labour Court.

17. It is further submitted that the Labour

Court is the final court of facts, and its findings cannot be interfered with in writ jurisdiction unless it is shown to be perverse or illegal. It is contended that the writ petition has been filed after more than one year of the Award, without reinstating the workmen or paying back wages. The petitioner has consistently violated Section 17-B of the Industrial Disputes Act, during pendency of litigation, compelling the workmen to initiate contempt proceedings.

18. The Learned counsel further submitted that under the Bihar Power Generation Undertaking Transfer Scheme, 2018, liability for execution of awards passed prior to 15.12.2018 remains with BTPS, and not NTPC.

19. The Learned counsel appearing for respondent nos. 4 and 5 submits that the Labour Court, upon appreciation of oral and documentary evidence, recorded a categorical finding that the workmen were working under the direct supervision and control of the Management and had completed continuous service. It is contended

that their termination was effected without compliance of Section 25-F of the Act and during the pendency of conciliation proceedings, rendering the same *void ab initio*. It is further submitted that the scope of interference under Article 226 of the Constitution of India with an Award of the Labour Court is limited.

20. The Learned counsel has also placed Reliance on judgments of the Hon'ble Supreme Court reported in **AIR 1964 SC 477** : **Syed Yakoob v. K.S. Radhakrishnan** and **(2014) 11 SCC 85 : Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd.**

21. Having heard learned counsel for the parties and perused the materials on record, the following issues arise for consideration:

(i) Whether reinstatement can be directed when the establishment itself has ceased to exist?

(ii) Whether back wages can be awarded in respect of a closed establishment?

(iii) Whether the Labour Court exceeded its jurisdiction in directing appointment in another

establishment?

22. It is undisputed that the Intermediate College, where respondent nos. 4 and 5 were engaged, was closed with effect from 24.09.1991. The closure of the College has not been set aside by any competent authority. Once the establishment itself has ceased to exist, the question of reinstatement therein does not arise.

23. Reinstatement presupposes the existence of a post and a running establishment. In absence thereof, such a direction becomes incapable of compliance and legally unsustainable. The Labour Court, while directing reinstatement, simultaneously acknowledged that the College was closed and then proceeded to direct appointment in another establishment of the Management. Such direction travels beyond the terms of reference and amounts to creating a new contract of employment.

24. This Court is of the considered opinion that once the College was closed, reinstatement was legally impossible. Consequently, the direction

to pay back wages also cannot survive, as there was no subsisting establishment in which the workmen could have worked.

25. The Award, therefore, suffers from patent illegality insofar as it grants reinstatement and back wages in respect of a closed establishment and further directs adjustment in other units of the Management.

26. While it is true that the scope of interference under Article 226 is limited, this Court can interfere where the Award is contrary to law or incapable of implementation. The present Award falls within that category.

27. In view of the discussions made hereinabove, this Court holds that since the Intermediate College was closed with effect from 24.09.1991, reinstatement of respondent nos. 4 and 5 is legally impermissible. The direction for appointment in another establishment of the Management is beyond jurisdiction and the consequential direction for payment of back wages is unsustainable.

28. Accordingly, the Award dated 27.06.2018 passed by the Presiding Officer, Labour Court, Begusarai in Reference Case No. 23 of 1994, insofar as it relates to respondent nos. 4 and 5, is hereby quashed and set aside.

29. The writ petition stands allowed.

30. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2026
Transmission Date	