

\2222ITEM NO.1 COURT NO.9 SECTION XVI
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No.2793 of 2009 @
Petition(s) for Special Leave to Appeal (Civil) No(s).17881/2007
(From the judgement and order dated 10/10/2006 in LPA No. 1457/1995 of
The HIGH COURT OF PATNA)

B.S.I.D.C. & ANR. Petitioner(s)

VERSUS

BAIDYANATH SINGH & ANR. Respondent(s)
(With appln(s) for exemption from filing O.T.,permission to file additional
documents and prayer for interim relief and office report)(for final disposal)

Date: 22/04/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr. Nagendra Rai, Sr. Adv.
Mr. Prithvi Pal, Adv.
Mr Pavan Kumar,Adv.

For Respondent(s) Mr. Ardhendumauli K.Prasad, Adv.
Mr. Krishna Kant, Adv.
Mr. Ishit Saharia, Adv.for
Mr. Kishan Datta,Adv.

Mr. Anuj Prakash, Adv.for
Mr. Gopal Singh ,Adv

UPON hearing counsel the Court made the following
ORDER
Leave granted.

The Appeal is allowed in terms of the signed order.
No order as to costs.

(Parveen Kr. Chawla) (Pushap Lata Bhardwaj)
Court Master Court Master

Signed Order is placed on the File

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURSDICTION

CIVIL APPEAL No. 2793 OF 2009
(Arising out of SLP (c) No. 17881 of 2007)

B.S.I.D.C & AnotherAppellants

Versus

Baidyanath Singh & Another Respondents

ORDER

Leave Granted.

Heard learned counsel for the parties.

This appeal has been filed against the impugned judgment of the

Division Bench of the Patna High Court dated 10 th October, 2006 passed in LPA No. 1457 of 1995. By that judgment the Division Bench has reversed the

judgment of the learned Singh Judge dated 27.09.1995 in CWJC No. 7147 of 1993.

The facts of the case are that the Katihar Jute Mills Limited is the owner of the industrial unit. The properties of the said industrial unit were mortgaged to the Bihar State Financial Corporation (in short 'BSFC'). Since the debts of the Katihar Jute Mills were not discharged, Section 29/30 of the State Financial Corporation Act was invoked, and the BSFC took over the properties of the unit and leased out the unit to the Bihar State Industrial Development Corporation (in short 'BSIDC'). A managing committee for the unit had been appointed by the State Government.

The respondent was appointed in a purely temporary capacity as manager of the Katihar Jute Mills, which was a leased unit of BSIDC. The appointment letter dated 16.4.1985 is annexure P-3 to this appeal. The letter states that the respondent is being appointed temporarily as Manager (Production) in the Katihar Jute Mills on a consolidated salary of rupees 3,500/- per month. It was further stated therein that his appointment is temporary and may be terminated at any time without notice.

The unit suffered huge losses of several crores of rupees and there were various liabilities because of which the mill had to be closed down. BSIDC managed to pay salary and wages to the employees till October 1988.

The BSIDC surrendered the lease on 31.10.1988 to the BSFC. After October 1988 the appellant BSIDC had not paid salary to the respondent.

The respondent was sent on deputation to the Bihar State Textile Corporation (BSTC) in October 1988 but on 15.5.1990 he was reverted to the parent department. The BSIDC was of the view that it was not the parent department and the respondent was not its employee, since it had only taken the unit on lease. Hence it asked the respondent to join in Katihar Jute Mills. The respondent made a representation to the BSIDC requesting it to re-consider the direction given to the respondent to Join Katihar Jute Mills and to allow him to stay at the Headquarters of BSIDC, but the representation was rejected, and the rejection order was not challenged by the respondent. Instead, the respondent filed a writ petition before the High Court which was dismissed by the learned Single

Judge dated 27.09.1995, but that judgment has been reversed by the Division Bench of the High Court by the impugned judgment. Hence this appeal. We have carefully considered the judgment of the learned Single Judge and of the Division Bench and have heard learned counsel for the parties. We agree with the view of the learned Single Judge that the respondent was not an employee of the appellant since the appellant had only taken the Jute Mill on lease but had surrendered it back to the BSFC in October 1988. Hence the respondent cannot claim any salary from the appellant after October 1988.

Moreover the representation of the respondent was rejected by the appellant, but the rejection order was never challenged and hence became final. A perusal of the respondent's appointment order dated 16.04.1985 copy of which annexed P-3 to this appeal shows that the respondent was appointed on a purely temporary capacity on consolidated salary, and the appointment order itself states that the appointment is temporary and may be terminated at any time without notice.

This Court in the case of State of U.P. & Another vs. Kaushal Kishore Shukla (1991) 1 SCC 691 has held that a temporary employee has no right to the post. We respectfully follow the aforesaid decision and hold that respondent no.1 had no right to the post. The appeal is therefore allowed. The impugned judgment of the Division Bench is set aside. No order as to costs.

.....J.
[Markandey Katju]

.....J.
[H.L. Dattu]

New Delhi
April 22, 2009