

(2019) 12 OHC CK 0017

In the Orissa High Court

Case No : Writ petition (C) No. 3468 Of 2003

B. Krishna Murty

APPELLANT

Vs

Presiding Officer, Industrial Tribunal And Another

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 10(1)(d), 12(5), 25F

Citation : (2020) 1 CLR 262

Hon'ble Judges : Sanju Panda, J;S. K. Sahoo, J

Bench : Division Bench

Advocate : J.R. Dash, M. Dash, K.L. Dash, S.K. Mishra, D.P. Nanda, P.K. Mohapatra, M.K. Pati, R. Kanungo

Final Decision : Disposed Of

Judgement

S. K. Sahoo, J

1. In this writ petition the petitioner B. Krishna Murty has challenged the award dated 13.12.2002 passed by the Presiding Officer, Industrial Tribunal,

Rourkela in Industrial Dispute Case No.6 of 1998 in holding that the petitioner is not entitled to claim any relief whatsoever.

The Government of Orissa in their Labour and Employment Department vide memo no.12357(5) dated 05.11.1998 made the following reference

under sub-section (5) of section 12 read with clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereafter referred to as the Act).

Act for adjudication:-

Whether the termination of service of Sri B.K. Murty, Empl. No.68295, Canteen Department by M/s. Larson & Tubro Ltd., Kansbahal Works,

Kansbahal by giving 24 hours notice in its letter dated 25.05.1996 during his three months extension of probationary period, is legal and/or justified? If

not, to what relief the workman is entitled to?â??

It is the case of the petitioner that he was working in the Canteen Department of the opposite party no.2 Management as a contract labour under a

contractor and after abolition of the contract labour, the Government of Odisha decided that the petitioner along with others should be taken as regular

workmen under the company and accordingly, there was an interview and about forty nine workers were appointed in the Canteen Department of the

company. The petitioner also continued to work there till he was discharged from the service. His probation period for six months was extended for

another three months and during absence of the petitioner, his services were terminated without any reason whatsoever. It is the further case of the

petitioner that since he was an active member of the Union espousing the causes of the workmen with the Management of the company, to get rid of

him, the Management of the company stealthily terminated his service without paying him compensation and one monthâ??s wages in lieu of the

notice and that the conduct of the company amounts to unfair labour practice. It is his further case that since he has been victimized for his trade

union activities in the company, therefore, he prayed for reinstatement in the service with full back wages.

It is the case of opposite party no.2 Management that the petitioner was kept under probation for a period of six months and his work was found not to

be satisfactory for which his probation period was extended for another three months as per the Certified Standing Orders of the company and the

terms of his contract of service with the company. However, the petitioner was not found suitable for his job and therefore, before completion of his

extended period of three months of probation, he was discharged from his service. Since the petitioner was not a regular workman, he was not entitled

to one monthâ??s notice or in lieu thereof one monthâ??s wage and compensation for his termination from service under the company.

The learned Tribunal framed the following issues:-

â??(I) Whether the termination of service of 2nd party workman by the 1st party management by giving 24 hours notice in its letter dated 25.05.1996

during his 3 months extension of probationary period, is legal and/or justified.

(II) If not, to what relief the workman is entitled to?â??

While adjudicating issue no.(I), the learned Tribunal has been pleased to observe

that the first party Management has left no stone unturned in effecting service of the order of termination on the petitioner and it was sufficiently brought to the knowledge of the petitioner workman that his service was terminated and for that reason he agitated the matter before the conciliation authorities and ultimately a reference was made on the basis of failure of the conciliation. It is further held that the very purpose of placing a person on probation is to try him during the period of probation to assess his suitability for the job and the order of discharge is not the order of punishment and therefore, there is no question of giving an opportunity of hearing before termination of service. It is further held that the petitioner is not entitled to claim any relief under section 25-F and section 2(oo) of the I.D. Act as it does not amount to termination and it is not bad on the ground of non-compliance of section 25-F and since it is a case of termination simplicitor, the principle of natural justice is not required to be complied with as the petitioner was a probationer. It was further held that since the petitioner being a probationer is not entitled to leave of any type and his absence from the work from 23.05.1996 to 03.06.1996 was unauthorized, he cannot be paid any wages for such period because of the principles of "no work no pay". Accordingly, it was held that the petitioner is not entitled to any relief whatsoever.

Mr. J.R. Dash, learned counsel appearing for the petitioner contended that when the Management has failed to adduce any evidence to show that the performance of the petitioner during the period of probation was unsatisfactory and that the absence of the petitioner from 23.05.1996 to 03.06.1996 was deliberate and without any valid reason, the learned Tribunal should not have mechanically held that the petitioner being a probationer is not entitled to get any relief whatsoever. It is argued that the petitioner was under probation on the extension basis for a period of three months after completing the earlier probation period of six months. On 21.05.1996 he received a telegram from his brother staying at his native village indicating "mother expired" and accordingly he approached the Personal Executive - cum- Canteen in charge, showed the telegram to proceed to his native village and with the permission of the authority, he proceeded to the native village on 23.05.1996 and after returning from home when he came to report for his duty as usual, he was not allowed to enter into the factory

premises. It is further contended that even though in the letter of termination which is dated 25.05.1996 marked as Ext.D, it is mentioned therein that the petitioner's contract of employment is terminated giving 24 hours' notice but the order of termination was sent by post only on 28.05.1996 and therefore, the malafidness of the Management is apparent and as such the order of termination is liable to be set aside. It is contended that deliberately the petitioner was terminated in his absence even though his leave was on a valid ground and it was duly intimated to the authority and necessary permission was taken for absence. In that respect, learned counsel for the petitioner brought to the notice of this Court the telegram which is marked as Ext.3. It is contended that since on account of the trade union activities of the petitioner, the Management was seeking for an opportunity to remove him, without following the principle of natural justice, the petitioner was terminated from his service and therefore, the impugned award passed by the learned Tribunal should be set aside and the order of reinstatement with full back wages should be passed.

The learned counsel for the opposite party no.2 Management on the other hand supported the impugned award and contended that the appointment offer dated 01.09.1995 clearly indicates that it was a six months' probation period which is to take effect from 01.09.1995 and during the period of probation, the contract of employment can be terminated by either party by giving 24 hours' notice in writing to the other without assigning any reason and that during the probationary period, the workman will not be entitled to any kind of leave. It is argued that after joining of the petitioner on 01.09.1995, he was posted in the Canteen Department and on 23.05.1996 he was found absent without any application and on 25.05.1996 on account of his absence, the order of termination was displayed in the Notice Board and on 28.05.1996 the termination notice was sent to the petitioner by registered post with A.D. at his local address as well as permanent address. It is contended that in view of the limited scope of certiorari writ jurisdiction, when there is no illegality in the findings of the learned Tribunal or in the award, the writ petition should be dismissed. The learned counsel placed the Certified Standing Orders of the company and particularly the definition of the 'probationer'.

As per the definition of 'probationer' in the Certified Standing Orders of the

company, it means a workman who is provisionally employed to fill up a permanent vacancy or post and who has not completed six months service therein. On expiry of the aforesaid probationary period of six months, the workman may be confirmed in writing. In case, however, the services of the workman is not found satisfactory, the probationary period of six months may be extended in writing for a further period of three months, whereafter the workman shall be deemed to be a permanent workman. Since after six monthsâ?? probation period from 01.09.1995, there was an extension of probationary period for three months, as per the Certified Standing Orders, on successful completion of probationary period, on 01.06.1996 the petitioner would have been deemed to be a permanent workman in the company.

Learned counsel for the Management emphatically contended that since no kind of leave is permissible during the probation period of service, the petitionerâ??s absence from the service since 23.05.1996 is clearly unauthorized and therefore, the Management rightly terminated him from service on 25.06.1996. Though the learned counsel for the Management submitted that since during the first six monthsâ?? probationary period, the service of the petitioner was found not to be satisfactory for which it was extended for a further period of three months but extension order which is dated 01.02.1996 does not indicate any such reason for extension. Therefore, it is difficult to accept that during the six monthsâ?? probationary period, the service of the petitioner was not satisfactory.

It is no doubt true that in the appointment offer, it is mentioned that during the probationary period, the petitioner will not be entitled to any kind of leave but under the compelling circumstances, on account of his motherâ??s death, he proceeded to his village after receipt of a telegram from his brother which has been marked as Ext.4 which indicates â??mother expiredâ?. Therefore, it cannot be said that the absence of the petitioner from 23.05.1996 till the termination order was passed on 25.03.1996 was illegal or that he deliberately flouted the conditions of the appointment offer. Ext.D is the termination order which is dated 25.03.1996 wherein it is mentioned that the employment is terminated by giving 24 hours notice but it was posted only on 28.05.1996 as reveals from the envelope which was utilized for postal service of such order on the petitioner which returned

unserved. Therefore, it is apparent that after the expiry of 24 hours period as stipulated in Ext.D, the letter was posted which clearly reflects the malafide intention of the Management. Though it is contended by the learned counsel for the Management that on 25.05.1995 the termination order was displayed in the notice board of the company but no clinching material has been produced in that respect rather it is apparent that when the company authorities knew that on 01.06.1996 i.e., after the expiry of the extended period of probation of three months, the petitioner would be deemed to be a permanent workman in view of the definition of "probationer" as per the Certified Standing Orders, they utilized the absence of the petitioner in terminating his services. There are materials on record to suggest that the petitioner was actively involved in trade union activities. The case of the petitioner that due to such involvement, his services has been terminated cannot be lightly brushed aside.

The petitioner was working on probation in the company from 01.09.1995 till 22.05.1996 and therefore, he has worked for 265 continuous days.

It is no doubt true that the period of probation furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or to dispense with his service. Period of probation may vary from post to post or master to master and it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer. A probationer is on test and if his services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services. The mere fact that in response to the challenge the employer states that the services were not satisfactory, would not ipso facto mean that the services of the probationer were terminated by way of punishment.

In case of V.P. Ahuja -Vrs.- State of Punjab reported in A.I.R. 2000 S.C. 1080, it is held that a probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily nor can those services be terminated in a positive manner without complying with

the principles of natural justice.

In view of the foregoing discussions, we are of the view that absence of the petitioner from his service since 23.05.1996 cannot be said to be

unauthorized but as it appears that on account of the death of his mother after receipt of the telegram, he left for his village to perform obsequies

ceremony after taking permission of the authorities. There is no allegation against him that he was habitually remaining absent during the period of

probation or his work was unsatisfactory during such period. It appears that clandestinely his service was terminated with malafide intention arbitrarily

because of the petitioner's participation in trade union activities without following the principle of natural justice. Therefore, we are of the humble

view that the impugned award is not sustainable in the eye of law and accordingly, the same is set aside. The petitioner shall be put back in service

and in the facts and circumstances; he is entitled to 50% of his back wages.

With the aforesaid observation, the writ petition is disposed of.