
(2008) 12 OHC CK 0005
In the Orissa High Court
Case No : OJC No. 10611 of 1999

Benudhar Swain

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Constitution of India, 1950 — Article 32
Industrial Disputes Act, 1947 — Section 10, 2
Limitation (Amendment) Act, 1983 — Article 137

Citation : (2008) 12 OHC CK 0005

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : S. Das, S.K. Mohanty and S.K. Das, for the Appellant;

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner calls in question the award dated 25.1.1999 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No. 147 of 1996 under Annexure-6 to the writ application.

2. Facts of the case reveal that the Petitioner-workman was terminated from his engagement with effect from 28.2.1983. Challenging his termination, the General Secretary, All Orissa Works Department (R & B) N.M.R. Employees Association, Bhubaneswar forwarded the complaint petition of the present Petitioner along with other 13 N.M. Rs., who were similarly terminated, to the Assistant Labour Commissioner, Bhubaneswar. A preliminary enquiry was conducted under the said complaint by the Asst. Labour Officer, Bhubaneswar on 25.11.1983. Thereafter, the General Secretary of the N.M. Rs. Employees Association did not pursue the matter for which three other workmen similarly placed like the Petitioner raised disputes u/s 2 (a) of the I.D. Act. References were made on such dispute. Conciliation having failed and such failure report having been sent to the Labour Department, Government of Orissa, the said references were registered as I.D. Case Nos. 15 of 1989 and 12 of 1993 and an

award was passed in favour of the workman on 13.11.1990 in I.D. case No. 15 of 1989 and when the I.D. Case No. 12 of 1993 was pending, the Petitioner also raised a dispute. Subsequently, the said I.D. case No. 12 of 1993 was also disposed of by passing an award in favour of the workman on 19.7.1994. On the dispute being raised by the Petitioner and the conciliation having failed, the failure report was sent to the Labour Department, Government of Orissa and accordingly, reference was made thereafter to the Labour Court u/s 10 of the I.D. Act. While deciding the reference, the Presiding Officer, Labour Court framed two issues, which are as follows:

1) Whether the action of the management of Capital Construction Division No. 1, Bhubaneswar in terminating the services of the workman with effect from 28.2.1983 is legal and/or justified?

2) If not, what relief the workman is entitled to ?

3. The management took a plea that the dispute is hit under the principles of limitation and the management is not an Industry as defined u/s 2 (j) of the I.D. Act. The Learned Presiding Officer upon hearing the case concluded that the management is an "Industry" as defined u/s 2(j) of the I.D. Act. On the question of limitation, the Presiding Officer relying upon certain case laws came to the conclusion that the dispute having been raised after 11 years of termination of service, the Court is incompetent to adjudicate the dispute. Being aggrieved, the Petitioner has preferred the present writ application seeking appropriate remedy.

4. Learned Counsel for the Petitioner submits that the Presiding Officer has relied upon the decision in the case of Ratan Chandra Sammanta and Ors. v. The Union of India and Ors. (SC) 1993 (67) FLR 70 in support of his finding that the claim is barred by law of limitation and in holding that the Presiding Officer is incompetent to adjudicate the same. He further submits that the Supreme Court in the case of Ajaib Singh v. Sirhind Corporation. Marketing-cum-Processing Service Society Ltd. and Anr. 1999 1 CRL 1068 categorically held that considering the objectives in enacting the Industrial Disputes Act, 1947 where limitation act has not been made applicable to the I.D. Act, relief under the Act cannot be denied to the workman solely on the ground of delay as Limitation Act is not applicable and in case delay is established, the Labour Court or Tribunal can mould the relief with regard to back wages etc. In the case of Ajaib Singh (Supra), the Supreme Court has categorically held that the provision under Article 137 of the schedule to the Limitation Act, 1983 is not applicable to the proceeding under the I.D. Act and the relief under the said Act cannot be denied to the workmen merely on the ground of delay. The plea of delay if raised by the employer is required to be proved, as a matter of fact, by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case, where delay is shown to be existing, the Tribunal, Labour Court or Board dealing with the case can appropriately mould the relief by declining to grant wages to the workman till the date he raised the demand regarding his illegal

retrenchment/termination or dismissal.

5. In the case of Workmen of Karnatak Government Insurance Department (KGID) Employees Union v. Presiding Officer, Principal Industrial Tribunal and Ors. 1999 LAB I.C. 2553, the Karnataka High Court was considering the rejection of reference of the dispute regarding payment of bonus on the ground of delay in raising the dispute. While considering the said question, the Karnataka High Court observed that the Tribunal while dealing with the question of delay in raising the Industrial Dispute, which was referred to it for adjudication, should bear in mind that the delay by itself is not a ground to reject the reference.

6. In the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the Supreme Court reiterated the above position of law referring to the decisions in the case of Bombay Gas Company Ltd. v. Gopal Bhiva and Ors. 1963 (7) FLR 304 (SC) and Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubili and Ors. 1969 (18) 373 (SC), Sakuru Vs. Tanaji, , Jai Bhagwan v. Management of the Ambala Central Co-operative Bank Ltd and Anr. 1983 (47) FLR 532 (SC) and H.M.T. Ltd. v. Labour Court, Ernakulam and Ors. 1994 LLR 720 (SC). The decision relied upon by the labour Court in the case of Ratan Chandra Sammanta and Ors. (supra) was a Writ Petition filed before the Supreme Court under Article 32 of the Constitution, where the Supreme Court was considering a prayer made by the Petitioners therein for reemployment and for restraining the Opp. Parties therein from filling up the vacancies from open market. Considering the facts of the said case, the Supreme Court, finding that the Petitioners have approached the Court at a belated stage, i.e., after lapse of a period of 15 years, came to the conclusion that a writ cannot be issued in favour of the Petitioners as prayed for by entertaining the application which sought for a roving enquiry leaving scope of manoeuvring. Nothing appears in the said decision to indicate that the law of limitation would be applicable to a reference while being answered by a Labour Court and the workman will be denied the right solely on the ground of delay.

7. Considering the above position of law, it is trite to state that the Presiding Officer, Labour Court has erred in law in refusing to adjudicate the dispute referred to it solely on the ground of delay in raising the dispute by the Petitioner. In view of the above, the impugned award under Annexure-6 passed by the Presiding Officer, Labour Court in I.D. Case No. 147 of 1996 is quashed and the matter is remitted back to the Labour Court, Bhubaneswar to answer the references referred to it in accordance with law and it shall not reject the same on the sole ground of delay. Since the matter is of the year, 1994, the Presiding Officer, Labour Court is directed to dispose of the case as expeditiously as possible preferably within a period of six months from the date of production of the certified copy of this order before him by the Petitioner. On receiving the certified copy of the order, the Labour Court shall issue notice to the management and proceed with the matter in accordance with law. In the event the lower Court below finds that the Petitioner also stands on the same footing

as the workman in I.D. Case Nos. 15/1989 and 12/1993, he shall pass similar award in favour of the Petitioner as has been passed in favour of the workmen in the aforesaid two I.D. cases.

The Writ Petition is accordingly allowed.