

(1987) 12 OHC CK 0009

In the Orissa High Court

Case No : Original Jurn. Case No. 2048 of 1980

Bharat Kumar Sekhar

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 04-12-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1993) 3 LLJ 659

Hon'ble Judges : K.P. Mohapatra, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : R.K. Bose, for S.B. Nanda, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—The petitioner has challenged apart of the award (Annexure-1) of the Presiding Officer, Labour Court, Orissa, by which, although he declared that termination of the services of the petitioner was illegal nevertheless he did not direct his reinstatement according to Section 25F of the Industrial Disputes Act ("Act" for short).

2. Facts are brief and are stated below. The petitioner was appointed as a workman under opposite party No. 3 on 1-5-1951 on a monthly pay of Rs. 40/-. He continued to serve under it in different capacities with enhanced pay. At the time of termination of his services with effect from 1-3-1976 as a measure of punishment but without drawing up a proceeding, he was holding the post of supervisor on a monthly pay of Rs. 165/-. He challenged the order of termination and the following dispute was referred to the Labour Court:

"Whether the termination of services of Shri Bharat Kumar Sekhar, Supervision by the management of M/s. Ramai Talkies, Bolangir, with effect from the 1st March, 1976, is legal and/or justified ? If not, to what relief he is entitled" ?

Before the Presiding Officer, Labour Court, the petitioner, as well as opposite

party No. 3, adduced evidence. The Presiding Officer took notice of the fact that the post of supervisor was no longer required by opposite party No. 3 which was sustaining loss in the business. Nevertheless, it has held that retrenchment of the petitioner was in effect termination of his services without holding an enquiry. Accordingly, he passed the award (Annexure-1) in the following terms :-

"That the termination of services of Shri Bharat Kumar Sekhar, Supervisor, by the management of M/s. Ramai Talkies, Bolangir with effect from 1-3-76 is illegal and unjustified. He is entitled to receive due compensation, gratuity, etc. from the management through process of law without being reinstated".

As the termination of services of the petitioner was held to be illegal, he naturally expected reinstatement with effect from the date of termination of his services and full back wages in accordance with Section 25F of the Act. But the award did not contain such a direction, he approached this Court in this writ petition.

3. Opposite Party No. 1 is the Presiding Officer, Labour Court and Opposite Party No. 2 is the State Government. They did not file any counter nor even Opposite Party No. 3 who was the real contestant. At the time of hearing, none represented Opposite Party No. 3.

4. Mr. R.K. Bose, learned counsel appearing for the petitioner, urged that according to the provisions of Section 25F of the Act, the petitioner is entitled to reinstatement and full back wages. The contention finds full support from the provisions of Section 25F of the Act interpreted in several decisions of the Supreme Court and of this Court. It is sufficient if we cite Mohan Lal Vs. Management of Bharat Electronics Ltd., in which, it was held that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits, namely, back wages in full and other benefits.

5. From the records, however, it is found that Opposite Party No. 3 sustained loss in the business and it was no longer necessary for it to maintain the post of a supervisor. That is why the post of supervisor was retrenched. There is nothing on records to show that although the petitioner was retrenched, any of his juniors working as supervisor had been retained in service. Opposite party No. 3 is a small unit of a cinema hall of not a big town in the State. If reinstatement is directed, it may not be possible on its part to require his services and pay the monthly salary. In such circumstances, in our considered opinion, if a lump sum amount is granted as compensation it shall be of great use to the petitioner so that he may invest the amount for gainful purposes to generate a steady income. Looking at the award, we gather the impression that the Labour Court exactly intended and visualised such a situation, but did not quantify the amount of compensation.

In this connection, reference may be made to two decisions reported in Sant Raj v. O.P. Singla : 1985 (II) LLJ 19 and Ras Behari Vs. Haryana Agricultural

University through Vice-chancellor, Hissar and Others, in which, in similar situations lump sum compensation was awarded.

6. For the reasons stated above, the writ petition is allowed in part. The amount of compensation which is awarded to the petitioner is quantified Rs. 15,000/- (Rupees Fifteen Thousand). Opposite party No. 3 shall pay the amount within three months. The award shall stand modified to this extent. Cost is estimated at Rs. 300/- (Rupees Three Hundred).

D.P. Mohapatra, J.

I agree.