
(2010) 01 OHC CK 0039
In the Orissa High Court

Bhubaneswar Development Authority	APPELLANT
Vs	
B.D.A's Workers Union	RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12

Citation : (2010) 109 CLT 650 : (2010) 4 LLJ 43

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—The Management - Bhubaneswar Development Authority is the Petitioner in this Writ Petition. It has challenged the award dated 30.12.2004 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No. 74 of 2003. A reference was made Under Sections 10 & 12 of the Industrial Disputes Act, 1947, which reads as follows:

Whether the action of the management of Bhubaneswar Development Authority, Bhubaneswar in not regularizing the services of 113 numbers of N.M.R/D.L.R/Ad hoc workmen (list enclosed) is legal & or justified? If not, what relief they are entitled ?

2. It was the case of the workmen that they were engaged in Class-III & IV jobs by the Management-Petitioner & by rendering continuous & uninterrupted services for near about 10 to 15 years, as the services of the workmen were not regularized, an industrial dispute was raised. On failure of conciliation & submission of failure report, a reference was made by the Government which was registered as I.D. Case No. 2 of 1988. Considering the evidence adduced by both the parties & the documents produces, the Tribunal in I.D. Case No. 2 of 1988, by award dated 22.11.1990 held that the N.M.R. employees, who have been working under the Petitioner continuously for more than one year should be regularized & are entitled to service benefits like their counterpart in the regular

establishment. The said award was notified & thereafter, the Management approached the Opp. Party - Union for amicable settlement of the matter. A settlement was entered into between the Management & the Opp. Party - Union on 29.4.1991 as at Annexure-A/1 & it was agreed upon that the employees, who have rendered five years of service under the establishment, would be regularized. Pursuant to the said settlement, the services of 270 employees were regularized & the process of regularization continued. But subsequently, the said process was stopped. The Union again put-forth its demand before the authorities & accordingly, another settlement was entered into on 21.2.1993 vide Annexure-C/1. While the services of 113 D.L.R. employees were not taken into consideration for regularization & on the other hand, the services of D.L.R. employees, who were juniors to the said 113 workmen were regularized, a dispute was raised, which on being referred, has been registered as I.D. Case No. 74 of 2003 in which the impugned award has been passed. Materials were produced & evidence adduced before the Labour Court by the workmen. The Union specifically pleaded that out of 1050 employees, except 119 D.L.R. employees, the services of all others have already been regularized & the Management has also engaged more 500 employees through contractors. The matter was before this Court earlier in O.J.C. No. 7083 of 1998 which was filed by 9 workmen. The said workmen filed the aforesaid Writ Petition challenging an Order Dated 4.5.1998 withdrawing the earlier order of regularization of service passed in their favour. This Court, while declining to interfere with the said order on the ground that admittedly, the Petitioners therein had not completed 5 years of service directly under the Bhubaneswar Development Authority as on 1.12.1994, ultimately directed that since the Petitioners therein have completed five years of service directly under the Bhubaneswar Development Authority in the meantime, their cases may be considered for regularization at an early date.

3. Mr. Dayananda Mohapatra, Learned Counsel for the Petitioner BBSR Development Authority vehemently urged that the Labour Court has failed to appreciate the documents which were relied upon by the Management. The Labour Court has also not taken into consideration the financial crunch of the B.D.A. & the Management B.D.A. is bound by the superintendence & decision of the Government. Mr. Mohapatra further submitted that there was no sufficient work available to substantiate creation of posts for regularizing the left out workmen.

4. Mr. A.K. Choudhury, Learned Counsel for the Opp. Party -Union, on the other hand, submitted that the findings recorded by the Presiding Officer do not suffer from any illegality or perversity so as to be interfered with Under Article 226 of the Constitution of India. He further submitted that the settlement arrived at between the Petitioner-Management & the Opp. Party- Union is bidding on both the parties & the same cannot be avoided on the ground that there is a financial crunch. The Labour Court in the impugned award, upon framing the issues raised, analyzing the evidence adduced before it & the materials produced, minutely &, in material particulars, came to the conclusion that the action of the

Management-Petitioner in not regularizing the services of the workmen is illegal & unjustified. The Labour Court for the above purpose placed reliance on the order of this Court passed in O.J.C. No. 7083 of 1998 & finding, as a matter of fact, that the workmen are entitled to be regularized as per the settlement arrived at between the Management & the Opp. Party - Union by which the parties are bound, the workmen are entitled to be regularized from the date they have completed five years of service in respect of general category & three years of service in respect of Scheduled Caste & Scheduled Tribe workmen, directed in the impugned award to consider the case of the concerned 113 workmen for regularization at an early date.

5. Though several decisions were cited by the respective parties, but on considering the facts of the present case, this Court does not feel it necessary to refer to the said decisions, which have been rendered in different sets of facts.

6. This Court also does not find any illegality or perversity in the impugned award so as to be interfered with by exercising its plenary Jurisdiction Under Article 226 of the Constitution. The Writ Petition, therefore, fails & is accordingly dismissed, but in the circumstances, without any cost.