
(2008) 12 OHC CK 0003
In the Orissa High Court
Case No : OJC No. 761 of 2002

Bijay Kumar Nanda and Others

APPELLANT

Vs

Orissa Administrative Tribunal and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Citation : (2008) CLT 195 Supp

Hon'ble Judges : Sanju Panda, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : B.P. Mohanty, N. Paikray, R.K. Kar and A.N.Ray, for the Appellant;
Jayanta Das, A.N. Das, A.N. Patnaik, N. Sarkar, E.A. Das, D.K. Rout, Bijan Ray,
B.S. Tripathy and R.K. Sahoo, for the Respondent

Judgement

Sanju Panda, J.—Challenge has been made in this writ petition to the order dated 3.1.2002 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 71 (C) of 200 disposing of the original application without going into the merit of the case giving liberty to 125 work-charged NMR employees to file a fresh application impleading the juniors who have been retained in the establishment whereas the Petitioners are facing retrenchment.

2. The brief facts of the case are as follows:

The Petitioners along with many others, in total 1634 persons, were engaged in "Samal Barrage Project". The work of the above project was started sometimes in the year 1978 to control the flood, tame and harness of water flow of river Brahmani. The State Government decided to set up a barrage over the river Brahmani in the undivided district of Dhenkanal. The prime intention to set up that barrage was to irrigate the land situated in Cuttack, Dhenkanal and Keonjhar. The authority engaged the Petitioners as NMRs employees. When, after serving for a petty long time covering a span of 15 to 20 years, they found that they were being exploited and work was being extracted from them by paying a nominal amount, different groups of persons moved the Tribunal by filing different original applications. Their specific prayer was for their regularization

and payment of equal pay with that of their counterparts. As the project was a major in nature and likely to continue for years to come, they had a right to be regularized. Since they discharged duties for long years, they asserted that they accrued a right and as such, they were not only to be regularized but also entitled to get the pay attached to the post. Accordingly, the original application was filed by the Petitioners before the Tribunal.

3. Opposite parties after receiving notice appeared and filed their counter affidavit specifically raising the question that the Petitioners were not selected by the regular selection process. Their services were requisitioned for specific jobs relating to the project. Their conditions of service as well as payment of wages were governed by the O.P.W.D. Code. As such, neither they were entitled to get regular scale of pay nor were they entitled to be regularized. In the said counter, they did not take any plea of non-availability of finance or the plea of work. However, they took a stand that though the work of the Barrage was at its fag end, the work of the excavation of canal was to start.

4. The Tribunal, taking into consideration the plea of the Petitioners and the stand taken by the opposite parties in the counter, by order dated 2.6.1995 directed the authorities to bring the NMR workers to the work-charged establishment with effect from the date when Original Application No. 1553 (C) of 1993 was filed and to be treated as employees borne in the work-charged establishment for the purpose of their salaries and also in respect of other service conditions. A further direction was made to the effect that they could only be retrenched by following due process of law and they could not be replaced by persons drawn from other sources. A further direction was given to pay them the salary at the initial stage in the scale of pay provided to their counterparts in the work-charged establishment. However, the Tribunal did not direct for their regularization.

5. Being aggrieved by the said order dated 2.6.1995 of the Tribunal, opposite parties carried the matter to the apex Court in SLP (C) No. 5526-31 of 1996 and the same was dismissed. The review application filed the same was also dismissed. Thereafter, opposite parties by order dated 24.5.2001 converted the service of 1224 NMR employees to work-charged establishment with effect from 2.9.1993 as per the direction of the Tribunal ignoring the case of 123 NMRs. Therefore, the said 123 NMR employees approached the State Government for redressal of their grievance. The State Government left out those 123 employees in spite of the fact that many of them were senior to 1224 NMR workers whose services were converted to work-charged establishment. The State Government in its own wisdom took a decision to retrench those employees on the ground of reduction of work. Accordingly, the Executive Engineers as well as the Medical Officers were directed to retrench those NMRs on the basis of last come first go". At that point of time, the Chief Engineer and Basin Manager of the Brahmani Left Basin apprised the State Government in his letter dated 17.1.2001 about the progress of different works, employment of different categories of employees and

particularly about the anticipated period of completion of different works. The said letter reveals that work was available till 20 13. On the above background of facts, the Petitioners approached the Orissa Administrative Tribunal with a prayer not to retrench/terminate them and to allow them to continue. Their main ground was that since the persons junior to them had not been retrenched, the persons who had joined earlier and continued their works should not be retrenched and they had a right to continue. However, while the Tribunal did not entertain that application on the ground that the persons junior to the Petitioners had not been added as parties to the original application, it observed that the Petitioners should not be retrenched and granted liberty to the Petitioners to file a fresh application impleading the affected persons. Hence, the present writ application.

6. In the writ application, notice was issued to the opposite parties. In the meantime the Samal Barrage Project Union represented by its President filed application to implead them as parties. As such, they were impleaded as parties to the writ petition. They contended that after disposal of the SLP, the State Government took steps to bring the NMRs employees who approached the Tribunal in the year,1993 to work-charged establishment with effect from 2.9.1993. As such, they were work-charged employees whereas the present Petitioners are still working as NMR employees. In the meantime, though many of the applicants were permitted to continue by orders of different courts, they have been retrenched and forced to accept the benefits. The plea of the writ Petitioners that the persons who have been brought into the work-charged establishment are junior to the NMR categories is false, misleading, baseless and mala fide. By virtue of the interim order, the persons who have already brought into work? charged establishment should not be retrenched or the authorities shall not initiate any coercive action against the said applicants. From the above contentions, it is crystal clear that there are 1634 persons working under the above said Project and even though 1224 persons have already been brought into work-charged establishment with effect from 2.9.1993, the present Petitioners, who are 123 in number, have claimed that they are seniors to 1224 persons and ignoring their seniority, the juniors have been brought into the work-charged establishment.

7. It reveals from the records that the Tribunal did not take into consideration the matter on merit as all the persons who are going to be affected were not made parties to the original application. The dispute being regarding the regularization and equal pay for equal work to the Petitioners and in the meantime the employees-union were impleaded as parties in the writ petition, for the interest of justice and fair-play, this Court is of the view that the matter should be remanded to the Tribunal which shall after hearing all persons on merits and taking into consideration the date of joining of the Petitioners and their continuation of service, give specific finding on the plea raised by the Petitioners for their regularization and equal scale of pay as their counterparts are getting.

8. Accordingly, the matter is remanded to the Tribunal. The Petitioners as well as the opposite parties are directed to appear before the Tribunal on 11.12.2008 on which date the latter shall fix a date of hearing of the case. Since the matter is very old one, keeping in mind the observation made by us in the foregoing paragraphs, the Tribunal shall dispose of the same as expeditiously as possible, preferably within a period of three months from the date of receipt a copy of this order. The interim order granted to the Petitioners regarding their services shall continue till the disposal of the matter by the Tribunal.

9. With the aforesaid observation and directions, the writ petition is disposed of.

I.M. Quddusi, J.

10. I agree.