
(2006) 03 OHC CK 0063
In the Orissa High Court
Case No : O.J.C. No. 1028 of 1996

Binay Kumar Das

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 18-03-2006

Acts Referred:

Citation : (2006) 03 OHC CK 0063

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : J.R. Dash and K.L. Dash, for the Appellant; J.K. Tripathy, B.P. Tripathy, A.K. Panda, S.N. Mishra, P.K. Chand, D. Satpathy, A. Mohanty and A. Mohapatra for O.P. No. 3, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This writ application is directed against the award dated 31st August, 1995 passed by the Labour Court, Sambalpur in Industrial Dispute Case No. 50 of 1992 answering the reference against the Petitioner.

2. The case of the Petitioner is that he was working as helper in the Store Department of Rourkela Steel Plant, opposite party No. 3 under the contractor Shri R.N. Sarangi, opposite party No. 4 with effect from 1979 and the nature of job performed by him was of permanent and perennial type. The said R.N. Sarangi was engaged by the opposite party No. 3 as a contractor. In course of execution of the contract, Shri R.N. Sarangi left as a result of which Rourkela Steel Plant carried on work on its own and paid wages to the labourers engaged by the said contractor including the Petitioner. While working as such, the Petitioner was retrenched from service with effect from 17.5.1983 on the ground of reduction of job. The case of the Petitioner is that though he was retrenched from service on the ground of reduction of job, at a later stage Rourkela Steel Plant had engaged workers afresh after retrenchment. Challenging the retrenchment, the Petitioner raised complaint before the labour machinery and in course of conciliation proceeding, Rourkela Steel Plant assured to take back the

Petitioner to service but it did not keep its promise. It is also the case of the Petitioner that as per the agreement between Rourkela Steel Plant and recognized union in 1983, the incoming contractor was to absorb all the workers of outgoing contractor and the left over work of R.N. Sarangi having been taken over by the management of Rourkela Steel Plant itself, the Petitioner should have been absorbed on permanent basis under Rourkela Steel Plant. Further case of the Petitioner is that he was retrenched from service due to his union activity. On the basis of such complaint, after failure of the conciliation, the reference was made to the Labour Court to the following effect:

(I) Whether the action of the management of Rourkela Steel Plant while executing the contract job of R.N. Sarangi in Central Stores Department after abandonment of the job by the said contractor in retrenching Shri Binoy Ku. Das with effect from 17.5.1983 is legal and/or justified?

If not, what relief the workman is entitled to?

3. The management of Rourkela Steel Plant filed written statement before the Labour Court stating therein that R.N. Sarangi, the contractor who had been engaged by Rourkela Steel Plant is the real employer and at best the management of Rourkela Steel Plant can be considered as principal employer. The reference was objected on the ground that the contractor R.N. Sarangi had not been made a party to the reference. It is the case of the management of Rourkela Steel Plant that Shri R.N. Sarangi was working as contractor from 1.8.1980 to 31.7.1981 and in order to execute the work, he had engaged its own workers including the Petitioner on the terms and conditions settled by him with the workers and he was paying wages to them up to May, 1983. It is also stated in the written statement that the period of work was extended up to 31.7.1983. Since the contractor failed to make payment of wages to the workers engaged by him for the month of May, 1983 by 9th June, 1983, the management discussed the matter with the representative of the contractor and directed him to make payment for the month May, 1983 by 10th June, 1983 positively. Subsequently it was informed by the representative of the contractor to the management of Rourkela Steel Plant that R.N. Sarangi having met with an accident sustained certain serious injuries and had been shifted from Rourkela to S.C.B. Medical College and Hospital, Cuttack and was unable to make payment of wages by 10th June, 1983 but promised to disburse the same to the workers on 13 June, 1983. In order to discharge the responsibility of the principal employer, Rourkela Steel Plant paid wages to the workers engaged by Shri Sarangi to be recovered from his bills. This fact was also intimated to Shri Sarangi and he was also directed to make payment of the wages for the month of June, 1983 by 7.7.1983. On 29th June, 1983 Shri Sarangi informed Rourkela Steel Plant that he was unable to execute the work any further on account of his ill health and requested for payment of wages to the workers for the month of June, 1983. In view of such request, the wages for the month of June, 1983 were also paid by the management of Rourkela Steel Plant. The contractor having again failed to

pay wages for the month of July, 1983 apart from annual bonus and leave wages from 1.8.1982 to 31.7.1983, the management of Rourkela Steel Plant was forced to make payment with the understanding that the same shall be recovered from the bills of the contractor. The contract subsisted up to 31st July, 1983 and thereafter, Rourkela Steel Plant had no obligation to make payment. So far as Petitioner is concerned, the stand taken in the written statement is that in the month of May, 1983 the Petitioner reported for duty for 9 (nine) days only and absconded thereafter. This fact was not brought to the notice of Rourkela Steel Plant by the representative of Shri R.N. Sarangi. It is also the case of the management that it had not retrenched the Petitioner with effect from 17.5.1983 as alleged. The specific case of the management is that the Petitioner worked in the establishment under the contractor and voluntarily abandoned the job after working for nine days in the month of May, 1983 and, therefore the question of retrenchment does not arise at all. So far as the agreement between Rourkela Steel Plant and union is concerned, it is stated in the written statement that the contract period of Shri R.N. Sarangi was valid up to 31.7.1983 and the agreement with the union was signed on 26.11.1983 and, therefore, the same has no application to the case of the Petitioner.

4. On the basis of the respective cases of both the parties, the Labour Court framed two issues and on analysis of evidence available on record found that the Petitioner was working under the contractor and any payment of wages and other service benefits made by Rourkela Steel Plant was on account of ill health of the contractor and only to fulfil the obligation of the principal employer to avoid any statutory liability. The Labour Court also found that the Petitioner had abandoned the job and therefore, it cannot be said that he was retrenched by the management of Rourkela Steel Plant with effect from 17.5.1983.

5. Shri J.R. Dash, the learned Counsel appearing for the Petitioner challenged the award solely on the ground that the Labour Court has travelled beyond the scope of reference by holding that the Petitioner abandoned the job and there was no retrenchment. Referring to the reference itself, Shri Dash contended that the Labour Court had never been called upon to decide as to whether the Petitioner abandoned the job or was retrenched from service. The Labour Court was only called upon to decide as to whether retrenchment of the Petitioner from service was justified, legal or not. In this connection, he relied upon a decision of the Apex Court in the case of *Pottery Mazdoor Panchayat v. The Perfect Pottery Co. Ltd.* and Anr. reported in AIR 1979 SC 1356, In the said case, the Apex Court observed that the jurisdiction of the Tribunal in the Industrial Dispute is limited to the points specifically referred for its adjudication and to the matters incidental thereto and the Tribunal cannot go beyond the terms of reference. In this connection, another decision of the Apex Court in the case of *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, be referred to. While deciding a similar question, the Apex Court held as follows:

Since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it u/s 10 is limited by Section 10(4) to the points specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication, which must always be avoided. Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. The fact that the relevant action of the employer is called a lockout in the order of reference does not mean that the Tribunal must hold it to be a lockout. In several cases where industrial disputes are referred for industrial adjudication in respect of certain persons named as workmen, the employers raise the contention that the specified persons are not their workmen and merely because the said persons are described as workmen in the reference, the employer is not precluded from disputing their status and the Tribunal has jurisdiction to try such an incidental dispute.

6. In the present case, the reference was as to whether after abandonment the job by the contractor, retrenchment of the Petitioner by the management of Rourkela Steel Plant is legal and justified or not. Shri Dash, the learned Counsel appearing for the Petitioner contended that the question as to whether there was retrenchment or not was not open to be decided by the Labour Court. The Court was only required to adjudicate as to whether such retrenchment as legal and justified or not. The learned Counsel appearing for the Rourkela Steel Plant, on the other hand, submitted that while making the reference the authority should have been careful giving no room of ambiguity or controversy. However, the Court is also required to construe the reference reasonably and not technically. On verification of the evidence available on record, it is found that the finding of the Labour Court that the Petitioner abandoned the job after working for nine days in the month of May, 1983 is justified and, therefore, Shri Dash, the learned Counsel appearing for the Petitioner did not challenge the said finding. There is nothing on record to show that before the Conciliation Officer a different stand had been taken by the management of Rourkela Steel Plant. In view of the above, merely because while drafting the reference some ambiguity has been created, the Petitioner cannot take advantage of the same. It is always for the Court to construe a reference reasonably. If the evidence adduced before the Labour Court is looked into, it will be clear that the Petitioner had abandoned the job after working for nine days in the month of May, 1983 and the contract work having continued since July, 1983, there was no question of retrenchment by the management of Rourkela Steel Plant who was the principal employer.

7. In view of the reasons above, I do not find any merit in the writ application and the same is dismissed.