

(1990) 12 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 1434 of 1985

Bisra Stone Lime Company Ltd.

APPELLANT

Vs

Their Workmen Mohender Dip and Others

RESPONDENT

Date of Decision : 11-12-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1992) 1 LLJ 616

Hon'ble Judges : B.L. Hansaria, C.J.; S.K. Mohanty, J

Bench : Division Bench

Advocate : B.B. Ratho, M. Misra and A.K. Satpathy, for the Appellant; Saktidhar Das, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mohanty, J.—Opposite Party No. 1 was serving as a labourer (miner) under the petitioner company since February 5, 1975. By Annexure-8 dated August 8, 1977 he was declared medically unfit for further mining work and was intimated about his retirement with effect from September 13, 1977 giving him one month notice. Being aggrieved, opposite party No. 1 raised an industrial dispute and the Central Government referred the same to the Industrial Tribunal on May 10, 1982 for adjudication. The Tribunal, in its order dated April 17, 1985 (Annexure-18), came to find that the case was one of retrenchment and declared that for non-compliance of Section 25-F of Industrial Disputes Act (for short "the Act"), the order of termination was neither legal nor justified and awarded the relief of reinstatement in service with full back wages. This order of the Tribunal is challenged in this proceeding mainly on the ground that termination of service of opposite party No. 1 was not retrenchment since the termination was on the ground of continued ill-health, for which there was ample evidence on record.

2. Opposite party No. 1 did not file any counter, but contested the case at the hearing.

3. Admittedly, the provision of Section 25-F of the Industrial Disputes Act has not been fully complied by the petitioner inasmuch as although one month's written notice was served, petitioner has not been paid compensation and notice on the Central Government has not been served. The stand taken by the petitioner in this proceeding is that the termination of services of opposite party No. 1 did not amount to retrenchment within the meaning of Section 2(oo) of the Act, since the termination was on the ground of continued ill-health and, therefore, it was not incumbent on the petitioner to comply with the provisions of Section 25-F of the Act. Now, therefore, it is to be examined whether there were adequate materials before the Tribunal to arrive at a finding that opposite party No. 1 possessed continued ill-health.

4. Ill-health means disease, physical defect or infirmity or unsoundness. A person who is not free from disease is certainly not possessing a sound health for active duties and if this sort of thing continued for a long period, he must be said to be suffering from continued ill-health, for continued ill-health suggests that it is prolonged for a considerable period. Ill-health, which is intermittent, cannot be termed as continued ill-health. It should be of sufficiently long duration and continuous.

5. In the instant case, the petitioner relied on four documents to prove the continued illness of opposite party No. 1. Annexure-1 dated March 11, 1977 is an entry in the out-door register of Biramitrapur Hospital showing the disease as fits and cold, Annexure-3 dated May 3, 1977 is another entry in the out-door register of the said hospital where the disease mentioned is fit. In Annexure-5 dated June 25, 1977, the hospital doctor has mentioned that opposite party No. 1 was admitted in the hospital direct from the quarry on May 3, 1977 with complaint of Haimpstysis and was discharged on May 4, 1977. He has further mentioned that as reported and confirmed by the Manager, Kaplas East Mahendra Dip (opposite party No. 1) was having recurrent attack of fit of epileptic type during working hours in the mines. The doctor recommended retirement of opposite party. No. 1 from safety point of view as there was every possibility that he may meet with accident of serious type if he gets fit while working close the border of the belt. Annexure-4 dated July 3, 1977 is another entry in indoor register of the hospital showing the disease as fits and haimpstysis. The doctor, who was examined in the Tribunal claimed that on May 3, 1977, the opposite party No. 1 had fits in the indoor to his knowledge and on other two occasions, he was informed by the management that the opposite party No. 1 fell down due to fits. But in Annexure-5 dated June 25, 1977, he has simply mentioned that the opposite party No. 1 was admitted on May 3, 1977 and was discharged on May 5, 1977 and has not noted that on May 3, 1977 the opposite party No. 1 had fits in the indoor. This apart, the above documents at best revealed that on three dates i.e. on March 11, May 3, and July 3, 1977, the workman suffered from fits which was of intermittent nature. So basing on them it cannot be said that opposite party No. 1 suffered from continued ill-health so as to attract Clause (C) of Section 2(oo) of the Act.

Before the Tribunal, opposite party No. 1 had produced a certificate from Asst. Professor, Neurology, S.C.B. Medical College, Cuttack, which indicates that his EEG did not provide any evidence of epilepsy. Thus this certificate negated the disease of epilepsy.

6. On behalf of the petitioner, Annexure-6 dated August 1, 1977, the application of the opposite party No. 1 addressed to the Superintendent, Mines and Quarries was pressed into service in proof of his continued ill-health. Herein opposite party No. 1 has mentioned that from his childhood he had not done any hard work and was getting difficult to continue miner work and therefore he may be transferred to other department. He repeated his prayer in Annex.-7 dated August 6, 1977. Herein he has stated that in course of employment he met with an accident for which he was hospitalised when he was told it was T.B., but it was revealed later that he was free from T.B. According to him due to the accident his health had deteriorated and he was having chest pain, stomach irritation and giddiness for which he could not discharge hard duties and may therefore be entrusted with light duties. These two documents at best revealed temporary illness and cannot be understood as an admission of continued ill-health.

7. In the ultimate analysis therefore we find that termination of employment of opposite party No. 1 amounted to retrenchment and, therefore, for non-compliance of Section 25-F of the Act, the order of termination could not be sustained. Consequently, the finding of the Tribunal in the impugned order that the order of termination was neither legal nor justified cannot be successfully assailed.

8. The impugned order was next attacked on the ground that in the facts of the case, the prayer for reinstatement should have been disallowed by the Tribunal. The normal rule in cases where dismissal or removal from service is found to be unjustified or illegal, the relief which would flow is that of reinstatement. It has, however, been stated in *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others*,), that the Tribunal has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional, so as to make reinstatement inexpedient or improper. What was stated in *I.T.C. Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna (Bihar) and Others*,), is in this connection is that every case has to be judged on its own facts while deciding the proper relief which should be granted to the workman, whose dismissal has been found to be wrongful, mala fide or illegal. In both these cases, the Apex Court had directed payment of compensation in lieu of reinstatement.

9. Relying on the aforesaid decisions, it is submitted by Shri Ratho that the present is a fit case where, instead of reinstatement, the Tribunal ought to have directed payment of compensation in lieu of reinstatement inasmuch as the workman had fallen ill between March 1977 and July 1977 on some occasions and had even desired on August 1, 1977 and August 6, 1977 to get himself transferred to some other department since he was not in a position to continue

the miner's work because from his childhood he had not done any hard work.

10. On the aforesaid submission being made by Shri Ratho, Shri Das appearing for the workman took some time to receive instructions, and he informed us later when the case was taken up for further hearing that though the petitioner had some problem of health in 1977, since then, however, he has been keeping fit and has been earning his livelihood by pulling a rickshaw. The learned counsel further informed the Court that the workman would have no difficulty in undertaking the miner's work which, though arduous, is not more arduous than that of a rickshaw-puller. The petitioner had appeared in the Court and we have found him quite hale and healthy. There is no material before us to show if after 1977 the petitioner had been keeping bad health because of which reinstatement should be denied to him. In view of all the above, we have not felt persuaded to accept the contention of Shri Ratho.

11. There being no other infirmity in the impugned award relating to reinstatement, the petition is dismissed. Keeping however, in view the fact that the petitioner was self-employed as a rickshaw-puller after the termination of his service, we shall order for payment of 2/3 of the arrear wages calculated from the date of the termination till the date of the award.

B.L. Hunsaria, C.J.

12. I agree.