

(1992) 05 OHC CK 0018

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2074 of 1987

Braja Kishore Pradhan

APPELLANT

Vs

Tribal Development Corporation of Orissa Ltd. and Another

RESPONDENT

Date of Decision : 05-05-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F

Citation : (1992) 74 CLT 248 : (1992) 2 OLR 239

Hon'ble Judges : B.L. Hansaria, C.J.;K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : J. Das, B.S. Tripathy, B.K. Sahu and P.K. Deo, for the Appellant; N.K. Paikray, G.K. Mohanty, B.C. Panda, R.P. Kar, A.N. Ray and M.N. Harsabardhan, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The petitioner was appointed as a shop assistant in 1974 provisionally for a period of three years. Subsequently, he was brought to regular cadre with effect from 16-10-1975 after completion of his probationary period as would appear from Annexure-2 dated 23-4-1979. However, by office order dated 25-5-1979 (Annexure-3), he was informed that his services are "no more required" with effect from 31-5-1987. He was paid one month's wage in lieu of one month's notice. As to the requirements of Section 25-F(b) of the Industrial Disputes Act, it was stated that "(c) compensation at the rate of 15 days average pay for each completed year of service will also be paid to him," This order has been challenged in this petition.

2. Shri pas urges that the order, though innocuous on the face of it, should really to be taken as an order of dismissal and the same having been passed without holding any enquiry is illegal. Though no counter has been filed in the present case on behalf of the opposite parties, from the averments made in the writ petition, we are not in a position to read mala fide, in the impugned order

inasmuch as the averments made in paras 3 (h), 4 and 5, which alone are relevant in this regard do not make out a case of mala fide. It is well settled that mala fide has to be specifically pleaded and necessary averments have to find place,, which are missing in the present, case. We are, therefore, not in a position to accept the first submission of Shri Das.

3. The second submission is that even if the order of termination as at Annexure-3 be i?ken to be retrenchment, the compensation visualised by Clause (b) of Section 25-F of the industrial Disputes Act had not been paid at the time of retrenchment. This is apparent, as in the impugned order it is stated that compensation will also be paid. There is, therefore, sufficient force in the submission of Shri Das that requirement of Clause (b) has not beer: fulfilled, in this connection, our attention is drawn to the statement made in para-6 of the petition that no payment of compensation had been made at the time of service of the impugned order. As no counter has been filed in the present case, as already stated, we have to accept this statement of the workman. The termination having thus been in violation of the full requirements of Section 25-F, has to be held as invalid in law. We/therefore, set aside the same and order reinstatement of the petitioner,

4. Next question is whether we should grant back wages to the petitioner. In this connection, we have to bear in mind that the order of retrenchment has been regarded as invalid by us due to non-compliance of Clause (b) of Section 25-F. A case of similar nature recently came up before the apex Court in Tarlochan Singh Vs. Punjab State Warehousing Corporation and others, wherein the service of the incumbent had been terminated by giving him one month's salary in lieu of one month's notice, whereas "he requirement of law was giving of two month's notice or pay in lieu thereof. The termination order was, therefore, held to be not in accordance with law with the result that the same was set aside. The apex Court, however, stated that the appellant would not be entitled to back wages having regard to the facts and circumstances of the case.

5. It would also be profitable to refer to another recent case ; Mrs. Neera Mathur Vs. Life Insurance Corporation of India and another, . In that case the appellant was on probation and she was discharged from service on the ground of false declaration having been o made in some matters while seeking employment under the Corporation. The declarations were found to be false, but the Court was of the view that the declaration which were sought from the appellant were of very personal nature and it was really not proper on the part of the Coiporation to have asked for the same. The discharge order was therefore, set aside, but it was observed that the appellant would not be entitled to salary from the date of discharge till her reinstatement.

6. The above shows that in appropriate cases while ordering reinstatement back wages may not be paid. Though in the present case the retrenchment has been held to be illegal by us and. though we are conscious of many apex Court decisions wherein cases of illegal retrenchment also back wages have been

awarded, yet we would think that in the facts and circumstances of the present case and keeping in view the aforesaid two latest judgments of the Supreme Court, granting of back wages is not called for. We also do not rule out the possibility that the petitioner might have been employed somewhere else or otherwise gainfully engaged during the period in question. Other service benefits shall, however, be made available to the petitioner.

7. The petition is allowed accordingly. Let this order be implemented by the opposite parties within a period of two months from the date of receipt of the order.

8. Before parting, we may observe that as none of the counsel for the opposite parties appeared at the time of hearing of the case, we heard the same with the assistance of Shri Das and being satisfied about the illegality in the order of retrenchment, we have passed the aforesaid order.

K. C. Jagadeb Roy, J.

9. I agree.