
(2016) 08 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 5345 of 1999

Branch Manager

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2017) 152 FLR 1095 : (2017) 1 LLJ 175

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. S.C. Samantaray, N. C. Sahoo, S.P. Panda, D. Mohanty, S. Patnaik and S. Nanda, Advocates, for the Opposite Parties; M/s. P.V. Ramdas and P.V. Balkrishna Rao, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

S.N. Prasad, J. - This writ petition is on the behest of Branch Manager, State Bank of India, Barbil Branch wherein the award dated 20th July 1998 passed in Industrial Dispute Case No.115 of 1997(C) has been challenged.

2. The award has been passed for reinstatement with payment of 50% of the back wages in favour of the opposite party - workmen which has been challenged on the ground that the Industrial Tribunal has not appreciated the fact regarding master - servant relationship in between Barbil Branch of State Bank of India and the opposite party - workmen and without answering the same the finding has been given regarding non-compliance of the provision of Section 25-F of the Industrial Dispute Act.

It has been contended that the Industrial Tribunal ought to have taken into consideration before passing the award of reinstatement with 50% of back wages by first establishing the relationship of employer - employee in between the management and the opposite party - workmen which is the mandatory requirement and without doing so the award has been passed for reinstatement,

while the all along case of the management - petitioner is that the opposite party - workmen is not the employee of the Barbil Branch of State Bank of India, rather he was engaged as a Canteen boy by the Local Implementation Committee (Staff Welfare Scheme) at Barbil Branch and as such the Industrial Tribunal ought to have given finding to that effect before answering the reference.

3. Per contra the learned counsel representing opposite party - workmen has submitted that there is no infirmity in the award, rather the award has been passed by the Industrial Tribunal after taking into consideration entire aspect of the matter, specifically the fact that opposite party - workmen has rendered his service continuously from June 1984 till 1.4.1992 but without complying the provision of Section 25-F of the Industrial Dispute Act, the opposite party - workmen since been retrenched from service, hence the Industrial Tribunal has answered the reference in favour of the workman by way of reinstatement with 50% of back wage considering the fact that the provision of Section 25-F ought to have been complied with mandatorily. He further submits that there is no infirmity in the award, hence no interference is required by this court.

4. Heard the learned counsels for the parties and perused the documents available on record.

It is the case of the opposite party - workmen who has been engaged as Canteen boy-cum-Messenger to work under Barbil Branch of State Bank of India in the month of June 1984 and continued as such till 1.4.1992 and where after he was not allowed to discharge his duty. The opposite party - workman has made representation but when no result has come out, he raised a dispute before the Assistant Labour Commissioner, Rourkela and a conciliation proceeding was initiated, but when the same has failed, the appropriate Government has made a reference to the effect:

"Whether the action of the Branch Manager, State Bank of India, Barbil Branch, P.O.:Barbil, Dist.: Keonjhar in terminating the services of Sri Mukund Patra, Canteen Boy-cum-Messenger, P.O.:Barbil, Dist.:Keonjhar w.e.f.1.4.1992 is justified? If not, what relief the workmen is entitled to?"

The Industrial Tribunal has proceeded to answer the reference and came to conclusion that the opposite party - workmen has performed his duty from June, 1984 and continued till 1.4.1992 and as such the provision of Section 25-F is attracted but since the same has not been followed, hence the termination of opposite party - workmen cannot be said to be in consonance with law and accordingly the reference has been answered in favour of the workmen by directing reinstatement with 50% of back wages which is under challenge in this writ petition.

5. Before answering the issue it would be relevant to go through the provision of Section 25-F of the Industrial Dispute Act, 1947 which is hereunder as:-

"25F. Conditions precedent to retrenchment of workmen. -

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette."

This section contains conditions precedent to retrenchment of workmen and the conditions laid down in it have been preamble with the words, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer. The provision contains protection, i.e.

(i) having the relation of employee with the employer,

(ii) he must be a workman within the meaning of Section 2(s) of the Act,

(iii) the establishment in which he is employed must be an industry within the meaning of Section 2(j) and

(iv) he must have put in not less than one year of continuous service as defined by Section 25B under the employer.

These conditions are cumulative. If any one of these conditions are lacking, the provision of this section will not be attracted.

The all along case of the petitioner - Bank is that the opposite party - workmen has not been engaged rather he has been engaged as Canteen Boy-cum-Messenger by the Local Implementation Committee (Staff Welfare Scheme) at Barbil Branch, hence there does not exist any relationship of master-servant in between the Bank and the workers of the Canteen, but while appreciating the Award, we find that these issue has not been answered by the Tribunal.

Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of job, etc. should weigh with the court for determination of such an issue.

Admittedly in this case the opposite party - workmen has been engaged to perform his duty as Canteen Boy-cum-Messenger by the Local Implementation Committee under the Staff Welfare Scheme but before passing the award the

Industrial Court has not taken into consideration the nature of appointment, availability of job, etc. and further the Tribunal has also not gone into the relationship of employer - employee in between the Barbil Branch of State Bank of India and the opposite party - workmen. But in stead of going into these controversies, it would be proper to meet the ends of justice by placing reliance on various authoritative pronouncements of the Hon"ble Apex Court in the cases of Idrishan Yakubkhan Pathan v. State of Gujarat, (2007) 9 SCC 352, Madhya Pradesh Administration v. Tribhuban, (2007) 9 SCC 748, Sita Ram and Others v. Moti Lal Nehru Farmers Training Institute, (2008) 5 SCC 75 and Jagbir Singh v. Haryana State Agriculture Marketing Board and Another, (2009) 15 SCC 327 and taking into consideration these aspects of the matter this court vide order dated 14.7.2015 has directed learned counsels for both the parties to convey the amount of compensation to be paid to the opposite party no.2 in lieu of the award of reinstatement.

Learned counsel representing the petitioner - bank has produced one communication dated 11.7.2016 showing willingness to pay Rs.1,00,000/- to Sri Mukund Patra in lieu of reinstatement. Learned counsel for opposite party - workmen has submitted that the amount of Rs.1,00,000/- is too less and as such he has prayed to enhance the same.

Considering all aspects of the matter we are of the considered view that payment of an amount of Rs.1,25,000/- (Rupees one lakh twenty - five thousand) only in favour of the opposite party - workmen would meet the ends of justice.

Accordingly, we modify the award directing the petitioner - Management to disburse an amount of Rs.1,25,000/- (Rupees one lakh twenty - five thousand) only in favour of opposite party - workmen within period of four weeks from the date of receipt of copy of this order.

Accordingly the writ petition stand disposed of.