

(2016) 06 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 4740 of 1997

Budhiram Barik

APPELLANT

Vs

Presiding Officer, Labour Court, Jeypore

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2016) 150 FLR 907 : (2016) LIC 3585 : (2016) 4 LLJ 611

Hon'ble Judges : Kumari S. Panda and Mr. K.R. Mohapatra, JJ.

Bench : Division Bench

Advocate : M/s. Satyabadi Das, R.N. Acharya and S.Mohanty, Advocates, for the Appellant; M/s R. Mohapatra, Sr. Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.R. Mohapatra, J.—The unsuccessful workman in I.D. Case No. 34 of 1994 calls in question the legality and propriety of the award dated 16.12.1996 passed by the Presiding Officer, Labour Court, Jeypore, Koraput.

2. Pursuant to the notice of the Presiding Officer, Labour Court, Jeypore, the Workman (petitioner herein) filed his statement of claim stating that he was engaged as a Field Assistant in Narayanpatna Bamboo Sub-Division by the first party-Management, Orissa Forest Development Corporation, Rayagada (C) Division, Rayagada (for short, 'OFDC') (opposite party No. 2 herein) with effect from 01.03.1989 on a monthly wage of Rs. 650/- and continued as such till 15.04.1993. On 16.04.1993, he was served with a letter No. 310 dated 15.04.1993 (Annexure-1) dispensing with his services with certain allegation of violation of OFDC Rules and unsatisfactory discharge of duties. The opposite party Nos. 2 and 3 neither adhered to the principles of natural justice nor complied with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act') while terminating the services of the workman. Thereafter, the petitioner moved the opposite party No. 2 against such action, but to no effect. The opposite party nos. 2 and 3 neither conducted any

enquiry nor asked the petitioner to explain the alleged misconduct before dispensing with his services. Thus, finding no other alternative, the petitioner moved the Labour machinery and on failure of conciliation, the matter was referred to the Tribunal for adjudication.

3. The opposite party Nos. 2 and 3 filed their statement of claim stating that OFDC acted as an agent of the Government for extraction of bamboo from the forest. It was a seasonal operation commencing from the month of October and ending in the month of June next year. Most of the employees engaged in the said operation were piece-rated. They, including the petitioner, were being disengaged automatically when the coupe work ceased for which no order either of engagement or disengagement was being issued for the same. The petitioner was engaged in such operation as a seasonal employee on daily wage basis from 05.03.1989 to 15.04.1993 with seasonal breaks during the off season. He was disengaged with effect from 16.04.1993 on completion of the coupe work for the said season. The petitioner also neglected in his duty and cut bamboos outside the coupe area, for which the Range Officer, Narayanpatna had drawn an interim report No. 24 dated 25.02.1993 for illicit felling of bamboos of 362 clumps equivalent to 51 full bundles of Salia bamboo for which the OFDC had to pay compensation Rs. 1,810/-. For such negligence, he was charged with gross negligence in duty causing financial loss to the OFDC and was asked to explain the same vide letter No. 368 dated 19.07.1990. The petitioner did not submit any explanation to the above charges as would reveal from letter No. 644 dated 25.06.1992 of the Sub-Divisional Manager (opposite party No. 3). He was regularly negligent in his duty for which the Sub-Divisional Manager vide No. 1179 dated 14.12.1992 had warned him and instructed him to improve his performance, but the petitioner didn't improve. In course of enquiry, the petitioner had submitted application, which was received on 26.03.1994, requesting the Enquiry Officer to fix another date for enquiry due to illness of his wife and also monetary stringency. Accordingly, the date was fixed to 13.04.1994 and he was instructed to submit his explanation as last chance. But, he did not cooperate with the Enquiry Officer thereafter. Thus, the Enquiring Officer in his report recommended not to re-engage the petitioner in OFDC after cessation of the seasonal work on 15.04.1993. In view of the above, opposite party Nos. 2 and 3 claimed that the mandatory provisions of Section 25-F of the Act was not applicable to the case of the petitioner and the reference was not maintainable.

4. Taking into consideration the pleadings of the parties, the Presiding Officer, Labour Court (opposite party No. 1) answered reference against petitioner holding that the action of the opposite party Nos. 2 and 3 in terminating the services of the petitioner with effect from 16.04.1993 was legal and justified. Assailing the same, the petitioner filed the present writ petition.

5. Mr. Satyabrata Mohanty, learned counsel for the petitioner challenged the correctness of the award under Annexure-5 contending that the petitioner was engaged with effect from 01.03.1989 and continued till 15.04.1993 and he had

worked for more than 240 days in a calendar year. Thus, while terminating his services, the opposite party Nos. 2 and 3 ought to have complied with the mandatory provisions of Section 25-F of the Act. In absence of such compliance termination of the petitioner becomes illegal and he is entitled to reinstatement in service with full back wages. Though the opposite party Nos. 2 and 3 (Management) contended that the engagement of the petitioner was seasonal, no material to that effect was produced. The learned Labour Court relying upon the oral testimony of M.W.1, namely Kailash Chandra Muduli, the then Forest Manager, Rayagada, came to a conclusion that the nature of job discharged by the petitioner was seasonal in nature. Further, learned Labour Court in order to come to the aforesaid conclusion relied upon some stray statements of the petitioner (WW-1) to the effect that he was being paid his wages as per his daily attendance and no bamboo coupe work was being undertaken from July to September and hold that the petitioner was being disengaged after cessation of work every year. Thus, he was a seasonal employee for which the provision under Section 25-F of the Act need not be complied with at the time of his termination. Such a finding is perverse and contradictory materials available on record. The burden lies heavily on the opposite party Nos. 2 and 3 to prove that the job which was being discharged by the petitioner was seasonal in nature. Admittedly, no material to that effect was filed by the management. Further, the recital of Annexure-1 goes to show that the petitioner was disengaged due to his negligence in duty. No inquiry whatsoever was conducted and the petitioner was never given any opportunity to explain the allegation levelled against him under Annexure-1 at any point of time. In view of the above, the termination of the petitioner is per se illegal and his entitled to be reinstated in service.

6. Mr. R. Mohapatra, learned Senior Advocate forcefully refuted contentions of Mr. Mohanty and submitted that the workman/petitioner examined as WW-1 in the I.D. Case. He during the cross-examination categorically admitted that there was no post of Field Assistant under opposite party Nos. 2 and 3 in the year 1989. Further, Exts. E/1 to E/42 marked on behalf of workman clearly disclose that the petitioner was holding post which was seasonal in nature and he was being paid his wages through vouchers. He further contended that requirement of Section 25-F of the Act need not be complied with in the case at hand, since the job discharged by the petitioner was seasonal in nature. Further, he was not in continuous service for more than 240 days immediately preceding the date of his termination i.e., 16.04.1993. He had only worked for 156 days in a calendar year prior to the date of his termination. In addition to the above, because of the misconduct and negligence of the petitioner, the opposite party Nos. 2 and 3 suffered loss. Hence, a domestic inquiry was initiated against him. Though notices were issued to the petitioner to appear before the Enquiry Officer and submit his explanation, he did not co-operate with the same. Finding no other alternative, the Enquiry Officer submitted a report holding him guilty and recommended not to total losses, retain him in service in future. Accepting the recommendation of the Enquiry Officer, the petitioner was not re-engaged in the

Corporation. Learned Labour Court taking into consideration these material aspects held that the petitioner is not entitled to any relief. Thus, he prayed for dismissal of the writ petition.

7. Having heard learned counsel for the parties and on perusal of the records, it appears that the services of the petitioner were dispensed with pursuant to order under Annexure-1 to the writ petition. Annexure-1 does not disclose that the petitioner was a seasonal worker. On the other hand, order dated 15.04.1993 (Annexure-1) discloses that the petitioner allegedly neglected in his duties. He was entrusted with the job of engaging bamboo cutting labourers and camp with them for cutting of industrial bamboo as per Bamboo Cutting Rule in Atmakonda U.R.A. Kandabargi Section. Due to his negligence, the labourers cut bamboo outside the coupe area for which the Range Officer, Narayanpatna had drawn an interim report No. 24 dated 25.02.1993 for illicit cutting of 62 clumps equivalent to 51 full bundles of Salia bamboo, which were felled and removed from the adjoining area of Atmakonda ?A? coupe. For such negligence, the Range Officer charged a compensation of Rs. 1,810/- to the Corporation. Thus, the petitioner was alleged to have violated OFDC Rules and was held to be not suitable to continue in his service. Accordingly, his services were terminated with effect from 16.04.1993 forenoon. Plain reading of Annexure-1 does not disclose that the services of the petitioner were terminated at the end of the bamboo cutting season, as contended by opposite party Nos. 2 and 3. His services were dispensed with for negligence in his duty, for which a domestic enquiry was stated to have been initiated which ended in holding the petitioner guilty. Though the petitioner had categorically stated that he was not given any opportunity of hearing before his termination, the total losses, learned Labour Court has not made any endeavour to make an enquiry with regard to correctness of such enquiry. Learned Labour Court has made a great effort to find out as to whether provision of Section 25-F of the Act was required to be complied with at the time of termination of service of the petitioner. The vital aspect with regard to holding the petitioner negligent in his duty was not enquired into properly by the Labour Court. He has not made any endeavour to come to a conclusion that the domestic enquiry initiated against the petitioner was conducted properly and fairly. In the instant case, it is not relevant as to whether Section 25-F of the Act is complied with before dispensing with the services of the petitioner, the services of the petitioner were terminated on the allegation of negligence in his duty. Learned counsel for the petitioner strenuously urged that the petitioner was not given an opportunity of hearing in the domestic enquiry. Such a plea was also taken before learned Labour Court. Learned Labour Court has not made any endeavour to find out the correctness of such enquiry conducted against the petitioner. In that view of the matter, the impugned award is not sustainable in the eye of law.

8. In normal course, this Court would have remitted the matter to the learned Labour Court to make a fresh adjudication with regard to correctness of the enquiry made against the petitioner on the alleged negligence in his duty as

revealed from Annexure-1. But in the meantime, 23 years have already elapsed from the date of termination of the petitioner. No fruitful purpose would be served by remitting the matter back to the learned Labour Court. In addition to the above, there is no material on record to show that a fair and proper enquiry was conducted before the petitioner was terminated. We have scrutinized lower Court record available before us meticulously. Though there are some documents available on record to show that the petitioner had sought for time to submit his explanation before the Enquiry Officer, but the same is not sufficient to come to a conclusion that the enquiry was conducted fairly and properly. In such circumstances, the petitioner should have been reinstated in service. It is the admitted case that from the year 1993, the bamboo coupe are being allotted to respective Paper Mills and it is not under the control of the Corporation. In that view of the matter, a direction for compensation in lieu of reinstatement of the petitioner with back wages would be just and proper in the facts and circumstances of the case. Taking into consideration the nature of job being discharged by the petitioner, length of his service and the wages that was being paid to him, this Court feels it appropriate to grant a compensation of Rs. 75,000/- in lieu of his reinstatement with back wages. Accordingly, it is directed that the petitioner shall be paid a sum of Rs. 75,000/- (Seventy five thousand only) in lieu of his reinstatement with back wages within a period of four months from the date of communication of a copy of the judgment.

9. Accordingly, the writ petition is allowed to the extent indicated above.

10. S. Panda, J.—I agree.