
(2015) 02 OHC CK 0063
In the Orissa High Court
Case No : O.J.C. No. 3706 of 2000

Debendra Ram

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 120 CLT 465 : (2015) 1 OLR 1093

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : Susanta Kumar Dash, S.K. Mishra, B. Mohapatra, S.K. Dash and A. Dhalasamanta, for the Appellant; S.K. Nayak-1, Sr. Counsel, A.K. Baral, D. Nayak, S.K. Nayak-6, M.S. Sahoo, B.K. Sahoo and M.C. Swain, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J—The petitioner files this application seeking for a direction to Opposite Party No. 3 to accept his joining report dated 26.06.1999 in view of the direction given by the Opposite Party No. 2 dated 11.11.1999 and allow him to discharge duty and also grant all consequential service benefits as due and admissible in accordance with law.

2. The short fact of the case in hand is that the petitioner was engaged as an Ancillary Worker under F.C.I., F.S. Depot, Dhenkanal, pursuant to which he joined on 06.07.1992. Accordingly, an Identity card was issued in his favour by the District Manager of the Corporation registering him as Ancillary Worker having registration No. 182 vide Annexure-1. The petitioner was also enrolled as a member of a registered trade union as per Annexures-2 to 4. As he was critically ill, he was advised complete bed rest and medical certificate in support of such illness has been produced vide Annexure-5. After he was found fit, a joining report was submitted on 10.06.1999 before the Opposite Party No. 3 vide Annexure-3. The said joining report has not been accepted, therefore he

approached the Opposite Party No. 2 by filing representation vide Annexure-7. On consideration of the same, Opposite Party No. 2 vide letter dated 11.11.1999 in Annexure-8 directed the petitioner to resume duty. It is also indicated in the said letter that in case he fails to join, he would be faced with disciplinary proceeding. On receipt of such letter when the petitioner rushed to join on 22.11.1999, his joining was refused by Opposite Party No. 3, who advised him to meet Opposite party No. 2 at Cuttack. Therefore, the petitioner submitted his joining report on 26.11.1999 by registered post with A.D., but no action has been taken by the authorities till date. Hence, this application.

3. Mr. S.K. Dash, learned counsel for the petitioner states that as the petitioner was not allowed to join or resume duty, it amounts to termination of service, which is in gross violation of the provisions under the Industrial Dispute Act as well as the principles of natural justice. Therefore, he seeks for a direction to opposite party No. 3 to accept the joining report of the petitioner in view of the order passed by opposite party No. 2 vide Annexure-8 and grant him all consequential service benefits admissible in accordance with law.

4. Pursuant to notice issued by this Court on 25.08.2000, Mr. S.K. Nayak-1, learned Senior Counsel and associates have entered appearance for Opposite Party No. 1 to 3 by filing Vakalatnama on 23.11.2000. But no counter affidavit has been rebutted in any manner in order to dislodge the claim made by the petitioner.

5. Considering the contention raised by learned counsel for the parties and after going through the records, since no materials has been placed before this Court by the opposite parties and since there is no rebuttal contention raised by the opposite parties, applying the principles of doctrine of non-traverse, this Court proceeded with the matter on the basis of the materials available.

6. The sole contention raised by Mr. S.K. Dash, learned counsel for the petitioner is that the petitioner was not allowed to discharge duty pursuant to joining report dated 22.11.1999 filed before the Opposite Party No. 3 and thereafter the same was submitted by registered post with A.D. on 26.11.1999 Non-acceptance of joining report, amounts to termination of service and for termination of service, mandatory provisions under the Industrial Dispute Act are required to be followed. The same having not been followed, termination itself is void ab-initio.

7. Relying on the ratio decided in Pradeep Kumar Mohanty Vs. State of Orissa and Others, (1994) 1 OLR 480 , learned counsel for the petitioner contended that the mandatory provisions under Industrial Dispute Act having not been followed, the petitioner continues to be in service till he attains the age of superannuation or till his dismissal or retrenchment or termination from service, as the case may be, by following due procedure of law. Since the Opposite Parties have not refuted the contention raised by learned counsel for the petitioner, deemed to have admitted that the so called non-acceptance of joining report is as good as termination of services violating the principles of natural justice.

8. In paragraph-11 of *Indulal Nautamlal and Co. Vs. Collector, Central Excise and Customs, Bhubaneswar*, AIR 1989 Ori 15 : (1990) 69 CompCas 507 : (1989) 22 ECC 53 : (1987) 30 ELT 659 , this Court held as follows:-

"11. Mr. A.B. Mishra, the learned Standing Counsel of the Central Government however strenuously urged that the petitioner having not exhausted the statutory remedies available to it under the Act by way of appeal and revision, should be kept out of the Court and that it is not entitled to any relief. The submission is wholly devoid of merit. It was specifically urged by the petitioner in the writ petition that the order imposing penalty was in violation of natural justice as no notice under Section 74 had been issued. The allegation made are taken to be admitted by the opposite party on the principle of no-traverse since the statement has not been challenged. It thus remains a fact that the imposition of penalty under Section 74 on the petitioner was without compliance with the principles of natural justice. It is well settled that the two well recognized exceptions to the requirement of exhaustion of the statutory remedies before the extraordinary jurisdiction of the High Court is invoked, are (1) where the order impugned is passed without jurisdiction and (2) where the order is passed in violation of natural justice."

9. In *The State of Uttar Pradesh Vs. Mohammad Nooh*, (1958) 1 SCR 595 , it was observed as follows:

"If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or Tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what a ex facie was a nullity for reasons aforementioned...."

The decision was re-affirmed in *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, AIR 1961 SC 1506 : (1983) ECR 2151 : (1983) 13 ELT 1327 : (1962) 1 SCR 753 and *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, AIR 1969 SC 556 : (1971) 2 SCC 489(1) : (1969) 1 SCR 518 . It must be held that the principle is now firmly entrenched in our Constitutional Jurisprudence and admits of no exception. Even *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, AIR 1983 SC 603 : (1983) 34 CTR 393 : (1983) 142 ITR 663 : (1983) 1 SCALE 437 : (1983) 2 SCC 433 : (1983) 2 SCR 743 : (1983) 53 STC 315 with *The State of Uttar Pradesh Vs. Mohammad Nooh*, (1958) 1 SCR 595 and has in no way departed from the same. It was merely a decision where an assessment was challenged not on the ground of violation of natural justice or lack of jurisdiction, but on purely procedural irregularities and grounds touching upon the merits of assessment. Assistant Collector of Central

Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, AIR 1985 SC 330 : (1985) 4 ECC 103 : (1985) ECR 4 : (1985) 19 ELT 22 : (1985) 154 ITR 172 : (1984) 2 SCALE 819 : (1985) 1 SCC 260 : (1985) 2 SCR 190 : (1985) 17 UJ 368 , the other citation relied upon by the learned Standing counsel is also wholly inapplicable. The case arose out of an interim order of stay and it is in that context but the Supreme Court observed that where a fiscal statute is involved, the Court must have a good and sufficient reason to by-pass the alternative remedy provided by the statute. The observations were made by taking judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other so as to paralyse the collection of revenue. The decision would have no application where a final order of adjudication is challenged as being violative of natural justice or as being without jurisdiction."

10. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that non-acceptance of the joining report of the petitioner by the authority is arbitrary, unreasonable and contrary to provisions of Industrial Disputes Act as well as violation of principles of natural justice. Consequently, the petitioner is deemed to be continuing in service with effect from his date of joining i.e. 22.11.1999 and is entitled to get all consequential benefits admissible in accordance with law.

11. Accordingly, the writ application is allowed. However, there is no order to costs.