

(1996) 03 OHC CK 0004

In the Orissa High Court

Case No : O.J.C. No. 6234 of 1992 and Original Criminal Miscellaneous Case No. 56 of 1994

District Transport Manager (Admn.), Orissa State Road
Transport Corporation

APPELLANT

Vs

Dharanidhar Singh and Another
 Dharanidhar Singh
Vs P.C. Suar

RESPONDENT

Date of Decision : 29-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 1 OLR 526

Hon'ble Judges : S. Chatterji, Acting C.J.; P.K. Mohanty, J

Bench : Division Bench

Advocate : S. Rath, in O.J.C. No. 6234 of 1992 and A. Mohapatra, G.C. Patnaik, U.M. Mall, T.K. Sahoo and G.N. Swain in Original Criminal Misc. Case No. 56 of 1994, for the Appellant; P.K. Padhi in O.J.C. No. 6234 of 1992 and G.C. Mohapatra, B.L. Tripathy and N.M. Mohanty, in Original Criminal Misc. Case No. 56 of 1994, for the Respondent

Judgement

S. Chatterji, A.C.J.

1. Human hunger has no words to be described. But this case is a glaring example where hunger has generated anger. The peculiar facts of the present case, as brought before us, are that the impugned award was made by the Industrial Tribunal in a proceeding u/s 33 of the Industrial Disputes Act directing reinstatement with back wages of one Dharanidhar Singh, ex-Conductor, Orissa State Road Transport Corporation, Cuttack. Since the award was not implemented, the workman file a writ petition before this Court being OJC No. 6059 of 1992 on 26-8-1992, The same was disposed of by the Division Bench presided by the Acting Chief Justice G. T. Nanavati and Justice P. C. Misra (as their Lordships then were) by holding that there is nothing to show that the award has been challenged by the management, opp. party No. 2. Though power has been filed, yet no counter-affidavit has been filed, nor any material produced

before the Court to show that for some valid reason the award has not been complied with. This attitude on the part of opp. party No. 2 really deserves to be criticised, as observed there. For such wilful disobedience, even contempt proceedings can be initiated. However, in order to enable opp. party No. 2 to comply with the award, the aforesaid Division Bench gave one month's time from the date of receipt of the order.

2. Curiously enough, the District Transport Manager (Admn.), OSRTC, Cuttack, obtained an order in the present writ petition (OJC No. 6234/92) on 31-1-1994, after disposal of the earlier writ petition, admitting the same on the limited question of grant of back wages. In Misc. Case No. 6031/92, there was an interim order to the extent that the direction with regard to the payment of back wages may not be enforced until further orders.

3. Subsequently, the workman filed the present contempt petition (Original Criminal Misc. Case No. 56 of 1994) arising out of the final judgment of OJC No. 6059 of 1992. The contemner is Shri P. C. Suar, District Transport Manager (Admn.), OSRTC, Cuttack. For the fitness of things, both the matters, i. e., the contempt petition as well as the pending OJC No. 6234/92, are taken up for hearing together.

4. Learned counsel appearing for the District Transport Manager (Admn.), OSRTC, has urged, inter alia, that the impugned award suffers from such perversity where the interference by the writ Court is all the more necessary. He has tried to justify that the appreciation of the evidence by the Tribunal is not proper and there are such defects which ought to be interfered with by the writ Court. But the scope of the writ petition is very much limited indeed. At the time of admission, the Division Bench presided by G.B. Patnaik and B. N. Patnaik, JJ., (as their Lordships then were) recorded with unequivocal expression that they see no justification for interference with the direction for reinstatement. The question of illegal termination becomes a closed chapter after disposal of the earlier writ petition, i. e., OJC No. 6059 of 1992, and in view of admission of the present writ petition on the limited question of grant of back wages. Nothing is left before this Court to make a scrutiny as to the illegal termination.

5. The question now remains is that a person who was terminated in the year 1992 has not been reinstated. It is now submitted that the workman having already attained the age of superannuation in 1993 is not entitled to be reinstated any further. The point raised by the management is that even admitting that the termination was illegal the workman would not be entitled to back wages in view of the principle enunciated in a plethora of decisions of the apex Court that payment of back wages is not a matter of course. Nobody disputes such proposition of law. Every case has its own peculiar facts and circumstances. In each case, the High Court or the apex Court or even the Tribunal has to consider under what circumstance an employee is entitled to back wages. On scrutiny of all the materials on record, we are of the view that an illegally terminated employee is suffering under the niceties of the points of law

and delay has caused his hunger transformed to anger even. We do not find any justification to interfere with the award passed by the Tribunal as to the entitlement of the workman to back wages from the date of his illegal termination till the date when he attained the age of superannuation. The points raised by the management and/or the District Transport Manager (Admn.) in OJC No. 6234 of 1992 have no merit and the petition is accordingly dismissed. The interim order stands vacated.

6. So far as the prayer in the contempt petition is concerned, we find that the order of this Court directing payment of back wages has not been implemented. For the fitness of things, besides the present contemner, we grant leave to the petitioner-workman to implead the present authorities concerned who are responsible for not releasing the back wages. Notice may be issued to them returnable by 8-5-1996 for personal appearance. We also direct that the entire payment should be released within four weeks. If payment is effected, the contemnners need not be personally present, but an affidavit must be filed as to the compliance with the Court's order.

The contempt matter be put up on 8-5-1996.

P.K. Mohanty, J.

I agree.