

(2005) 04 OHC CK 0033

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5995 of 1997

Divisional Manager, Orissa Forest Development Corporation,
Berhampur (C) Division

APPELLANT

Vs

Gourishankar Misra and Another

RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (2005) 2 OLR 73

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.K. Patnaik and U.C. Mohanty, for the Appellant; S. Das, P.C. Das, R. Acharya and S. Mohanty for Opp. Party No. 1, for the Respondent

Judgement

A.S. Naidu, J.—The Divisional Manager, Orissa Forest Development Corporation, Berhampur (C) Division seeks to assail the Award dated 30th July, 1996, vide Annexure-11, passed by the Presiding Officer, Labour Court, Jeypore in I.D. Case No. 54 of 1994.

2. Opposite party No. 1 -Gourishankar Misra was admittedly appointed by the Orissa Forest Development Corporation (for short OFDC) on daily wage basis. In order to meet the long felt grievance of the daily rated and consolidated workers of the Corporation who were continuously working for a long time, the Corporation framed a set of rules called "the Orissa Forest Corporation Daily-rated/Consolidated-rated Workers" Service Rules, 1980" (hereinafter called the 1980 Regularisation Rules). In consonance with the said Rules, an employee who was in continuous service of the Corporation for a period of at least two years on daily wage basis was to be regularized in service. Accordingly the service of the opposite party-workman was regularized by Office Order dated 10.1.1991, vide Annexure-5, and he was posted as a Watcher in Chandragiri Sub-division of the Corporation. He worked there till May, 1991 when surprisingly he was intimated orally by the management that the order as to regularization of his service was

cancelled and he would continue on daily-rated basis. Being aggrieved by such action of the Corporation the workman raised an industrial dispute. Conciliation having failed, the State Government in exercise of powers conferred upon it under Sections 10 and 12 of the Industrial Disputes Act, 1947 referred the following dispute to the Labour Court for adjudication :-

"Whether the management of Orissa Forest Development Corporation Ltd., Berhampur Commercial Division, Berhampur is justified in cancelling the appointment order of Sri Gourishankar Misra in a regular post of Watcher vide Order No. 118 dt. 1.6.1991 ? If not to what relief Shri Misra is entitled ?"

3. Before the Labour Court the workman contended that the order of the Corporation cancelling the order of regularization of his service without notice and without observing the basic statutory principles of industrial law could not be sustained. It was further averred by him that many of his juniors whose services had been regularized like his were still continuing in service and, as such, the Corporation had acted illegally in discriminating him.

4. The management on receiving notice had appeared and filed its written statement inter alia taking the stand that the service of the workman had been erroneously regularized and after the same was detected the Corporation cancelled the order regularizing his service. According to the Corporation an order passed erroneously could be rectified on detention of the error at any time, and even without observing the paraphernalia.

5. On the basis of the pleadings of the parties, the Labour Court framed two issues. Both sides however declined to adduce any oral evidence, but relied upon only on documentary evidence to establish their respective cases. The workman exhibited the order dated 10.1.1991 of the Corporation regularizing his service; whereas the management exhibited the Office Order dated 1.6.1991 which was marked as Ext.A, by which the order dated 10.1.1991, Ext. 1 had been cancelled.

6. After going through the pleadings of the parties and appreciating the materials on record, the Labour Court arrived at the conclusion that the order cancelling the regular appointment of the workman without following the principles of natural justice and equity or without initiating any proceeding to that effect was not justified and accordingly answered the reference in favour of the workman. The Labour Court directed that the workman be given appointment as Watcher as done vide order dated 10.1.1991. The said Award of the Labour Court, as stated earlier, is assailed in this Writ application.

7. Learned counsel for the Corporation forcefully submitted that there was an amendment of the aforesaid 1980 Rules on 20th of August, 1986 in consequence of which is regularization of daily-rated/consolidated-rated workmen was to be made on the basis of seniority and on completion of five years of continuous service. According to him the said amended provision was not kept in mind while issuing the regular appointment order to the workman on 10.1.1991, and the workman having not completed five years of continuous service on 10.1.1991

was not eligible to be appointed on regular basis. This error having come to light, the authorities cancelled the regular appointment order of the workman.

8. The fact that no proceeding had been initiated in the matter nor the workman had been given any opportunity of hearing before the order cancelling his regular appointment was passed has not been denied by the management. In the said premises, the short question that arises for consideration is whether the order of cancellation of the regular appointment of the workman could be said to be vitiated for non-compliance with the principles of natural justice by not affording an opportunity of hearing to the workman. There is no controversy that the workman had continuously worked under the Corporation for more than two years by 1991 when his service was regularized. As such, he was not entitled to be regularized in consonance with the 1980 Regularisation Rules. If the authorities subsequently realized that the workman had been erroneously regularized basin on certain incorrect information, then they were duty-bound to issue notice to the workman giving him opportunity to explain the said fact and thereafter to pass any order. There is no dispute that by virtue of the order dated 10.1.1991, Annexure-5, the workman had been appointed against a regular post and by that order certain rights accrued to him. The workman could not have been denuded of such rights without being afforded an opportunity to have his say. The plea taken by the Corporation that in the year 1986 certain amendment was made to the Regularisation Rules of 1980, was not advanced before the Labour Court nor the relevant document, if any, was exhibited. In absence of such materials, the Labour Court rightly came to the conclusion that the order cancelling the regular appointment of the workman was unjust and illegal. I also do not find any infirmity in the impugned Award.

9. Be that as it may, fact remains, there was an amendment to the Regularisation Rules of 1980 and the span of service of a daily-rated worker to be eligible to be regularized in service was extended from two years to five years. The workman was appointed against a regular post without the aforesaid amended provision being kept in mind by the authorities. Thus the order regularizing the workman in service before he had completed the required years of service as a daily-rated worker was not just and proper.

10. The Supreme Court in the decision reported in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., has clearly held that regularization without following the statutory principles being ab initio void, the same can be rectified at a later stage.

11. I have heard learned counsel for the parties at length and perused the materials available on record. By virtue of an interim order passed by this Court the workman is still continuing in service. Even according to the 1986 amendment to the Regularisation Rules of 1980, the workman was entitled to be regularized in service on completion of five years of continuous daily-rated service. In view of the said fact, I dispose of this Writ application directing the Corporation to regularize the service of the workman-opposite party No. 1 from

the date he completed five years of continuous daily-rated service and not from 10.1.1991 as has been held by the Labour Court. It is needless to say that the workman will be entitled to all these service benefits retrospectively from the date of regularization of his service.