
(2006) 02 OHC CK 0045
In the Orissa High Court
Case No : O.J.C. No. 2247 of 1993

Duryodhan Parida

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 17-02-2006

Acts Referred:

Citation : (2006) 1 OLR 409 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.K. Mishra, D.P. Nanda, U.N. Nayak, P.K. Mohapatra and M.K. Pari, for the Appellant; B.R. Sarangi and P. Acharya for O. Ps. 2 and 3, J.K. Mishra, J.P. Patnaik, N. Sarkar, S. Mallick and A.K. Sahoo for O. Ps. 3 and B.K. Patnaik and P. Sinha for O.P. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This writ application is directed against the award dated 19.9.1992 passed by the Labour Court, Bhubaneswar in Industrial Dispute Case No. 66 of 1989 answering the reference against the workman-Petitioner.

2. Case of the Petitioner is that he was appointed as Artisan "C" under the management-opposite party namely Talcher Thermal Power Station, Talcher on 5.12.1972. His scale of pay was fixed at Rs. 110-195. He appeared in the trade of Fitter during 1981 and obtained the National Certificate from Government of India and had also passed All India Trade Test held in 1970 from I.T.I., Cuttack. He was also a qualified Boiler Welder. While working as Artisan "C" the post was upgraded to Artisan "B" and he was provided enhanced scale of pay. In the year 1974 he claimed upgradation from Artisan "B" to Artisan "A" and accordingly an agreement was entered between the parties before the Deputy Labour Commissioner for such upgradation. However, the same was not given effect to and the management-opposite party issued circular to conduct trade test for promotion to various categories and the workmen in the Artisan "C" grade were allowed to appear in the trade test instead of upgrading the post from Artisan

"C" to Artisan "A". Some workmen working as Artisan "C" had in fact been upgraded to Artisan "A" superseding the workmen working as Artisan "B". While the matter stood thus a set of charges were issued against the Petitioner for his alleged misconduct and an Enquiry Officer was appointed. The charges could not be proved against the Petitioner but the Executive Engineer and the Assistant Engineer who participated in the enquiry had a bias against the Petitioner, as a result of which he was not allowed upgradation from Artisan "C" to Artisan "A" on the ground that he failed to pass trade test. The objection to such conduct of the management was also taken up by the Union but the management did not listen to the claim and some of the employees junior to the Petitioner were upgraded from Artisan "C" to Artisan "A".

In view of the above, a dispute was raised and ultimately the matter was referred to the Labour Court for adjudication. The reference is "Whether the action of the management of Talcher Thermal Power Station, Talcher in passing over the claim of Sri Duryodhan Parida for promotion to the post of Artisan "A" is legal and/or justified? If not, to what relief is Sri Parida entitled?".

The opposite party management filed its written statement before the Labour Court stating therein that the demand of the Petitioner is not justified. According to the management-opposite party the Petitioner had to requisite experience or length of service to qualify for the revised scale and the settlement dated 15.10.1974 and 19.10.1974 do not help the Petitioner for raising such claim. The Petitioner became Artisan "B" w.e.f. 27.11.1975 and therefore the settlement dated 19.10.1974 has no application to the case of the Petitioner. There was an industrial dispute earlier by the workmen of T.T.P.S. and the procedure adopted for promotion was upheld in an Award dated 30.9.1998 in the industrial dispute case. In the award the action of the management in holding the trade test was found to be in order and was upheld. Further case of the management-opposite party is that on 19.4.95 selection to the post of Artisan "A"(Welder) for the machine shop and fabrication unit was held and the then Superintending Engineer and the Executive Engineer participated in the Selection process. The selection process was fair and bona fide and the Petitioner did not qualify. It is also the case of the management-opposite party that the workmen like Batakrushna Samal, Artatrana Parida and Kapila Behera who are alleged to be the junior of the Petitioner did not belong to the machine shop and fabrication unit. The aforesaid three workmen belong to the plant mechanical maintenance unit and both have distinct and separate promotional prospect. In view of the above they cannot be called as juniors to the Petitioner since they do not belong to the same unit.

3. On the basis of the pleadings of the parties the Labour Court framed two issues and found that action of the management of Talcher Thermal Power Station, Talcher in passing over the claim of the Petitioner for promotion to the post of Artisan "A" is legal and justified, but observed that in future a liberal view should be taken for the purpose of promotion/upgradation to the next higher

rank.

4. Learned Counsel for the Petitioner submitted that the workmen from the same category as that of the Petitioner had been upgraded from Artisan "C" to Artisan "A" directly by passing the claim of the Petitioner in Artisan "B" grade. It was also contended by the learned Counsel for the Petitioner that the three workmen as mentioned in the written statement of the management belong to the same category as that of the Petitioner and were also working in the same unit and therefore the stand taken in the written statement is not acceptable. It was also contended in the alternative that accepting for the sake of argument that the Petitioner and the aforesaid three workmen belong to two different Departments, promotion procedure should be same for all Departments and if in the case of one Department Artisan "C" is upgraded to Artisan "A" there cannot be any discrimination in respect of another Department. In this respect the Petitioner also relied upon evidence of the witnesses and some documents exhibited before the Labour Court.

5. A preliminary counter-affidavit has been filed by the opposite parties 2 and 3 and it is not necessary to refer to the facts stated in the counter-affidavit since same stand as taken in the written statement has been reiterated. Counter-affidavit has also been filed by the opposite party No. 4 i.e. the Grid Corporation of Orissa Limited and it is stated in the said counter that at the time when the dispute was raised the Talcher Thermal Power Station was an independent unit of erstwhile Orissa State Electricity Board and by virtue of the Talcher Thermal Power Station (Acquisition and Transfer) Act, 1994, the State Government took over all the assets, liabilities and personnel working under the T.T.P.S. and subsequently transferred the same to the National Thermal Power Corporation w.e.f. 3.6.1995. Consequent upon such transfer, all the assets and personnel of TTPS were transferred to the NTPC. It is also the stand taken by the opposite party No. 4 that by virtue of operation of the Orissa Electricity Reforms Act, 1995, the OSEB ceased to exist w.e.f. 1.4.1996 and the State Government in exercise of powers conferred upon it under the said Act took over all the assets and liabilities of the erstwhile OSEB and transferred the assets and business relating to Transmission and Distribution of electricity to the Grid Corporation of Orissa Limited with effect from the appointed date i.e. 1.4.1996. The Orissa State Electricity Reforms Act, 1995 specifically stipulates that the dispute existing as on 1.4.1996 before the OSEB can only be taken by the Grid Corporation of Orissa Limited and the dispute in the present case was not pending before the erstwhile OSEB as on 1.4.1996. On the basis of the above stand it is stated that the Grid Corporation cannot be saddled with any liability.

6. After hearing the learned Counsel for the parties and after perusal of the stand taken by the parties before the Labour Court, the sole question that requires to be considered is whether conduct of the management in directing the Petitioner to take trade test for promotion to Artisan "A" and upgrading the post from Artisan "C" to Artisan "A" in respect as to whether the Petitioner had been

discriminated. Referring to the deposition of witness No. 1 examined on behalf of the workman, it appears that on 29.2.1973 there was one settlement and it was decided that for the promotion from Artisan "B" to Artisan "A" there shall be no trade test and the said fact is borne out from the office order dated 6.8.1973. In another settlement dated 19.10.1974 upgradation was allowed from Artisan "B" to Artisan "A". Said witness also stated that one Tripura Biswal and Golak Behari Jena who were Artisan "C" and Operator "C" were upgraded to Artisan "A" and Operator "A" respectively. Witness No. 1 who is the Petitioner has stated in his deposition that he was working in the Machine shop and Fabrication unit which is a part of Mechanical maintenance. In view of such evidence it is necessary to look into the settlement relied upon by the Petitioner. Minutes of discussion between the workmen of TTPS and the management on 19.10.1974 indicates that it was agreed between the parties that upgradation of Artisan "B" to Artisan "A" shall be done as per the agreement dated 20.2.1974. The settlement dated 20.2.1974 is exhibited as Ext.L. In the settlement dated 20.2.1974 the relevant portion relates to demand No. 13. Settlement in respect of this demand does not indicate that the post of Artisan in Grade "C" shall be upgraded to Artisan "A" without a trade test being conducted. Therefore the aforesaid settlement is of no help to the Petitioner. Much reliance was placed by the learned Counsel for the Petitioner on Ext.2 i.e. a settlement arrived at between the parties on 15.10.1974. In para 1(a) of the said settlement it is mentioned that as agreed under Clause 8 of terms of settlement dated 29.2.1973 the stipulation of trade certificate, qualification, etc. as contained in the office order dated 6.8.73 in respect of the categories indicated therein shall be waived. The management in their order dated 15.10.73 issued a revised order waiving the stipulation like trade test and qualification keeping experience and the date of applicability of the order in tact. Relying on the aforesaid clause it was contended by the learned Counsel for the Petitioner that trade test was waived. It appears from the said clause that settlement was arrived at on 29.2.73. Neither of the parties has produced any copy of the settlement dated 29.2.73 in order to appreciate the contention of the parties. In absence of the settlement dated 29.2.73 and specifically when the term of settlement dated 29.2.73 is not known by the both the parties, it is difficult to accept the contention of the learned Counsel for the Petitioner that trade test was waived for the purpose of either promotion or upgradation.

7. Coming to the second point raised by the learned Counsel for the Petitioner that juniors to him were upgraded from Artisan "C" to Artisan "A" grade, it appears that from perusal of the relevant documents that those three workmen belong to different departments altogether and therefore cannot be termed as juniors to the Petitioner. From Ext.7 it is clear that those three workmen do not work in the same Department as that of the Petitioner and therefore I am not inclined to accept the contention of the learned Counsel for the Petitioner and the Petitioner cannot claim the said workmen to be junior to him. Apart from the above, adopting different procedure in different Departments depends on the

cadre strength, availability of employees working under different departments. Therefore, it cannot be said that there has been discrimination so far as the Petitioner is concerned.

8. Since no other point has been raised in this writ application, in view of the discussions made above, I do not find any merit in the writ application and accordingly the same is dismissed.