
(2006) 06 OHC CK 0027
In the Orissa High Court
Case No : OJC No. 356 of 1993

Executive Engineer, Camps and Building Division	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 12, 25F

Citation : (2006) 102 CLT 430 : (2006) 111 FLR 135 : (2006) 2 OLR 216

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

Bench : Single Bench

Advocate : Addl. Standing, for the Appellant; Satyabadi Das, Satyabrata Mohanty and R.N. Acharya, for the Respondent

Judgement

A.S. Naidu, J.—The award dated 14th September, 1992 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No. 69 of 1989 is challenged in this Writ application invoking jurisdiction under Articles 226 and 227 of the Constitution of India.

2. Opposite party No. 2- Rajendra Kumar Sahoo was working as an NMR Watchman in the establishment under the petitioner. His services were terminated by striking off his name from the muster roll. He raised a dispute. Conciliation having failed, the State Government in exercise of its power conferred upon it u/s 12 read with Section 10 of the Industrial Disputes Act, referred the following dispute to the Labour Court, Bhubaneswar for adjudication :-

Whether the action of the Executive Engineer, Camps and Buildings Division, Samal, District Dhenkanal in dispensing with the services of Sri Rajendra Kumar Sahu, Watchman by way of striking off his name from the muster roll with effect from 24.6.1988 is legal and/or justified ? If not, to what relief is he entitled ?

3. According to the workman-opposite party No. 2 he had been engaged as an

NMR Watchman in the establishment of the present petitioner on 1.8.1980. It was averred by him in the written statement filed by him before the Labour Court that the management without any justifiable reason struck off his name from the muster roll with effect from 24.8.1988. He alleged that in connection with some theft in respect of some other Division, a criminal case had been initiated against him and after trial he was acquitted, but even then the management without initiating any domestic enquiry disengaged him as stated above. He also alleged that no compensation or any retrenchment benefit was given to him, nor was any order of retrenchment/disengagement issued. He claimed that as the mandatory requirements of the I.D. Act were not complied with by the management, he was entitled to reinstatement in service with full back wages from the date of his retrenchment/disengagement till reinstatement.

4. The management in its written statement took the stand that the workman had been engaged as NMR Watchman with effect from 1.8.1980 and he worked till 23.6.1986 for which period he had received his wages. Since 24.6.1986 he had remained absent from duty and, as such, he was not entitled to any wages. The workman was not an employee in the regular/work-charged establishment of the management. No rules have been prescribed regulating the service conditions of NMR employees, and they do not hold any civil post. The positive case of the management was that the service of the workman was never terminated by the management as alleged by him, but then the latter neither turned up to duty from 24.6.1986 nor application for leave had been filed by him. In the meanwhile the State Government having banned engagement of NMR employees, reinstatement of the workman in service did not arise.

5. On the basis of the aforesaid pleadings of the parties the Labour Court framed two issues. Both sides adduced their respective evidence, both oral and documentary. After analyzing the evidence the Labour Court arrived at the conclusion that the workman having served continuously for a period exceeding 240 days in a calendar year, his services could not be terminated without following the principles of natural justice and the provisions of the I.D. Act. As such, termination of the service of the workman was contrary to the provisions of Section 25-F(a) of the I.D. Act and on such basis the Labour Court directed the management to reinstate the workman in service and to pay him back wages as claimed by the latter. The said Award is assailed by the management in this Writ application.

6. This Court by order dated 30.8.1993 issued notice on the question of back wages alone and declined to interfere with the direction of the Labour Court to the petitioner-management with regard to reinstatement of the workman. In course of hearing it was admitted by both sides that the workman has been reinstated in service with effect from 5.11.1993. Thus the only question that needs determination is with regard to payment of back wages. Admittedly the workman was engaged as an NMR Watchman with effect from 1.8.1980 and he worked up to 23.6.1986. During this period he was paid wages throughout.

According to the management the workman did not turn up to duty since 24.6.1986 and consequently no wages were paid to him from the said date. But then according to the workman as his services were terminated from that date without following the mandatory requirements of Section 25-F of the I.D. Act he is entitled to reinstatement with full back wages from the date of such termination till reinstatement.

Although non-compliance with the provisions of Section 25-F of the I.D. Act may lead to grant of a relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, the same would not mean that such a relief has to be granted automatically or as a matter of course.

7. Law is well settled that if a workman was eager to work but he was kept out of employment he would be entitled to back wages. In the case at hand, the materials on record reveal that the workman was implicated in a theft case and being arrested he stayed behind the bars for a considerable period, though ultimately he was acquitted. Thus the allegation of the workman that he was not permitted to work was not correct, but as a fact he was not in a position to report to duty during the period he was in custody. The workman has not adduced any evidence worth-the-name to show that any time after his release from custody he had reported to duty but he was denied. There is also no material to reveal that the workman had not been gainfully employed anywhere else after the alleged disengagement till 5.11.1993 when he was reinstated. Only because it was found by the Labour Court that the requirements of Section 25-F of the I.D. Act were not complied with by the management while terminating the services of the workman ipso facto would not entitle the workman to back wages. Payment of back wages depends on several factors, e.g. refusal of engagement, no gainful employment of the workman concerned elsewhere, etc. In the present case no such criteria are satisfied. That apart, law is well settled that the principle of "No Work, No Pay" would be squarely applicable to a case of deliberate abstention from work resulting in no work for a considerable period and the management would not be obliged to pay the wages to an employee for the period he has not worked. Thus this Court feels that it is a fit case where the principle of "No Work, No Pay" should be applicable.

8. In the result, this Court quashes the direction of the Labour Court in the impugned Award as to payment of full back wages by the management-petitioner to the workman-opposite party No. 2, while upholding the direction as to his reinstatement.

The Writ application is thus disposed of.