

(2010) 05 OHC CK 0031

In the Orissa High Court

Case No : Writ Petition (C) No. 4805 of 2002

Executive Engineer, Electrical, Jajpur Elec. Division At/PO.
Jajpur Town

APPELLANT

Vs

Presiding Officer, Labour Court and another

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 25F

Citation : (2010) 05 OHC CK 0031

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Patel, J.—The employer has filed this writ application assailing the legality of award dated 9th May, 2002 passed by learned Presiding Officer, Labour Court, Bhubaneswar (for short the "Labour Court") in I.D. Case No. 107 of 1996 holding the opposite party No. 2-workman to be entitled to reinstatement in service with 50% backwages.

2. The impugned award was passed in adjudicating the following reference made u/s 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (for short "the Act") :-

Whether the termination of Sri Bipin Bihari Nayak by the Executive Engineer, Jajpur Road Electrical Division, Jajpur Road with effect from 26.4.90 is legal and or justified ? If not to what relief he is entitled ?

3. The workman's case, in brief, was that he was working under the employer from 1988 till 25.4.1990. He was refused employment from 26.4.1990 by the employer without compliance of the provision under the Act. The workman made several representations which were not considered by the employer. Even after refusal of employment to the workman, the employer had employed 44 persons as NMR workers in the year 1990-91. The employer did not publish seniority list

of NMR workers before refusal of employment to the workman. Neither notice was issued nor notice pay or retrenchment compensation was paid to the workman. Therefore, the workman was entitled to reinstatement with full backwages and other service benefits.

The employer filed written statement resisting the workman's claim. It was pleaded that the claim was not maintainable in view of delay and laches. It was contended that the workman was working as casual labour under the management of erstwhile Orissa State Electricity Board (for short "O.S.E.B"). Consequent upon the operation of Orissa State Electricity Reform Act, 1995, all the assets and activities of O.S.E.B. were transferred to the Grid Corporation of Orissa Ltd. with effect from 1.4.1996. As the workman was not in the roll of O.S.E.B. as on 1.4.1996, as per the stipulations in above said Act of 1995, the Grid Corporation Orissa Ltd. was not liable to entertain the workman's claim. Since the workman was engaged as casual labour, he had no right of employment. It was specifically pleaded that the workman was engaged in the construction work as a casual employee purely on temporary basis subject to availability of work and funds. He had worked for 59 days in 1988, 47 days in 1989 and 15 days in 1990. He had never rendered continuous service for one year during his employment nor had he worked for minimum period of 240 days during the period preceeding 12 months from the date of his discontinuance. It was further pleaded that the employer being an industrial establishment was liable to preserve the registers and records required to be maintained under the Payment of Wages Act for a period of three years only after the last entries made therein. The workman was required to adduce strict proof of the period of his engagement. As per the records, the workman was not engaged after 20.3.1990 due to non availability of work. The workman had not made any representation for his engagement and as such his claim was belated and stale. There has not been engagement of any fresh NMR worker in the year 1990-91.

In order to substantiate his claim workman examined two witnesses including himself as W.W. No. 1 and relied upon documents marked Exts. 1 to 10. On the other hand one witness M.W. No. 1 was examined and no documentary evidence was adduced by the employer.

On appraisal of the materials on record, it was held by the Labour Court that the workman had completed 240 days of service between August 1989 to March 1990 and thereby became eligible for protection u/s 25-F of the I.D. Act. On the basis of such finding the impugned award was passed.

4. It was contended by learned counsel for the petitioner that the workman having raised the dispute in the year 1996 on the assertion that he was refused employment since 26.4.1990, the learned Labour Court should not have entertained the dispute due to delay and laches. It was further argued that there was no basis for the learned Labour Court to come to the finding that the workman had completed 240 days of service prior to his disengagement. The learned Labour Court has acted upon vague statements of the workman and his

witnesses in this regard and has ignored the evidence adduced on behalf of the employer.

5. In reply, it was contended by learned counsel for the opposite party No. 2 that the workman submitted several representations for his engagement which were favourably forwarded from the Sub-Divisional Office to the Executive Engineer. The workman had resorted to remedies under the Act only after waiting for a reasonable period expecting that his representations would be considered. Ultimately, he resorted to remedy under the Act by filing application before the Labour Officer. Therefore, there was no delay in raising the dispute. It was further contended that evidence adduced on behalf of the workman to the effect that the workman was in continuous employment from 1985 to 1990 remained uncontroverted. M.W. 1 also admitted that the workman was engaged as NMR during different periods between 1.2.1988 to 22.3.1990. No document was produced on behalf of the employer on the pretext that the records and documents were burnt and damaged in course of an agitation. Nonetheless, it was categorically admitted that the workman was disengaged with effect from 26.4.1990, which corroborates the assertion of the workman. Under such circumstances, there is absolutely no scope to interfere with the impugned order. Learned counsel for the opposite party No. 2 relying upon decisions of the Hon'ble Supreme Court in H.D. Singh Vs. Reserve Bank of India and Others, and of this Court in Executive Engineer (Elec.), Bhubaneswar City Distribution Division, C.E.S.C.O. Ltd. Vs. Presiding Officer, Labour Court, argued that as the employer failed to produce any record, evidence adduced on behalf of the workman remained uncontroverted. Therefore, there is no infirmity in the finding of the learned Labour Court.

6. In his statement of claim, the workman pleaded that he filed several representations for re-employment. While deposing before the learned Labour Court also, it was testified by him that he approached the higher authorities. W.W. No. 2, the Secretary of the Workers' Union proved Exts. 8, 9 and 10, which are letters under which the workman's representations were forwarded to higher authorities. Also W.W. No. 2 stated that, after his termination, the workman had approached the authority time and again till 1995, but as no action was taken the dispute was raised. W.W. No. 2 has not at all been cross-examined on behalf of the employer. Therefore, it is evident that the workman submitted representations before the dispute was raised on his behalf by the Union. Hence, there is no scope to hold that there was any delay or laches on the part of the workman so as to render his claim state. Under the facts and circumstances of the case, delay stands explained.

7. It was pleaded by the employer that the workman did not render service for 240 days prior to his disengagement. However, M.W. No. 1 testified before the learned Labour Court that the workman was engaged as NMR from 1.2.1988 to 31.3.1988, 1.3.1989 to 25.3.1989, 2.7.1989 to 4.7.1989, 8.7.1989 to 13.7.1989, 15.7.1989 to 20.7.1989, 21.7.1989 to 27.7.1989, 15.2.1990 to

18.2.1990, 20.2.1990 to 22.2.1990, 25.2.1990 to 27.2.1990 and 18.3.1990 to 22.3.1990. According to him, the workman was disengaged with effect from 26.4.1990 due to want of work. It is not at all the case of the employer that the workman had not been engaged during any spell other than the above stated periods. Rather M.W. No. 1 deposed that the records regarding engagement of the workman during subsequent periods were not available, as the same were damaged/burnt during Mandal Commission agitation. In course of his cross-examination, M.W. No. 1 admitted that some surplus NMR employees of Talcher Thermal were engaged in Jajpur Road Electrical Division after 1990. As against such materials placed before the Labour Court on behalf of the employer, the workman appears to have placed unimpeachable documentary evidence in support of his continuous engagement between 1987 and 1990. It appears that the workman was engaged as NMR Typist. In Exts. 1 to 7, Junior Engineer (Electrical) No. 1, Jajpur has certified that the workman was engaged for the periods from 25.7.1987 to 31.7.1989, 1.8.1989 to 3/90, 1.4.1990 to 30.4.1990, 1.5.1990 to 31.5.1990, 1.6.1990 to 30.6.1990, 1.7.1990 to 31.7.1990 and 1.8.1990 to 31.8.1990 respectively. In Ext. 8, while sending the workman's representation to the Sub-Divisional Officer, it has been mentioned by the Junior Engineer " (Electrical) No. II, Jajpur that the workman had completed 400 days of service in the temporary NMR post between 7.7.1985 to 1.10.1986. In Ext. 9, while forwarding the representation of the workman to Executive Engineer, it has been mentioned by Sub-Divisional Officer, Electrical No. 1, Jajpur that the workman had worked as NMR in different spells between 1.2.1988 to 22.3.1990 and that record relating to periods between 1.1.1986 to 28.1.1988, 1.4.1990 to 30.4.1990, 1.5.1990 to 31.5.1990, 1.6.1990 to 30.6.1990, 1.7.1990 to 31.7.1990 and 1.8.1990 to 31.8.1990 was not available as the same might have been destroyed by the mob on 28.8.1990. Thus, the workman is found to have adduced ample evidence in support of his continuous engagement which remained uncontroverted. Admittedly, neither disengagement notice was issued nor notice pay or retrenchment compensation has been paid to the workman.

8. Therefore, there appears no infirmity in the impugned award warranting interference by this Court in exercise of its writ jurisdiction.

9. In the result, the writ application is dismissed.