

(2004) 03 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6243 of 1994

Executive Engineer, Power Plant Division No. 1

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

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

Citation : (2004) 98 CLT 268 : (2004) 102 FLR 1122

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

Bench : Single Bench

Advocate : Additional Government Advocate, for the Appellant; D. Mohanty, K.M. Samal, B.K. Biswal and K. Lenka for Opp. Party No. 2, for the Respondent

Judgement

A.S. Naidu, J.—The Executive Engineer, Power Plant Division No. 1, Bengali Division No. 1 has filed this writ application, inter alia, challenging the legality and propriety of the award passed by the Presiding Officer, Labour Court, Bhubaneswar in Industrial Dispute Case No. 42 of 1992. In the said award, the Presiding Officer held that the termination of the services of opposite party No. 2 as N.M.R. Helper by the, petitioner with effect from 31.3.1990 was neither legal nor justified and that opposite party No. 2 was entitled to be reinstated in service with full back wages from 31.3.1990 at the rate at which he was drawing last, till the date of re-employment under the organization. 2. Admittedly, opposite party No. 2 who was working as N.M.R. helper under the petitioner was dis-engaged. The dispute was initiated by the workman, inter alia, alleging that the order of termination was ab initio void as the provisions of Section 25-F of the Industrial Disputes Act were not followed. The conciliation proceeding having failed, the State Government in exercise of the powers conferred under Sub-section (5) of Section 12 read with Clause (d) of Subsection (1) of Section 10 of the Industrial Disputes Act, referred the matter to the Labour Court for adjudication. The reference reads as follows :

"Whether the termination of services of Sri Sadasiva Tripathy, N.M.R., Helper by the Executive Engineer, Power Plant Division No. 1, Bengali Dam Site, Bengali with effect from 31.3.1990 is legal and/or justified ? If not to what relief Sri Tripathy is entitled ?"

3. The Management appeared before the Labour Court and filed its written statement wherein a specific stand was taken to the effect that the workman did not work for 240 days in a year and as such, he was not entitled to any protection under the Industrial Disputes Act. It appears that though written statement was filed, no witness was examined by the Management to substantiate the plea taken by it. At the other hand, the workman specifically stated that he was continuously working for more than 240 days in a year and that though he was present on all the days, mischievously he was not allotted any work and the authorities could not take advantage of such act. To substantiate his case, the workman examined himself as a witness.

4. The Labour-Court after perusing the pleadings inter se, and after discussing the evidence both oral and documentary applying the ratio of the decision in the case of Kailash Paswan and Ors. v. Union of India and Ors., reported in 1985 Lab.I.C. 433, came to the conclusion that in fact the workman established that he worked under petitioner- management for more than 240 days in a year. In view of such conclusion, the Labour Court held that the order of termination of his services without compliance with Section 25-F of the Industrial Disputes Act was illegal and unjustified. The labour Court as stated earlier, directed to reinstate the petitioner with all back wages. The award was passed on 25.4.1994. According to the learned counsel appearing for opposite party No. 2-workman, by order dated 13.7.1995 he was reinstated in service with effect from 1st April, 1995 and is in service as on date. A perusal of the order reveals that the said order was passed after the stay order passed by this Court was vacated on 4.7.1995. Of course, the order of reinstatement was subject to the result of the writ application. But then, the fact that the workman was reinstated and is in continuous service from 1995 indicates that there is no dearth of work and the post is available.

5. After hearing the learned counsel for the parties and after perusing the award impugned, I find no infirmity or irregularity in the same. In fact, though the Management made some bald allegations in the written statement, it failed to substantiate the same by adducing cogent evidence either oral or documentary. In absence of any evidence for substantiating the plea taken, the labour Court rightly discarded the same. At the other hand, the workman examined himself and also substantiated the plea that he worked for more than 240 days in a year. Be that as it may, in view of the fact that the work is available and the opposite party No. 2 has been reinstated in service in consonance with the direction of the labour Court and is serving under the petitioner, I find no reason to interfere with the portion of the award directing reinstatement of opposite party No. 2 in service. Admittedly, opposite party No. 2 was disengaged with effect from

31.3.1990. He was reinstated only on 13.7.1995. According to the direction issued in the award, he is entitled to full back wages for the aforesaid period. No evidence is available on record to reveal that opposite party No. 2 was not gainfully appointed within the said period.

6. In view of the aforesaid clear fact, the position of law being "No work, No pay", as has been held by the Supreme Court in the case of Union of India v. Jaipal Singh reported in AIR 2003 SCW 6635 I feel ends of justice and equity would be better served, if the direction issued in the award is modified to the extent that the workman-Opp. Party No. 2 shall be only entitled to 50% of the back-wages and not the entire back-wages and I direct accordingly.

7. It is submitted at the Bar that a sum of Rs. 44,896/- has been deposited in the Registry of this Court. As it appears the said amount has been invested in fixed deposit. Let fifty per cent of the said amount including interest accrued thereon be released in favour of opposite party No. 2 and the balance amount be returned to the petitioner- State.

8. With the aforesaid modification of the impugned award, the writ application is disposed of.