

(2024) 03 OHC CK 0155

In the Orissa High Court

Case No : Writ Petition (C) No.1083 Of 2016

General Manager Mahanadi Coalfields Ltd. And Another

APPELLANT

Vs

Presiding Officer C.G.I.T.cum Labour Court Bhubaneswar And
Another

RESPONDENT

Date of Decision : 19-03-2024

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(k)

Citation : (2024) 03 OHC CK 0155

Hon'ble Judges : Arindam Sinha J;M.S. Sahoo, J

Bench : Division Bench

Advocate : Satya Sundar Kanungo

Final Decision : Disposed Of

Judgement

Arindam Sinha, J.

1. Mr. Kanungo, learned advocate appears on behalf of petitioners (management). He submits, under challenge is award dated 12th February, 2014 passed by the Central Government Industrial Tribunal-cum-Labour Court. By it, the reference was answered in favour of the workmen.

2. Opposite party no.2 is the union espousing cause of the workmen. It goes unrepresented in spite of sufficiency of service recorded in order dated 26th August, 2022 and reiterated by order dated 22nd February, 2024.

3. We reproduce below schedule from order of reference dated 9th May, 2008.

"Whether the demand of the Union regarding promotion of their member workmen namely S/Shri Hira Singh, Krishna Ch. Swain, Satnam Singh and Ajay Moharana who have joined as Dumper Operator Trainees to get promotion as per the cadre scheme prevalent in the organization from the date from which they are actually eligible and entitled for career wages, is legal and justified? To what reliefs are the workmen concerned entitled?"

It goes without saying that a Tribunal or Labour Court answering a reference must, if called upon, decide on whether the dispute is an industrial dispute. Meaning of industrial dispute given by section 2(k) in Industrial Disputes Act, 1947 is reproduced below.

“(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

4. Meaning of industrial dispute given by section 2(k), in the facts of this case is, any dispute or difference between employer and workmen, which is connected with the employment or non-employment or the terms of the employment. The dispute regarding entitlement to promotion and differential wages cannot be said to be a dispute connected with employment or non-employment of the workmen. This is because it does not relate to the terms of employment, the case not being in respect of non-employment. We say this because, document referred by the Tribunal is circular dated 9th December, 1995 on subject of career growth and training scheme for Dumper Operators, in excavation category pay scales. This document cannot be construed as providing terms of employment. It is a scheme. Furthermore, clause 5.0 in the scheme gives discretion to the employer for promotion. The clause is reproduced below.

“5.0. The Dumper Operators, who have put in one year service in Group-C (Grade-II) and have drawn difference of wages of Grade I and Grade II for one year may be promoted/placed to the post of Dumper Operator Grade-I in Group/Cat.B in its regular pay scale of excavation category on the recommendation of the duly constituted D.P.C.”

(emphasis supplied)

5. On query from Court Mr. Kanungo draws attention to his clients’ written submission of argument filed in the Tribunal (page 42). Clause (i) under paragraph 1 is reproduced below.

“(i) The law is well settled that no employee has a right to get promotion and to claim the promotion as a matter of right.”

Perused impugned award. There is no reference to the contention nor was an issue framed in regard thereto.

6. Going back to the schedule of reference, the question put for answer by the Tribunal was whether the demand of the Dumper Operator Trainees, to get promotion as per the cadre scheme prevalent in the organization from the date from which they are actually eligible and entitled for career wages, is legal or and justified. It appears from impugned award (paragraph 8) that contention of the union for the workmen was, they were covered by earlier circular dated 2nd January, 1978 as applicable. The contention stood rejected on the evidence of the workmen themselves. Finding in the award was, applicable was aforesaid

circular dated 9th December, 1995 outlining the career growth scheme.

7. The Tribunal found that there was delay in promoting the workmen under aforesaid scheme dated 9th December, 1995, on two grounds. Firstly, there were no vacancy and secondly Departmental Promotion Committee (DPC) had not been held. The circular being a scheme, terms of it cannot be enforced as conditions of service. Omission to hold timely DPC, in the facts considered by the Tribunal to be because of no vacancy cited by the management, is a situation that gets covered by aforesaid clause 5.0 of the scheme, in the management having discretion. The scheme also provides a cap for difference of wages of Grade-I and Grade-II to be drawn for a period of one year.

8. In view of aforesaid, when the Tribunal had negated contention of the workmen to be covered by the earlier circular dated 2nd January, 1978, for it to answer the reference in the affirmative and in their favour, appears to be perverse.

9. For reasons aforesaid, impugned award is set aside and quashed. The writ petition is allowed and disposed of.

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