
(2023) 11 OHC CK 0063
In the Orissa High Court
Case No : Writ Petition (C) No.35177 Of 2023

General Manager, The Samaja, Buxi Bazar	APPELLANT
Vs	
Santosh Kumar Muduli	RESPONDENT

Date of Decision : 08-11-2023

Acts Referred:

Industrial Disputes Act of 1947 — Section 2(bb), 2(oo), 10(4), 25F

Citation : (2023) 11 OHC CK 0063

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

Bench : Division Bench

Advocate : Biplab P. B. Bahali, Bibhu Prasad Panda

Final Decision : Disposed Of

Judgement

Arindam Sinha, J.

1. Mr. Bahali, learned advocate appears on behalf of petitioner (management). He submits, impugned is award dated 30th June, 2023 made by the labour Court, illegally and with material irregularities in finding that termination of opposite party (workman) by not renewing the contract was neither legal nor justified. Consequently, direction for reinstatement and payment of back wages at 30% are also to be set aside and quashed.

2. He draws attention to the contract, under which opposite party was appointed. It is dated 1st March, 2012. We reproduce below clauses 1, 2 and 9.

"1. The period of contract will be for a period of one year from the date of your joining.

2. During the period of contract apart from the consolidated amount of Rs.10,000/- no other allowance or financial benefit will be admissible to you except the allowances towards fuel and mobile.

xxx xxx xxx

9. On expiry of contractual period, your contract of engagement shall stand automatically terminated.”

(emphasis supplied)

He submits, the contract was extended to subsist between 1st April, 2013 till 31st March, 2014. By office order dated 7th April, 2014 it was said that the contract had expired as not renewed. Text of the office order is reproduced below.

“Annual Contract of Sri Santosh Kumar Muduli, who is at present working as ‘Reporter’ in Balasore Edition has been expired since 31st March 2014 and the same is not renewed.

Thus, Sri Muduli is no longer attached with ‘The Samaja’.

This Order comes into force with immediate effect.”

(emphasis supplied)

3. Mr. Bahali submits, opposite party at trial could not dispute above facts. In the circumstances, finding in the award that there had been retrenchment without following provisions in, inter alia, section 25-F in Industrial Disputes Act, 1947 is perverse. Without prejudice he submits, the workman cannot claim to be covered by the Act of 1947, as he is covered by provisions in Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

4. Mr. Panda, learned advocate appears on behalf of opposite party (workman). He submits, there was no renewal of the contract upon its automatic expiry on 31st March, 2013. In the circumstances, his client having been allowed to continue to work in absence of contract, became a workman entitled to the protection and benefits under the Act of 1947. He submits further, facts are similar to the case decided by this Bench on judgment dated 9th October, 2023 in WP(C) no.23655 of 2015 (Sri Chinmaya Prasad Rout v. Presiding Officer, Labour Court, Bhubaneswar and others). He relies on paragraph 8, reproduced below.

“8. To adjudicate the challenge we have to first ascertain the facts. We have seen petitioner had obtained contractual engagement. The notice clearly says that the period of engagement was one year and extendable, subject to requirement and performance. On petitioner having been engaged there were two communications made to him, respectively dated 12th February, 2009 and 18th May, 2009 extending his period of engagement up to 31st October, 2009. What is important is that petitioner had an order of engagement and thereafter extensions limiting the time up to 31st October, 2009. In the circumstances, as on 1st November, 2009 the cause for the management arose to not renew the contract. It appears from the record that the management purported to terminate the engagement by writing dated 6th November, 2010 saying that the engagement period expired on 30th October, 2010. It emerges that on 1st

November, 2009 there was no disengagement. We, as aforesaid, have not been shown that petitioner was communicated any extension beyond 31st October, 2009. The facts standing thus, first part of clause (bb) as interpreted in Raj Kumar (supra) cannot be availed by the management in having disengaged petitioner one year later.”

5. Regarding contention of his client being covered by the Act of 1955, Mr. Panda draws attention to the schedule of reference standing quoted in impugned award. We extract and reproduce it below.

“Whether the action of the Management, The Samaj, At/PO- Buxi Bazar, Dist.: Cuttack in terminating the employment of Sri Santosh Kumar Muduli, Ex-Reporter from service with effect from 01.04.2014 in guise of non-renewal of annual contract is legal and/or justified? If not, what relief the workman is entitled to?”

He submits, section 10(4) in the Act of 1947 clearly confines the reference to answer the issue and anything incidental thereto. The order of reference was not challenged by the management. Whether or not his client is covered by the Act of 1955, is not a point or matter incidental to the reference.

6. On query from Court we are shown deposition of opposite party in cross-examination. Our query was made in context of finding on fact in the award, extracted and reproduced below.

“Admittedly, after completion of period mentioned in his appointment letter, the second party was allowed to work for further one year on renewal.

The second party during his cross-examination at para-19 admitted that on 1.4.2013 his service was renewed for a year which ended on 31.03.2014. But, either of parties has not filed such renewal order to show that whether the terms and conditions of said renewal order are same with the previous appointment letter of the second party or not.”

(emphasis supplied)

The labour Court said the second party during his cross-examination at paragraph 19 admitted that on 1st April, 2013 his service was renewed for a year, which ended on 31st March, 2014. The admission, unless explained, is proof of the fact. Notwithstanding, the labour Court went on to say either of parties had not filed such renewal order to show that whether the terms and conditions of said renewal order are same with the previous appointment letter of the management or not. This required us to look at the deposition in cross-examination of opposite party.

7. On perusal of depositions in cross-examination of the workman dated 21st May, 2019 and 25th June, 2019 we think fit to reproduce paragraphs 17, 19 and 23 therefrom.

“17. It is a fact that on 1.3.2012 I was given appointment on contractual basis

by the management for a period of one year with a consolidated amount of salary i.e. Rs.10,000/- per month. Ext.3 is the said offer of appointment letter and the same was accepted by me.

xxx xxx xxx

19. It is a fact that on 1.4.2013 my service was renewed for a year which ended on 31.3.2014 with a consolidated pay of Rs.12,000/- per month. It is a fact that I did not object to the decision of the management taking my salary and contractual nature of job at that time as because my service was extended for a year.

xxx xxx xxx

23. It is a fact that I was dismissed by the management not for any misconduct. It is a fact that as per clause-9 of my offer of appointment letter dtd.

1. 3.2012 my service automatically ended on 31.3.2014 after its further extension in the year, 2013."

(emphasis supplied)

As aforesaid we have perused the depositions in cross-examination. It is relevant to the cross-examination that we reproduce below paragraph 7 from evidence-in-chief by affidavit of opposite party.

"7. That the 1st Party management is an industry as defined under the Industrial Disputes Act. That the workers of the 1st Party Management are governed by Standing Orders. Clause-7 of the Contractual Appointment Order issued to me stipulates, "...the Board of Management shall have discretion to terminate the engagement without showing any reason".

The order of termination dated 07.04.2014 by the General Manager has neither carried the decision of the BOM nor the Member-In-charge of the Orissa Branch, my real employer. Even if for the sake of argument my engagement be treated as temporary, but continuous extensions thereof and availing my service beyond contract period have sufficiently proved that I was in continuous service had completed 240 working days in each preceding year till my illegal termination on 07.04.2014. Therefore, the termination is illegal under Section 25(F) of the Industrial Dispute Act."

(emphasis supplied)

8. On analyzing the evidence-in-chief and the workman's depositions in cross-examination the conclusion is inevitable that there was clear admission of renewal of the contract till 31st March, 2014 on an increase by ₹ 2,000/- of monthly remuneration. We have not been shown any explanation to this admission on scanning the entire deposition in cross-examination of the workman. Before the labour Court, fact of the renewal of the contract, therefore, stood proved. Proceeding to hold omission on part of the parties to produce

documentary evidence on renewal of the contract appears to be perverse as not based on relevant material before the Court.

9. Facts in *Sri Chinmaya Prasad Rout* (supra) were that petitioner was initially contractually engaged for one year and extendable. There were two subsequent communications respectively, dated 1st February, 2009 and 18th May, 2009 extending the engagement, first up to 30th April, 2009 and then till 31st October, 2009. The workman continued to work as engaged beyond 31st October, 2009. By letter dated 6th November, 2010 his service was terminated alleging that his engagement period had expired on October, 2010. There was no demonstration of the extension from 1st November, 2009 to 31st October, 2010. In those facts we had found that on 1st November, 2009 the cause for the management arose to not renew the contract. However, purported termination of the engagement was by writing dated 6th November, 2010 alleging the contract had been extended and expired on 31st October, 2010. In this case, as aforesaid, there was finding of fact by the labour Court on admission that the contract stood renewed.

10. Immediately upon expiry of the renewed period, the management communicated that the contract was not renewed any further and had expired. The facts bring the termination within exception clause (bb) under definitions section 2(oo) in the Act of 1947. It follows that termination of the workman does not come within meaning of retrenchment and, therefore, the protection and entitlements regarding retrenchment cannot be said to be applicable to the workman.

11. Mr. Panda also relies on judgment of the Supreme Court in *Jasmer Singh vs. State of Haryana*, reported in (2015) 4 SCC458, paragraphs 4 and 13. In paragraph 13 said Court relied on finding of fact that the workman therein had worked for more than 240 days in a calendar year and the termination order was void ab initio. Facts in said case was regarding the workman, who had worked as daily paid worker, terminated without following principle of 'last come first go' in section 25-G. There was no issue regarding contractual appointment or absence of renewal thereof and termination thereby. The judgment is not applicable to facts in the case.

12. Mr. Panda also shows us that his client had worked for a few days beyond 31st March, 2014. He refers to page 22 in the writ petition. This contention we are unable to accept for taking a view that thereby the workman got fresh appointment dehors the contract. This is because on behalf of the workman reliance was placed on the schedule of reference, which clearly required decision on whether the management in not renewing the contract leading to termination was justified.

13. For reasons aforesaid impugned award is set aside and quashed.

14. The writ petition is allowed and disposed of.

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