

(1997) 04 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7615 of 1992

Himanshu Sekhar Lenka and Another

APPELLANT

Vs

Orissa State Leather Corporation Ltd. and Others

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 2 OLR 84

Hon'ble Judges : Susanta Chatterji, J;C.R. Pal, J

Bench : Division Bench

Advocate : D.N. Lenka, B.R. Barik and L. Das, for the Appellant; K.K. Jena, for Opp. parties 1 and 2, K.N. Sinha and T. Sinha for Opp. party No. 2 and G.L. Mishra, S.R. Patnaik, K.K. Jena and S. Mohanty for Opp. party No. 4, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The present writ petition filed by the employees of the Orissa Leather Corporation Limited, Jajpur Unit working as Peon-cum-Watchman in the Sports Goods Unit seeks the following reliefs:

".....to issue a writ in the nature of mandamus or any suitable writ quashing Annexures - 5(a) and 5(b) and directing opposite party Nos. 1 and 2 to regularise the services of the petitioners under opposite party No. 1 and pay them salary at par with the regular Scale Attendant/Peon-cum-watchman under the Corporation as is being done in case of opposite party No. 3."

The petitioners further pray that this Hon"ble Court may be pleased to quash order of retrenchment on a finding that the same is void ab initio and declare that petitioners would be deemed to be continuing in service ignoring the Annexure-B and to grant petitioners all consequential financial and service benefits arising therefrom and be pleased to issue a writ of mandamus to that effect."

2. The petitioners in fact challenge the acts and actions of opposite parties 1 and 2, namely, the Orissa State Leather Corporation Limited and its Managing Director, in not regularising their services. They contend inter alia that though they are working in the establishment of opposite party No. 1- Corporation since more than one and half years as on the date of filing of the writ petition. Their services have neither been regularised nor are they getting their pay in the same scale as paid to their counterparts working in different branches as well as in the Head Office of the Corporation on regular basis and they are made to work at a consolidated pay of Rs. 400.00 per month. It is placed on record that the petitioners joined as Sales Attendants in the Jajpur Unit of the opposite party No. 1- Corporation under the Khadi and Village Industries Commission Scheme (for short "KVIC") at a consolidated pay of Rs. 400.00 per month and they were assured that their services would be regularised soon and they would be paid at the usual scale of pay after that. The petitioners made several representations to the authorities for regularisation of their services, but all in vain. Stating all these facts in greater details, the petitioners have filed the present writ application seeking the reliefs as indicated above.

3. There is reference to the petitioner's earlier writ application, i.e. O.J.C: No. 188 of 1991 claiming relief of regularisation of their services and financial benefits at par with the regular employees and by order dated 26.6.92 this Court directed opposite parties 1 and 2 to dispose of the petitioners pending representations within three months of receipt of the said order bearing in mind the relevant law laid down by the Supreme Court as also this Court in several cases, on the point, of "equal pay for equal work". The relevant portion of the order of this Court dated 26.6.92 has been quoted in para 20 of the writ petition.

4. it is also pointed out that opposite party No. 2, the Managing Director, by a bald order dated 1.10.92 rejected the representations of the petitioners. The two orders in respect of petitioner No. 1 and petitioner No. 2 are annexed to the writ petition as Annexures 5(a) and 5(b) respectively. It is alleged that while disposing of the representations of the petitioners, opposite party No. 2 only considered the questions of regularisation and completely ignored the question of "equal pay" for equal work" which was voluntarily pressed in the representations.

5. The writ petition is opposed by opposite parties 1 and 2 by filing a joint counter affidavit. There is another counter affidavit by opposite party No. 3. Bibhuti Bhusan Mohanty. Opposite parties 1 and 2 have denied the allegations of the petitioners and they have stated that the petitioners were appointed in the month of May, 1989 under the KVIC Scheme financed by the Khadi and Village Industries Commission for implementation of the said scheme. It is submitted that having regard to the need of the Scheme at the time, persons were appointed by opposite party No. 1- Corporation on temporary basis for implementation of the Scheme. They were getting their monthly salary from out of the funds provided by the Khadi and Village Industries Commission. Their services were purely temporary in nature and terminate at any time without

assigning any reason therefore as per the terms and conditions of their appointment orders as per Annexure-2 to the writ application: Their appointments being temporary and since they were getting their salary out of the funds allotted by the sponsoring authority, i.e. KVIC, no scale of pay prevailing in the Corporation was attached to their posts. Moreover, they were engaged on a consolidated pay of Rs. 400.00 per month which was indicated in their appointment orders and their engagement was for a temporary period depending upon the requirement of KVIC. Therefore, absorption of the petitioner in the opposite party No. 1 - Corporation is not conceivable in view of the very nature of their appointment under the KVIC Scheme and the viability of the Scheme. As such, their regularisation in service under the Orissa State Leather Corporation does not arise.

6. It is also submitted that the representations filed by the petitioners were considered by the Corporation and were rejected. The orders passed on the said representations have also been duly communicated to the petitioners. It has been mentioned therein that since KVIC Scheme was not viable and the Corporation faced difficulties to meet the expenses of the said Scheme, the Board of Directors of the Corporation had decided to close down the Units functioning under the Scheme. Consequent upon such closure the workmen of the Scheme were retrenched by the Corporation. The petitioners were retrenched vide order dated 21.9.93 as per Annexure - A/2 to the counter affidavit.

7. It is also submitted that as per the decision of the Board of Directors in their meeting dated 23.3.93, three Footwear Units established under the KVIC Scheme were to be managed by the opposite parties 1 and 2 and as such opposite party No. 1's management preferred to engage three senior most employees out of the KVIC Scheme under the control of the Corporation. As opposite party No. 3 was senior to the petitioners in service he was considered for rehabilitation in the Corporation. It is submitted that the petitioners cannot be equated with opposite party No. 3. An extract of the resolution of the Board of Directors dated 23.3.93 has been annexed as Annexure-C/2 to the counter affidavit and a copy of the decision for taking over the management of the Footwear Unit at Jagatsinghpur under opposite party No. 1 has been filed as Annexure-D/2.

8. The counter affidavit filed by opposite party No. 3 discloses that the petitioners' appointments were under the very Scheme sponsored by the KVIC Which was implemented by opposite party No. 2 and as such the petitioners cannot claim to be employees of the Corporation as their continuance in service depended on continuance of the Scheme at the option of the sponsorer. It is also submitted by opposite party No. 3 that he has been absorbed as a Peon-cum-Watchman as per the order Annexure-4 to the writ application and has been posted as in-charge of the Jagatsinghpur Unit as per order dated 24/25th August, 1989, a copy whereof has been filed as Annexure-C/3 to his counter affidavit and it is submitted that since the date of the said order opposite party No. 3 has been in independent charge of the said Unit till date. He has also been

granted annual increment of pay as per Memo dated 30.11.1990 issued by opposite party No. 1. The allegations of the petitioners have been denied by opposite party No. 3.

9. Having heard learned lawyers for the petitioner, for opposite parties 1 and 2 and also for opposite party No. 3 separately, we find that by the impugned orders, as per Annexures-5(a) and 5(b) to the writ application, the representations of the writ petitioners for regularisation of their services under the Corporation have been rejected". We also find that by Annexure-1 the petitioners were appointed after being sponsored by the Employment Exchange, Jajpur as Sales Attendant on consolidated pay of Rs. 400.00 per month with effect from the date of their joining at the Jajpur Unit under the KVIC Scheme of the Corporation. Annexure-4 indicates that opposite party No. 3 Bibhuti Bhusan Mohanty was appointed as a Peon-cum-Watchman under the KVIC Scheme in the scale of pay of Rs. 570-790.00 per month plus other allowances as admissible to the other employees of the Corporation in the District Office at Cuttack. He was to remain on probation for a period of one year or such period as might be deemed necessary. In Annexure-6 it is stated that consequent upon closure of the Footwear/Sports Goods/Sales Emporium Units under the KVIC Scheme, two employees, namely, the petitioners, who were working as Sales Attendants on temporary basis were retrenched from Service with immediate effect. Reading the annexures to the writ petition and the two counter affidavits of opposite parties 1 and 2 and opposite party No. 3, we find that the petitioners and opposite party No. 3 were all appointed under the KVIC Scheme. It is not appreciated by us that if on cessation of the KVIC Scheme the petitioners were retrenched, how opposite party No. 3 who was, also appointed under the said Scheme could be rehabilitated. Furthermore, it appears that the said Scheme is allowed to continue and therefore it is also not appreciated how opposite party No. 3 was regularised as an employee of the Corporation whereas the petitioners who were also under the very Scheme lost their services on closure of the Scheme. We find that there is a great anomaly regarding this aspect. If the petitioners and opposite party No. 3 were originally appointed under the KVIC Scheme, when the question of retrenchment came, all the employees under the Scheme had to lose their job. If the Scheme continues and there is any retrenchment, that has to be done in accordance with law as envisaged under the Industrial Disputes Act and the concept of "last come first go" should be followed. Opposite parties 1 and 2 having not been able to satisfy us that actually the Scheme under which the petitioners were appointed has ceased. It is also not explained when originally the petitioners and opposite party No. 3 were all appointed under the same Scheme how opposite party No. 3 could be rehabilitated and the cases of the petitioners were not considered in proper perspective. Further, if there was any retrenchment of employees how opposite party No. 3 could be rehabilitated in preference to the petitioners and the cases of the petitioners were not considered.

10. For all these reasons, we find that there is some merit in the contention of

the writ petitioners. We dispose of the writ petition quashing the impugned orders as per Annexures-5(a) and 5(b) rejecting the representations of the petitioners. We direct opposite parties 1 and 2 to reconsider the cases of the petitioners and if it is found that the petitioners stand at par with opposite party No.3, they should be rehabilitated and their services should be regularised within a period of three months of communication of this judgment. We make it clear that the petitioners would not be entitled to any financial benefits for the past period and the same should be reckoned from the date of their absorption and regularisation for the services in the scale of pay as admissible by the Corporation. We make no order as to costs.

C.R. Pal, J.

11. I agree.