

(1968) 11 OHC CK 0003
In the Orissa High Court

Hindusthan Steel, Ltd.

APPELLANT

Vs

Panda (G.S.) and Others

RESPONDENT

Date of Decision : 28-11-1968

Acts Referred:

Citation : (1969) 35 CLT 172 : (1969) 2 LLJ 200

Hon'ble Judges : S. Barman, C.J;S. Acharya, J

Bench : Division Bench

Judgement

S. Barman, C.J.—The industrial dispute, out of which this writ petition filed by the employer, Hindusthan Steel, Ltd., Rourkela, was referred to the labour court by the Government of Orissa was in these terms:

Whether the termination of the service of Ghanashyam Panda of the Power Plant of Hindusthan Steel, Ltd., Rourkela is proper ? If not, what relief he is entitled to?

2. The labour court, by its award dated 23 May 1964, found that the termination of the services of the said workman G.S. Panda is not justified and directed the management to reinstate him as early as possible with full back-wages as stated in the award. It is this award which is being challenged in this writ petition.

3. On 17 August 1959, G.S. Panda was offered the post of fitter in Hindusthan Steel, Ltd., for three years being the duration of his appointment. On 10 January 1961 he was promoted to the post of electrical fitter with effect from the date he assumed charge of his new assignment. In the order of promotion it was stated that Panda would be on probation for a period of six months and would be governed by the rules and regulations of the project in force from time to time. By an order dated 14 August 1962 Panda, while working as electrical fitter, was relieved of his duties with effect from 2 September 1962 resulting in the industrial dispute referred by the State Government to the labour court in terms aforesaid.

4. The points urged on behalf of the workman against the order of termination of his services were that it was passed mala fide and by way of victimizing him for

his trade union activities. It was also submitted on behalf of the workman that the order of promotion dated 10 January 1961 by which he was promoted as electrical fitter amounted to novation of contract.

5. These arguments were sought to be repelled on behalf of the employer who contended that the workman's services came to an end by efflux of time after expiry of the period of three years which was the period stipulated on his initial appointment as a fitter in 1959 and that it was not a case of termination, discharge or dismissal as alleged. It was also submitted that the question of mala fide was redundant because the workman had no right to continue after three years.

6. The reasoning on which the labour court passed its award in favour of the workman was in substance this: The initial terms of his service were superseded by the order of promotion dated 10 January 1961 when Panda was promoted to the post of electrical fitter. According to this order Panda was to remain on probation for a period of six months from 10 January 1961 but as his services were not terminated after the expiry of that period nor was he confirmed, he should be deemed to be still continuing as a probationer; in order to terminate the services of a probationer of this type for misconduct, it was necessary that he should be given an opportunity to refute the allegations of misconduct which admittedly had not been done in this case. Accordingly the labour court came to the conclusion that the termination of the services of Panda was not justified.

7. This view of the labour court, with which we agree, is supported by a decision of the Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, where it was held that an employee appointed on probation for six months continues as a probationer even after the expiry of six months if at the end of the period his services had either not been terminated or he is confirmed; without anything more, an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. At the end of the six months' period the employer can either confirm him or terminate his services because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer. It could not be contended that there was an automatic termination of service as soon as the period of probation of six months expires unless an order of confirmation was made.

8. In the present case it is clear from the order of promotion that it was a new assignment. The relevant portion of the order reads as follows:

* * * G.S. Panda, electrical fitter in the scale of Rs. 60 - 90, office of the General Foreman, Power Plant (Electrical), Hindusthan Steel, Ltd., Rourkela, is hereby promoted to the post of electrical fitter in the scale of Rs. 80--5--120 on a basic

pay of Rs. 80 a month and posted in the same department with effect from new assignment. Panda will be on probation for a period of six months and will be governed by the rules and regulations of this project from time to time.

9. Apparently, the workman was promoted to the post of electrical fitter as a new assignment on probation for six months. In our opinion, the reading by the labour court of the order of promotion as having superseded the original terms of service for three years is correct.

10. In view of our decision on merits as discussed above, it is unnecessary for us to deal with the question of alleged mala fides. In the result, therefore, the writ petition is dismissed but in the circumstances there will be no order as to costs.