
(2009) 08 OHC CK 0064
In the Orissa High Court

H.M. Electrical

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 12, 2, 25F

Citation : (2009) 108 CLT 754 : (2009) 2 OLR 839

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Judgement

B.K. Patel, J.—In this writ application filed under Articles 226 and 227 of the Constitution of India the petitioner assails the award dated 18.12.1999 passed by learned Presiding Officer, Labour Court, Bhubaneswar in Industrial Dispute Case No. 210 of 1993 holding that the termination of service of opposite party No. 2-workman by the petitioner is neither legal nor justified and that the opposite party No. 2 is entitled to be reinstated in service.

2. The award was passed in response to the following reference received from the state Government in exercise of powers conferred u/s 12 read with Section 10 of the Industrial Disputes Act, 1947 (for short "the Act"):

Whether the termination of service of Sri Ananta Charan Routray, Testing-in-charge by the management of M/s. H.M. Electricals, Jagatpur, Cuttack with effect from 1.4.1991 is legal and/or justified? If not, what relief he is entitled to?

3. Pursuant to the notice issued by the Labour Court opposite party No. 2-workman and the petitioner-management filed their statements of claim and written statement respectively.

4. It was pleaded by the opposite Party No. 2 that he was working as Testing-in-charge under the establishment of the petitioner from 6.4.1985 till 26.3.1991. On 27.3.1991 opposite party No. 2 suffered from fever and remained absent from 27.3.1991 to 31.3.1991 after informing regarding his illness to the

management through his colleague Duryodhan Das (M.W.3). Upon recovery from illness opposite party No. 2 proceeded to join his duty on 1.4.1991 but he was not allowed to enter inside the factory till 4.4.1991. It was asserted that as the conduct of the petitioner in refusing work to the workman amounted to retrenchment without complying with provisions u/s 25-F of the Act, he was entitled to reinstatement and back wages.

5. It was admitted in the written statement filed by the petitioner that the opposite party No. 2 was engaged as Testing-in-charge from 6.4.1985 to 26.3.1991. However, it was pleaded that the opposite party No. 2 was an employee of M/s. J.K. Electrical. Sri Jisu Krishna Das, proprietor of M/s. J.K. Electrical is the father of proprietor of M/s. H.M. Electrical, the petitioner. Proprietor of M/s. J.K. Electrical was looking after works of M/s. H.M. Electrical also. Proprietor of M/s. J.K. Electrical being a non-technical person was dependant on opposite party No. 2 since the works of M/s. J.K. Electrical was technical. As such opposite party No. 2 was functioning in the supervisory capacity in respect of the entire business including appointing employees and granting leave, etc. After death of proprietor of M/s. J.K. Electrical on 5.11.1990 opposite party No. 2 was looking after everything. It was further alleged that opposite party No. 2 was not only working for M/s. J.K. Electrical but also had established his own factory in the name and style of M/s. Haraguri Electricals at Cuttack. He was indulged in clandestine dealings. Apprehending action by the management against him due to his misconduct, opposite party No. 2 voluntarily absented from and abandoned his job without any intimation to the management. Since the opposite party No. 2 voluntarily abandoned his service and did not join his duty in spite of several notices, his name was deleted from the muster roll as per notice dated 21.4.1991 and no domestic enquiry was held as there was no necessity for compliance of provisions of Section 25-F of the Act."

6. In order to substantiate their respective assertions, opposite party No. 2 examined himself as W.W.1 and three witnesses M.W.1 to M.W.3 were examined on behalf of the petitioner. While considering the evidence on record; learned Labour Court took note of the fact that through allegations of misconduct were made against opposite party No. 2, management did not hold any domestic enquiry to substantiate the allegations. The petitioner also did not serve any prior notice or pay notice pay or retrenchment compensation to the opposite party No. 2. It was held that the petitioner failed to establish voluntary abandonment of service by opposite party No. 2. As the materials on record go to show that actions of the petitioner would come under purview of retrenchment u/s 2(oo) of the act, termination of service without compliance of provisions u/s 25-F of the Act was held to be neither legal nor justified.

7. In assailing the impugned award, it was submitted by learned Counsel for the appellant that management had taken specific stand and adduced cogent evidence to the effect that opposite party No. 2 was not a workman and that he was employed in supervising capacity. It was strenuously contended that the

learned Labour Court having neither framed any issue nor rendered any finding in respect of such stand, the impugned award is not sustainable. It was further argued that as opposite party No. 2 admitted that he was simultaneously engaged in his own business, the learned Labour Court should have held that opposite party No. 2 was guilty of misconduct. In view of misconduct it was natural for the management to lose confidence on opposite party No. 2. Opposite party No. 2 failed to adduce any evidence to substantiate his plea of having informed the management regarding illness which prevented him from attending duty from 27.3.1991 to 30.3.1991. Management exhibited letters marked Exts. D, D/1 and D/2 issued by it to opposite party No. 2 requiring him to join the duty. In the letter Ext.D/2 opposite party No. 2 was specifically impressed upon that In case of failure to report for duty on or before 27.4.1991, absence from duty would be deemed to be abandonment of service. In such circumstances, the learned Labour Court should have held that opposite party No. 2 voluntarily abandoned his service and his service was liable to be terminated without holding any domestic enquiry. It was further submitted by learned Counsel for the appellant that in letter dated 21.5.1991 which is Annexure-4 to the writ petition opposite party No. 2 simply requested the management for settlement of his accounts by payment of retrenchment compensation, encashment of earned leave and disbursement of gratuity and bonus without insisting to allow him to join his duty. Therefore, the learned Labour Court should have held that the opposite party No. 2 did not intend to resume his duty and, instead of directing reinstatement, should have directed the management to settle the accounts of opposite party No. 2 by way of payment of back wages and other dues, if any. Reliance is placed by the learned Counsel for the appellant on the decisions of *Sri Saroj Kumar Mohapatra v. Presiding Officer, Labour Court, Jeypore* and *Anr. 2006 XI OLR 740*, *New India Assurance Co. Ltd. v. Vipin Behari Lal Srivastava* *AIR 2008 Sc 1525*, *Syndicate Bank v. The General Secretary, Syndicate Bank Staff Association* and *Anr. 2000(3) Supreme 541*, *Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others*, and *Vimal Kumar Jain v. Labour Court, Kanpur 1987 SCC 283*.

8. In reply, learned Counsel for the opposite party No. 2 contended that in absence of any domestic enquiry held by the management, the learned Labour Court rightly refused to accept the plea of misconduct, unauthorized absence and voluntarily abandonment. On the basis of evidence on record, the finding regarding non-service of letters under Ext.D series on opposite party No. 2 cannot be faulted. Service of opposite party No. 2 having been terminated without any domestic enquiry or without complying with provisions Section 25-F of the Act, he is entitled to be reinstated. The power of the Court under Article 227 of the Constitution being limited in nature there is no scope to interfere with the impugned award. In support of his contention learned Counsel for the opposite party No. 2 presses into service decisions of *Mohammed Yusuf Vs. Faij Mohammad and Others*, and *Krishna Bahadur Vs. Purna Theatre and Others*, .

9. There is no quarrel over the well settled principle of law that a Writ of

Certiorari can be issued for only correcting errors of jurisdiction committed by inferior Courts or Tribunals, i.e. where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can also be issued wherein in exercise of the jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, inasmuch as it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

While exercising supervisory jurisdiction, this Court is not to act as an appellate Court. This limitation necessarily means that finding of fact reached by the Tribunal after appreciation of evidence cannot be reopened or questioned in the writ proceedings and an error of law which is apparent on the face of the record can be corrected by a writ Court, but not an error of fact, however grave it may appear to be. The finding of fact recorded by the Tribunal can be interfered with by a writ Court" only if the High Court is satisfied that the Labour Court had erroneously not considered or refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which could be corrected by a Writ of Certiorari as has been held by the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, . In this connection decision in Sri Saroj Kumar Mohapatra (supra) relied upon on behalf of the appellant and decision in Mohammed Yusuf v. Faij Mohammed and Ors. (supra) relied upon by learned Counsel for the opposite-party No. 2 may also be referred to.

10. Considering the facts and circumstances of the present case keeping in view the well defined scope and ambit of writ applications, it is observed that grievance raised on behalf of the appellant regarding non-consideration of stand and evidence to the effect that opposite party No. 2 was working in supervisory capacity is not unfounded. It is needless to observe that employees entrusted with supervisory work are not workmen, as has been held in Vimal Kumar Jain v. Labour Court Kanpur (supra). When the management had taken specific plea and adduced evidence in that regard, it was incumbent upon the learned Labour Court to render a finding as to whether opposite party No. 2 was workmen. Learned Labour Court also does not appear to have considered the fact that opposite party No. 2 did not claim reinstatement in the letter dated 21.5.1991 submitted to the management. Therefore, the impugned award is liable to be quashed and the matter is liable to be remitted for passing of a fresh award.

11. Accordingly, the impugned order is quashed and the matter is remanded for passing fresh award by the learned Labour Court. While passing a fresh award in the light of observations made above on the basis of evidence already on record, the learned Labour Court shall not in any manner be influenced by any of the findings recorded or observations made in the impugned award.

The writ application is, accordingly, disposed of.