

(2013) 03 OHC CK 0012

In the Orissa High Court

Case No : Writ Petition (C) No. 14764 of 2007

Kailash Chandra Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2(s), 25F, 25F, 25G

Citation : (2014) 117 CLT 692 : (2013) 138 FLR 164 : (2013) 3 LLJ 277 :
(2013) 1 OLR 935

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Sashi Bhusan Jena, S. Behera, S.S. Mohapatra, A. Mishra, S. Soren
and S. Das, for the Appellant;

Judgement

Sanju Panda, J.—The petitioner has filed this writ petition challenging the award dated 2nd June, 2007 passed by the Presiding Officer, Labour Court, Bhubaneswar in Industrial Disputes Case No. 30 of 2003 holding that the action of the management terminating his service is illegal and unjustified and he is entitled to the relief sought for. The facts as narrated by the present writ petitioner-workman in the present writ petition are as follows:

The petitioner was working as a casual helper under the management of opposite party No. 1 since 18th August, 1983. His service was terminated on 3rd August, 1994 without following the provision of Section 25-N read with Section 25-G of the Industrial Disputes Act (in short, "the I.D. Act"). Being aggrieved by the said action, the petitioner put-forth his grievance before the Asst. Labour Commissioner-cum-Conciliation Officer who initiated the conciliation proceeding between the workman and the management. During conciliation proceeding, the management agreed to reinstate him with continuity in service from 3rd August, 1994 fixing his seniority at Serial No. 76 in the gradation list of 133 number of casual Helpers. However, the management did not reinstate the workman. As such, Conciliation Officer submitted failure report to the Government.

Accordingly, a reference was made to the Tribunal by the Government. In the written statement, the management contended that reference u/s 10 of the I.D. Act was not maintainable both on the facts and law as because the function of the management relates to public welfare function by the State. Therefore, the dispute between the management and the workman could not be termed as industrial dispute. The petitioner was not a workman within the meaning of Section 2 (s) of the I.D. Act as he was working as a casual helper since 3rd February, 1994 being engaged temporarily on need basis. As his service was no more required, he was discharged from 3rd August, 1994 and it denied that the petitioner was working as a casual helper since 18th August, 1983. The question of application of Section 25-F and Section 25-G of the I.D. Act did not arise at all as he was not working for 240 days in a year prior to his termination. It further took a stand that during conciliation proceeding, there was an agreement under which it was agreed that the workman would be reinstated in his former post with effect from 3rd August, 1994 and the period from 3rd August, 1994 to 6th July, 2001 shall be treated as continuous service on "no work no pay" basis. The workman would get his wages on the prevailing rate of Minimum Wages with effect from 7th June, 2001 onwards and his seniority was fixed at serial number 76 of the gradation list. The management sent the said agreement to the Government of Odisha. However, the Finance Department declined to give concurrence to the terms of settlement. Therefore, the agreement reached during conciliation proceeding could not be given effect to. Accordingly, the action of the management in terminating the service of the workman is legal and justified.

2. On the above pleadings of the parties, the Tribunal framed two issues which are follows:

1. Whether the action of the management of Director, Printing, Stationary and Publication, Orissa, Madhupatna, Cuttack-10 in terminating the services of Sri Kailash Chandra Swain, Casual Helper with effect from 3.8.94 is legal and/or justified?

2. If not to what relief, the workman is entitled to?

3. The Tribunal on analyzing the materials available on record held that there was employer and employee relationship between the management and the workman. The management is an industry. The dispute was industrial dispute between the management and the workman. Ext. 1, the xerox copy of the experience certificate issued by the Establishment Officer of the management revealed that the workman was working as a "Contractor Helper" during the period 18.8.1983 to 24.9.1988. Notwithstanding such a certificate, Ext. 2 which was a tripartite settlement between the workman and the management during conciliation proceeding where the workman was a party and he himself made a complaint before the Conciliation Officer-cum-Assistant Labour Officer, Cuttack to the effect that he had been appointed by opposite party No. 1 as a casual helper with effect from 3.2.1994 along with others. In view of such admission, both the

parties admitted that his service was terminated and he was disengaged from service with effect from 3.8.1994. He never worked for 240 days at any time prior to his disengagement. As he was not in continuous service, the management was not legally bound to give him any notice to pay any compensation when the management terminated the service of the workman, On the above findings, the Tribunal passed the aforesaid award.

4. Learned counsel for the petitioner submitted that the Labour Court did not consider the case of the petitioner in its correct perspective when the specific case of the workman was that he was continuing in the establishment since 18th August, 1983. During conciliation proceeding, the management had given the terms and conditions to settle the dispute and agreed to reinstate the petitioner. Since the Finance Department declined to give concurrence to the terms of settlement, the service of the petitioner was not regularized. Earlier, to regularize the service of the petitioner, opposite party No. 1 directed him to appear before the interview on 10th January, 1988. Accordingly, the petitioner appeared in the interview. However, without regularizing the service of the petitioner, he was directed to continue as casual helper. While continuing as such, again management had given a direction to appear in the interview on 14th May, 1989 but the management appointed an outsider and terminated the petitioner to work as a casual helped with an assurance that the service of the petitioner shall be regularized. The petitioner had approached the Hon"ble Minister of Commerce and Transport, Odisha for regularization of his service. The Hon"ble Minister recommended the case of the petitioner for regularization on 25.9.1993. Again opposite party No. 1 issued a letter to appear before the interview on 17.10.1993. In pursuance of such interview, the order of engagement of the management was issued on 3.2.1994 though the petitioner was working as such since 18th August, 1983. While the matter stood thus, the disengagement order was issued pursuant to the letter issued by opposite party No. 1 in view of the Government in Commerce & Transport (Commerce) Department letters dated 30.3.1994 and 30.7.1994 issuing instructions to disengage the services of the excess casual employees beyond the sanctioned strength of 155 as on 31.12.1993 as it was not possible to pay excess casual employees after July, 1994 due to budgetary provision. The management disengaged only two persons, namely, Arunakanta Mohanty and the present petitioner though juniors to the present petitioner are continuing as casual helpers without following the principle of "first come last go and last come first go". Therefore, in the conciliation proceeding, the settlement was made to regularize the petitioner as described as above. However, the Labour Court did not consider all these facts while passing the impugned award. As such, the impugned order is liable to be set aside.

5. Learned Addl. Government Advocate, however, supporting the impugned award submitted that since the petitioner was engaged as casual helper in February, 1994 and his service was terminated in August, 1994, he had only completed maximum six months of service. As he had not completed 240 days of

continuous service in a year, prior to his termination, the Labour Court has rightly passed the impugned award. Therefore, the impugned award does not warrant interference.

6. From the rival submission of the parties and after going through the LCR, it appears that the contention of the petitioner that the workmen junior to him are continuing in service and his service was terminated without following the proper procedure appears to be correct as in the settlement the management admitted that the petitioner's seniority was at Serial No. 76 and the Government had issued instructions to disengage the services of the excess casual employees beyond the sanctioned strength as on 31.12.1993 as reveals from the letter dated 3rd August, 1994 issued by the opposite party No. 1, vide Annexure-7. Accordingly, the management and the workman entered into a tripartite settlement to regularize the service of the petitioner on 7th June, 2001 as reveals from Annexure-8. The terms of settlement was recorded by the Conciliation Officer-cum-Assistant Labour Officer, Cuttack. However, as the Government in the Finance Department did not concur the said tripartite settlement, the same could not be given effect to. Further the letter dated 20th July, 1993 issued by the Assistant Labour Commissioner, Cuttack to the Director, Printing Stationary and Publication, Odisha also reveals that the petitioner filed a representation complaining that his service was not regularized though he was working as a helper in the establishment since 18th August, 1983 and he had been interviewed twice for the post of Casual Helper but his case had not been considered. The Assistant Labour Commissioner further indicated in the said letter that in pursuance of the direction of the High Court of Orissa in OJC No. 3045 of 1992, the management regularized the service of one Sarat Chandra Sahu as a Casual Labourer though the petitioner stood on a similar footing, his case was not considered. Therefore, the Assistant Labour Commissioner recommended the management to consider the case of the petitioner sympathetically and requested to intimate the matter to him. The letter also reveals that by that date the petitioner was continuing as a Casual helper though his service was not regularized. The management has issued an engagement letter on 3rd February, 1994 and disengaged in August, 1994 to show that he was only working for six months which is not correct as it appears on the face of the record. Therefore, the action of the management in terminating the petitioner is illegal and without complying with the provision of Section 25-F of the I.D. Act and act of the management amounts exploitation of the workman.

7. The apex Court in the case of Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, has held that when the termination of a workman is held illegal, it can be said without any fear of contradiction that the Supreme Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled, to reinstatement in all situations. It has always been the view of the Court that there could be circumstance (s) in a case which may make it inexpedient to order reinstatement. Hence, the normal rule that the dismissed workman is entitled to reinstatement in cases of wrongful

dismissal has been held to be not without exception. The principles as relevant for granting relief of reinstatement when termination of workman is held to be illegal. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute. Now there is no such principle that for an illegal termination of service, the normal rule is reinstatement with back-wages, and instead the Labour Court can award compensation. The apex Court further held that the compensation, in lieu of reinstatement, should have been proper to a daily wager who has completed merely 240 days" service hence the Single Judge as well as the Division Bench of the High Court also erred in not considering that the reinstatement with back-wages is no longer a rule without exceptions. While granting a relief of reinstatement to a workman whose termination is held to be illegal, i.e., violative of Section 25F of the Industrial Disputes Act, 1947, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute. In view of the above settled position of law, since the termination of the petitioner's service was illegal, this Court sets aside the impugned award dated 2nd June, 2007 passed by the Presiding Officer, Labour Court, Bhubaneswar in industrial Dispute Case No. 30 of 2003 and directs opposite party No. 1 to pay a sum of Rs. 1,50,000/- (Rupees one lakh fifty thousand) as compensation to the petitioner-workman within a period of six weeks from today.

The writ petition is accordingly allowed in part. No costs.