

(2001) 03 OHC CK 0031
In the Orissa High Court
Case No : O.J.C. No. 12084 of 1997

Mahendra Kumar Sahoo

APPELLANT

Vs

Orissa Lift Irrigation Corporation Ltd. and others

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25

Citation : (2001) 91 CLT 717

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : M/s B. Mohanty and S. Patra, for the Appellant; M/s J. Mohanty, A.K. Panigrahi and P.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application has prayed for regularisation in service having been continued in casual employment since 1985.

2. The case of the petitioner is that he was engaged as an N. M. R. under opposite party No. 1 in October, 1985. In November, 1987 the services of the petitioner were terminated and such termination/retranchment was in violation of section 25F of the Industrial Disputes Act, 1947. The petitioner, therefore, raised a dispute and the matter was referred to Labour Court, Jeypore, for adjudication in I.D. Case No. 21 of 1989. An award, was passed by the Labour Court holding the retranchment to be illegal on 23rd August, 1990. Thereafter the petitioner was reinstated as N.M.R. Helper by Office Order dated 22-11-1990. On 16-4-93 a gradation list of N.M.R. staff was published and in the said gradation list the date of first engagement of the petitioner was shown as 26-11-1990, whereas the petitioner was continuing from October, 1985. Therefore, the petitioner made a representation, but no action was taken. Ignoring the initial date of appointment in October, 1985, opposite parties 1 and 2 regularised the services of some employees junior to the petitioner and the

petitioner again made a representation on 25-6-1997, No action having been taken by opposite parties, this writ application has been filed.

3. A counter has been filed on behalf of opposite parties 1 to 3. It is stated in paragraph 5 of the counter that the petitioner was engaged as . N.M.R. worker from 1-10-1985 to 31-10-1987 with break of service from 1-6-1986 to 30-6-1986. 1-11-1986 to 30-11-1986 and 11-6-1387 to 30 6-1987. He was again re-engaged as N.M.R. Helper with effect from 26-11-1990 and therefore, the petitioner has not completed twelve years of service as claimed.

4. From the averments made in the writ application as well as in the counter it appears that there is no dispute that the petitioner was initially engaged on 1-10-1985 and was disengaged in 1987. The award passed by the Labour Court, Jeypore shows that the aforesaid order of disengagement/ termination was held to be illegal, and unjust and the opposite parties 1 to 3 were directed to reinstate the petitioner but without payment of back-wages. Though a specific stand has been taken in the writ application that the initial engagement of the petitioner as an N.M.R. worker in opposite party No. 1 -Corporation was made in October, 1985 and the date of entry into service as N. M. R. in the gradation list has been wrongly shown as 26-11-1990, no reply has been given to the same. The other stand taken by the petitioner that persons junior to him have been regularised has been answered in paragraph 7 of the counter stating that N. M. R. workers named by the petitioner were regularised on their completing ten years of regular service as per the modalities of the Scheme for regularisation of services of N.M.R. workers.

5. Learned counsel appearing for the petitioner has relied upon a decision reported in 1993 11 L.LJ 835 : Executive Engineer, Panchayat (R & B) Division, Dt. Panchayat, Surendranagar v. Panbhasi Govindbhai, In the aforesaid decision of Gujarat High Court, it has been held that reinstatement of daily wage worker would mean maintaining his position in the seniority list with continuity of service as per his ranking in the seniority list. After reinstatement such workman will become entitled to work as a daily wager. Continuity of service would mean the same terms and conditions on which the daily wager was working prior to his retrenchment.

The learned counsel for petitioner has also relied upon a decision of the Apex Court reported in Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, It appears from the said judgment that the scheme prepared by the Gujarat Agricultural University for regular absorption of daily-rated workers provided that such workers must have completed ten years or more continuous service with minimum 240 days in each calendar year as on 31-12-1999 and should have the prescribed qualifications. The Apex Court in paragraph 17 of the judgment held that if work is taken by employer continuously from daily wage workers for a long number of years without considering their regularisation for its financial gain as against employees' legitimate claim, the same amounts to unfair labour practice. The Apex Court further denounced this practice and held

that if the work is of such a nature, which has to be taken continuously and the workmen are allowed to continue to work for year after year, the only option left to the employer is to regularise them. The Apex Court further held that where work is taken not for a short period or limited for a season or where work is not of part time nature and if pattern shows work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily rated workers. In such a situation a legal obligation is cast on an employer if there be vacant post, to fill it up with such workers in accordance with Rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no post exists then duty is cast to assess the quantum of such work and create such equivalent post for their absorption.

On the other hand, the learned counsel Shri J. Mohanty relying on a decision of the Apex Court reported in Registrar General of India and Another Vs. V. Thippa Setty and Others, submitted that in the event the service of the petitioner is regularised from a back date, same will disturb the seniority of those persons who have been already regularly appointed and therefore, the regularisation should be done prospectively and not retrospectively.

6. From the decisions cited by both parties it appears that the Apex Court as well as different High Courts and this Court have time and again held that N. M. R. workers should not be allowed to work continuously for year after year and should be regularised. If it is not possible to regularise such daily wagers at a time, it can be done in a phased manner. The only objection of the learned counsel for opposite parties is that if the petitioner is allowed to be regularised taking into account his initial date of entry into service as a casual worker in the year 1985, it may disturb the seniority position of those who have already been regularised. There being no dispute about the initial entry of the petitioner as a casual employee in the Corporation in October, 1985, there is no reason why the petitioner should be deprived of the benefit of seniority. The order of retrenchment passed in the year 1987 was held to be illegal and unjustified by the Labour Court and the said award was not challenged by the Corporation. Therefore, there was no order of termination or retrenchment in the eye of law and the petitioner continued to be a daily rated worker from October, 1985. The break period in between the date of retrenchment and date of reinstatement has to be calculated for the purpose of seniority though the petitioner has not been allowed back-wages, as he did not press for the same.

7. I, therefore, allow this writ application and direct opposite parties 1 to 3 to calculate the seniority of the petitioner with effect from the date he initially entered into service in the Corporation as a casual employee, i.e. 1-10-1985, and regularise his service with effect from the date employee next to him in the seniority list was regularised and accordingly fix his seniority as a regular employee.

8. Writ application allowed.