

(2004) 07 OHC CK 0043
In the Orissa High Court
Case No : O.J.C. No. 4489 of 2000

Management of Executive Engineer (Electrical), E.H.T.
Construction Division

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (2005) 1 LLJ 681 : (2004) 2 OLR 398

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : B.K. Patnaik, P. Sinha, S.K. Pradhan, P. Nayak and S. Patnaik, for the Appellant; R.K. Bose, G. Bhol and J. Nayak, for the Respondent

Judgement

A.S. Naidu, J.—The Management seeks to challenge the award dated March 8, 2000 passed by the Presiding Officer, Labour Court, Jeypore in Industrial Dispute Case No. 17 of 1998.

2. Opposite party No. 3 workman, alleged that he was appointed as an N.M.R. employee under the Junior Engineer, Electrical, E.H.T. Construction Section, Aska, which was under the administrative control of the petitioner-Management. He worked continuously from December 1, 1982 to January 28, 1986. Thereafter without any rhyme or reason and without observing the mandatory provisions of the Industrial Disputes Act (hereinafter referred to as "the Act"), his name was struck off from the Roll, which amounts to retrenchment. It is further averred that the employees who were junior to him were: allowed to continue in service and also some new employees were engaged after his retrenchment. On the basis of a petition filed, a conciliation proceeding was initiated by the Labour Court. The conciliation having failed, on being moved, the Government in exercise of the powers vested upon it u/s 10(1) read with Section 12(5) of the Act referred the dispute to the Court of the Presiding Officer, Labour Court, Jeypore for: decision. The reference reads as follows:

"Whether the action of the management of the Executive Engineer (Elect.) E.H.T. Construction Division, Berhampur in terminating the services of Sri Bali Nayak w.e.f. January 28, 1986 is legal and/or justified? If not, to what relief Sri Nayak is entitled?".

3. After receiving notice, the Management appeared and filed a written statement contending, inter alia, that the workman was working as an N.M.R. while construction of 132 K.V. line from Aska to Chatrapur was in progress. He worked for the period from December 1, 1981 to March 31, 1982 and then from June 1, 1982 to August 31, 1982 and from October 1, 1982 to January 31, 1983 only. Thereafter, he left the job by remaining absent. His services were never terminated.

4. On the basis of the pleadings, four issues were framed. Under Issue No. 1 the Labour Court came to the conclusion that the workman established that he had worked continuously from December 1, 1981 to January 27, 1986. Under Issue No. 2, the Labour Court held that the allegation that the workman abandoned the employment could not be established by the Management. Issue Nos. 3 and 4 regarding question of maintainability were answered in favour of the workman as the Management did not raise any objection.

5. On the basis of such findings, the Labour Court came to the conclusion that the opposite party-workman was entitled to be (reinstated in service and directed the Management to reinstate him in service with full back wages from January 1, 1996 and further directed that he would be "entitled to continue in service from the date of (retrenchment". The said award is impugned in this writ petition as stated earlier.

6. Mr. Banoj Kumar Patnaik, learned counsel for the petitioner-Management forcefully submitted that the Labour Court had not properly appreciated the facts. The findings of the Labour Court were contrary to law and the award should be set aside. It is stated that the workman having totally failed to establish the cardinal point, that is, he had ever served continuously for more than 240 days, the Labour Court committed an error apparent on the face of the record in entertaining the petition and directing to reinstate him. Mr. Patnaik further forcefully emphasized that the certificate said to have been issued by the Junior Engineer, E.H.T.(C) Section, Aska which was alleged to have been countersigned by the S.D.O. (Electrical) E.H.T.(C), Aska Sub-division under whom the workman was working is a forged document as the same was neither signed nor issued by the concerned officers and as such, the Court below acted with material irregularity in accepting the same in evidence and relying upon it. Sri Patnaik further submits that the Management could not adduce any evidence due to certain inadvertent reasons, but then it was not set ex pane.

7. The submissions made by Mr. Patnaik are strongly repudiated by Mr. Bose, learned counsel appearing for opposite party No. 3 (Workman). According to Mr. Bose, the Labour Court has considered all the materials available on record and

has arrived at right conclusions. The order did not suffer from the vice of non-consideration of any material and it is a fit case where the writ petition should be dismissed in limine. Mr. Bose submitted that the experience certificate issued by the officer of the Management under whom the petitioner was working was marked as Exhibit 1. The Management neither took any steps to examine any of the officers nor made any application to send the said certificate to the Hand-writing expert to substantiate its claim that the signatures were forged. In the absence of such steps, the Court below has rightly accepted the document (Exhibit 1) and considered the same. It is further contended that to substantiate the stand that the workman had continuously worked on the prayer of the workman, the Labour Court directed the Management to produce certain documents being N.M.R. Register, Attendance Register, Payment Vouchers etc. The said documents if produced would have conclusively proved that the workman continuously worked under the petitioner-Management till he was illegally retrenched. The Management chose not to produce the said documents and the Labour Court was right in drawing adverse inference and coming to a conclusion that the petitioner had worked continuously for the said period. The Management also failed to produce any document to prove that the workman wilfully abandoned the service. Neither any document was produced nor any witness was examined to substantiate such plea. According to Mr. Bose the Labour Court has taken into consideration all the facts and the conclusions arrived at, are on the basis of the materials available and should not be interfered with in a certiorari proceeding.

8. After hearing learned counsel for the parties, I perused the materials available on record. It appears that the workman, in fact, filed a petition before the Labour Court with a prayer to direct the Management to produce the N.M.R. Register, Attendance Register, Payment Vouchers, etc. which were in exclusive possession of the Management, to substantiate its case that the workman had worked under the Management continuously. On consideration of such petition, the Labour Court directed the Management to produce the documents but for the reasons best known, the Management failed to produce any of the documents in the Court. To substantiate his case, the workman had also produced an experience certificate, which was issued by the Junior Engineer, E.H.T. (C) Section, Aska, counter-signed by the S.D.O. (Electrical), E.H.T. (C) Aska Sub-Division. The experience certificate clearly reveals that the said officers under whom admittedly the workman was engaged had certified that the workman had served during the aforesaid period. Admittedly no steps were taken by the Management to disprove such certificate. No evidence either oral or documentary was adduced before the Court. A belated stand, however, was taken before this Court by filing an affidavit sworn to by one of the alleged executants of the certificate stating that he had not signed the certificate. Such belated stand cannot be considered at this stage. That apart, this being a certiorari proceeding, the materials available on record are only to be considered. There being no scope to cross examine the Executive Engineer, such belated attempt made by the petitioner-

Management cannot be accepted at this stage.

9. A perusal of the impugned award reveals that the Management failed to take steps on January 6, 2000 to which date the case had been posted for evidence on behalf of the Management. Thereafter, the case was adjourned to another date and finally award was passed on March 8, 2000. If the Management had any difficulty in adducing evidence on January 6, 2000, it was open to it to take steps before the Labour Court by filing a petition to allow it time to adduce evidence. Though the case prolonged for about two months, no steps were taken by the Management in the matter. As the Management totally failed to adduce evidence before the Labour Court, the said Court rightly proceeded with the case on the basis of the materials available on record and passed the award.

10. Law is well settled that the jurisdiction of the High Court to issue a Writ of Certiorari is a supervisory jurisdiction and the Court exercising it is not to act as an appellate Court. This limitation necessarily means that findings of fact reached by an inferior Court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings. While exercising certiorari jurisdiction, this Court can only correct an error of law, which is apparent on the face of the record but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ of certiorari can only be issued if (sic) it is shown that while arriving at such finding, the Tribunal had erroneously 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 amount to an error of law, which can be corrected by a Writ of Certiorari (See Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

11. Considering the facts and submissions and the materials available on record in the touchstone of the ratio of the decision of the Supreme Court in the case of Syed Yakoob (supra), I do not find any infirmity or illegality in the conclusion arrived at by the Labour Court. Accordingly, I have no hesitation to hold that the Labour Court has not committed any error apparent on the face of record. The findings arrived at are based on materials available on record and I decline to interfere with the same.

12. However, fact remains that the workman was a labourer. He was retrenched with effect from January 28, 1986. He raised the dispute only on December 28, 1995 before the District Labour Officer vide Exhibit 10. After the conciliation proceeding failed, the matter was referred to the Labour Court by the Government in the year 1998, that is, after lapse of twelve years. Admittedly, the Management has not failed the services of the workman for the aforesaid period. The Labour Court has not arrived at a conclusion that after the impugned retrenchment the workman was not gainfully employed anywhere. In the absence of such finding, I feel, it is a fit case where the principle of "no work no pay" should be applied. Accordingly, I modify the Award and while confirming the direction that the workman should be reinstated by the Management forthwith

hold that he shall not be entitled to any back wages. But then to mitigate the prejudice caused to the workman he shall be entitled to the cost of this litigation, which is assessed at Rs. 3,000/-(three thousand) only.

13. With the aforesaid modification, the writ application is partly allowed. Parties are to bear their own cost.