
(2016) 09 OHC CK 0020
In the Orissa High Court
Case No : W.P.(C) No. 30600 of 2011

Management of Regional Manager	Vs	APPELLANT
P.O., C.G.I.T.-cum-Labour Court		RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), Section 25B, Section 25F

Citation : (2017) 1 CLR 427 : (2017) 152 FLR 727

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. Satyabrata Mohanty, A. Sahoo, S.K. Das and S.S. Mohapatra, Advocates, for the Opposite Party No. 2; M/s. S.K. Dey, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Shri Sujit Narayan Prasad, J. - The award dated 12.05.2011 passed in I.D. Case No. 20 of 2003 is under challenge in this writ petition.

2. Case of the workman is that he was appointed as sub-staff by the Regional Manager, Indian Bank, Bhubaneswar and posted at Tulsipur Branch, Cuttack. He joined his duty on 17.08.1991. His name was sponsored by the Employment Exchange and interview was held in August, 1990 and thereafter he was selected and empanelled for appointment in sub-staff category. Besides working at Tulsipur Branch, he also worked at Rourkela, Danpur and Alba Branch on leave vacancies of permanent sub-staff. His initial monthly pay was Rs. 1500/- which was subsequently increased to Rs. 3700/- per month with D.A. and HRA. He signed the attendance registers maintained in the respective branches of the Bank. While working at Cuttack Main Branch he went on leave for one month from 7.4.2001 due to illness and after recovery i.e., after one month when he reported for duty in the Cuttack Main Branch, his joining report was not accepted and he was not given duty, he reported the matter to the Asst. General Manager, however to no effect. Finally he was refused employment and thereafter he has

raised a dispute before the competent authority.

3. On the other hand, case of the management-Bank is that the workman was a temporary sub-staff in the panel of temporary sub-staff of the Bank's Tulsipur Branch engaged in branches/offices of the Bank in the leave vacancy of permanent sub-staff, depending purely on their requirement of the Bank and as such they cannot be reinstated on regular basis. The engagement of the workman is against leave vacancies and that too for intermittent period. He was never appointed as permanent staff. His service has been utilized at various Branches as and when required by the Bank against leave vacancies of permanent sub-staff. There was complaint from the customers of Cuttack Branch i.e., the workman has misappropriated the fund given to him for depositing in their account with the Bank and in pursuance to that a criminal case has been instituted and as such there is a allegation of misappropriation of money against the workman.

4. The workman, having not been allowed to discharge duty, has raised dispute before the competent authority which ultimately culminated into a following reference:-

"Whether the action of the management of Indian Bank, Tulsipur Branch, Cuttack by terminating the services of Shri J.K. Nayak temporary sub-staff w.e.f. 24.06.2001 without following the provisions of Section 25 of I.D. Act, 1947 and Sastri Award is legal and justified? If not, what relief the disputant is entitled to?"

5. The Labour Court after appreciating the rival submissions has passed award with the following direction:-

"From the findings recorded above, the disengagement or technically say retrenchment as per Section 2(oo) of the Industrial Disputes Act, 1947 being held illegal and unjustified the 2nd Party-workman is entitled to reinstatement in the post on which he was engaged before this disengagement. As the 2nd Party-workman was engaged as a temporary sub-staff against leave vacancies of permanent sub-staff, he is not entitled to receive full back wages for the period of his disengagement. But I think it proper and justified in the facts and circumstances of the case that he be given a compensation of Rs. 1,50,000/- for the period of its illegal unjustified disengagement. I order accordingly. The 1st party-Management is directed to give him employment and pay compensation as ordered above within a period of three months from the date of publication of the award."

6. The management has challenged the award on the ground that they have not dispanelled the petitioner from the panel of appointment and as such it is not a case of retrenchment so that the provision of Section 25F cannot be attracted. The petitioner has not performed 240 days of continuous service in a calendar of 12 months, hence also the provision of Section 25F is not applicable. The workman is of tarnished character and he is not worth to be taken into service since there is allegation of misappropriation, to that effect an F.I.R. has been

instituted.

7. While on the other hand, the workman has defended the award by submitting that he was worked continuously from 17.08.1991 till 6.5.2001, hence he has continued regularly for the period of 10 years and when he, due to compelling circumstances i.e., due to illness, has not reported to duty and on recovery, reported to the duty he has been refused to allot duty which tantamount to retrenchment and the Labour Court after taking into consideration this aspect of the matter and also considering the fact that the petitioner has continued his service regularly for the period of 240 days in the calendar of 12 months has passed award of compensation and also reinstatement on the post in which he has been disallowed to discharge his duty. He has submitted that provision of section 25F since has attracted which is mandatorily to be followed, hence the award cannot be said to be unjustified and illegal. On this pretext of the rival submission, we have examined the same.

8. The fact regarding joining of workman w.e.f. 17.08.1991 till May, 2001 has been disbelieved by the Labour Court on the ground that no such evidence has been laid by the workman, but however relying upon Ext-8, which is a muster roll. From its perusal, the Labour Court has come to finding that the workman has continued in service regularly from the month of June, 1999 to March 2001 as such he had completed continuous service of 240 days in the calendar of 12 months, hence come to conclusion that provision of Section 25F is attracted.

9. So far as the part of submission that the workman has gone on leave w.e.f. 07.04.2001 reported on duty on 06.05.2001 and since there was an complaint on 28.05.2001 leading to an F.I.R. dated 19.12.2002, the petitioner has been disallowed to resume his duty but this fact has also been not taken into consideration for the purpose of attracting provision of Section 25F of the I.D. Act and this has rightly been done by the Labour Court that even from the period from 7.4.2001 till registration of the F.I.R. i.e., on 19.12.2001 will be excluded, then also taking the period from June, 1999 to March 2001 (Ext.8) the period would be 240 days in a calendar of 12 months and as such the provision of Section 25F of the I.D. Act would be attracted.

10. In view of this factual background, supported by the evidence we approve the finding of the Labour Court regarding non-observance of Section 25F of the I.D. Act which stipulates that before retrenchment, a notice is required to be given and retrenchment has been defined under the provision of Section 2(oo) of the I.D. Act, 1947 and the definition of continuous service has been defined under Section 25B(1) of the I.D. Act, 1947, these provisions are being referred as, for ready reference it is being reproduced herein below:-

"25B. Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not

illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman."

11. The stand of the Bank which has been taken into consideration in course of argument that till date the workman has not been retrenched from service, he is in panel which suggests that the petitioner has not been removed from the panel of employment which goes to suggest that they have not taken any action in pursuance of the criminal case lodged against him. Even otherwise also the date of occurrence of the F.I.R. is during the period from 15.10.2000 to 15.10.2001 which is the period covered under Ext.8 but no such action has been taken against the workman, which goes to show that lodging of criminal case has not adversely affected the employment of the petitioner.

12. It has been held by the judgment rendered by the Hon"ble Supreme Court regarding the nature of provision of Section 25F of the I.D. Act and accordingly it has depicted in the decision that provision of Section 25F is mandatorily to be followed, reference in this regard may be made in the case of The State of Bombay and others v. The Hospital Mazdoor Sabha and others reported in AIR 1960 SC 610 and Pramod Jha and others v. State of Bihar and others reported in (2003) 4 SCC 619. In view of the settled provision, the provision of Section 25F is mandatorily to be followed in case of retrenchment and if the employee has rendered 240 days of regular continuous service in the calendar of 12 months and the continuous service has been defined under Section 25B (1) of the I.D. Act, 1947 and in view thereof there is no dispute about the fact that the workman has rendered 240 days continuously in the calendar of 12 months, hence the provision of Section 25F is attracted.

13. So far as the direction passed by the Labour Court i.e., (i) to reinstate the petitioner on which the petitioner was engaged before his disengagement and (ii) to be paid a compensation of Rs. 1,50,000/- for the period of its illegal and unjustified disengagement.

The learned counsel representing the management-Bank has submitted that the workman is still in the panel of employment and whenever the work will be available, he will be provided the work, as such he has submitted that he has not aggrieved with the part of direction i.e., the reinstatement in the post before disengagement, hence we are not interfering with the same. It is also for the reason that in the Bank, there is need of part time workers for day-to-day work in case of absence of regular employees and when the management is submitting that he has not yet been struck off from the roll of the panel, hence we are not interfering with that part of the award.

14. So far as the amount of compensation is concerned, the direction is to pay amount of compensation of Rs. 1,50,000/-. There is no dispute about the fact that the petitioner has been appointed as temporary sub-staff against leave vacancies and it is also not in dispute that the F.I.R has been instituted against him, further the ground of the petitioner that he has joined on 17.08.1991

continued till 6.5.2001 but that has been disbelieved by the Labour Court which has also been proved. Taking into consideration the Ext.8 and the Labour Court has reached to conclusion that the petitioner has continuously work from June, 1999 to March, 2001 and after 7.4.2001 he has not performed his duty, as such amount of compensation of Rs. 1,50,000/- is on higher side.

15. Considering the fact that the workman was engaged as temporary sub-staff and as such he is entitled to be paid wages as has been fixed to be paid to the daily rated employee prevailing in the Bank and also considering the fact that making payment of Rs. 1,50,000/- will amount to causing over burden upon exchequer of the Bank, hence we thought it proper to reduce the amount from 1,50,000/- to 50,000/-. This reduction is made in the facts and circumstances of this case that the Bank has submitted that the workman is in the roll of the panel and the work would be provided to him subject to satisfactory performance of his service.

16. In course of argument, it has been submitted by the learned counsel appearing for the workman is that the other persons who have been taken as temporary sub-staff, they have been regularized staff except the petitioner, if that is so, the petitioner may ventilate his grievance before the appropriate forum.

In view of the above discussions and directions, the Award is modified to the extent as above.

Accordingly, the writ petition is disposed of.