
(2012) 02 OHC CK 0008

In the Orissa High Court

Case No : O.J.C. No"s. 3262 of 1996 and 12504 of 1997

Management, State Bank of India

APPELLANT

Vs

Bhaskar Moharana and Another

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 38, 39(a), 43
Industrial Disputes Act, 1947 — Section 2(s), 25F

Citation : (2012) 135 FLR 87

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : A.K. Mishra, G.S. Panda, N. Mohanty and Tapan Mishra, for the Appellant; R.K. Bose and G. Bhol, Counsel for the Opp. Party No. 1 and Addl. Government Advocate, Counsel for the Opp. Party No. 2, for the Respondent

Judgement

S.K. Mishra, J.—In O.J.C. No. 3262 of 1996, the Management of State Bank of India, Khodasingh A.D.B., Berhampur assailed the correctness of the award dated 29.9.1995 passed by the Industrial Tribunal, Bhubaneswar in I.D. Case No. 28 of 1994. In the connected writ application bearing O.J.C. No. 12507 of 1997, the workman has prayed for granting of back wages in addition to the award of reinstatement as daily wager. The Industrial Dispute was referred by the Central Government to the Industrial Tribunal, Bhubaneswar to determine; whether the action of the Management of State Bank of India, Khodasingh A.D.B., Berhampur in terminating the services of Bhaskar Moharana, Night Watchman, hereinafter referred to as the "Workman", for brevity, w.e.f. 9.9.1988 is legal and justified and to what relief the workman is entitled to. Second dispute referred to for adjudication is whether the action of the Management in reducing the wages of the said workman from Rs. 1011.80 to Rs. 900/- per month is justified and to what relief the workman is entitled to.

The parties have put in their statements of claim. The concerned workman claimed that he was working as a Messenger in the said Bank from 15.11.1984 to 31.1.1986 temporarily. He was given continuous employment from 15.1.1986

to 9.9.1988; that his salary has abruptly been reduced by the Management during the period June, 1988 to 9.9.1988 without any rhyme and reason; that he was also doing the duty of the Night Watchman beside the duty of the Messenger; from 10.9.1988 he was refused employment by the Management and since then he is out of employment. Claiming that while refusing the further employment to the workman, the Management did not comply with the provisions of section 25-F of the Industrial Disputes Act, 1947, hereinafter referred to as the "Act", for brevity. The workman claimed for reinstatement with full back wages and ancillary service benefit.

The Management took the plea that during the period 15.11.1984 to 13.1.1986, the workman was engaged on daily wage basis to assist the Record Keeper, to spray water to khaskhas screen during the summer and performed the duty of the messenger during the leave vacancy of regular messenger and in total, he worked for 101 days intermittently and not continuously as alleged by the petitioner. The further case of the Management is that the Workman was engaged as temporary Night Watchman from 15.1.1986 to 9.9.1988 on daily wage basis and he absented himself from duty after 9.9.1988. Therefore, another person was engaged in duty to perform the work of Night Watchman. The Management further pleaded that as the workman worked on daily wage basis and on his own accord, he abandoned his job, the Management needed no obligation to follow the legal procedure to prevent for instant of retrenchment. As per the alleged reduction of the wages, the Management contended that it paid consolidated wage of Rs. 30/- per day on the basis of mutual agreement, which the workman accepted during the period without any objection. Therefore, the Management pleads that the workman is not entitled to any relief.

2. On such pleadings, learned Presiding Officer, Industrial Tribunal framed several issues and addressed itself to determine whether the workman was refused employment by the first party Management; and if such refusal amounts to termination. It also addressed itself to adjudicate whether the action of the Management in terminating the services of the workman w.e.f. 9.9.1988 is legal and justified; whether the action of the Management in reducing the wages of the workman from Rs. 1011.80 paise to Rs. 900/- per month from June, 1988 is legal and justified and to what relief the workman is entitled. In order to substantiate his case, the workman examined himself as WW 1, and exhibited three documents. The Management, on the other hand, examined two witnesses to substantiate its claim.

3. After taking into consideration the materials available before it, the Industrial Tribunal came to the conclusion that the reduction of wages from Rs. 1011.80 to Rs. 900/- on mutual consent is not tenable and, as such, it held that such reduction is illegal. The Tribunal also refused to accept the plea of Management that the workman has abandoned the employment on his own accord and there is no termination on their side. Thus holding, the Tribunal directed reinstatement of the workman in service as a daily wager till the Management create a post or

alternatively to allow to continue the workman as a casual labourer and receive salary as a messenger as before till a regular vacancy arises in due course.

4. In assailing the award passed by the Industrial Tribunal, learned Counsel for the petitioner submitted that in view of the ratio decided by the Constitution Bench of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, . the services of the workman, who was not engaged against a vacancy and without following the procedure for selection and appointment, cannot be reinstated in service. Learned Counsel appearing for the workman, on the other hand, submitted that the award passed by the Industrial Tribunal does not suffer from any illegality and there is no scope of interference of the same for a Court exercising writ jurisdiction.

5. In *Secretary, State of Karnataka and others v. Umadevi and others* (supra), the Constitution Bench of the Supreme Court has held that the High Court acting under Article 226 of the Constitution of India should not ordinarily issue directions for absorption, regularization or permanent continuance, unless the recruitment itself was made regularly and in terms of the Constitutional scheme. Further, the Supreme Court held that there is an essential distinction between a person engaged on daily wage and they cannot claim to be equal to those who have been employed by regular process of recruitment. There is no fundamental right in those who have been employed on daily wage or temporarily or on contractual basis to claim that they have a right to be absorbed in service. While there is no dispute regarding the ratio decided by the Hon'ble Supreme Court in the aforesaid case, there is a settled distinction between the claim of regularization in service and reinstatement for non-compliance of section 25-F of the Act. In *Secretary, State of Karnataka and others v. Umadevi and others* (supra), the ratio decided by the Supreme Court is that they cannot claim to be regularized in service. The said case does not lay down that in case where a person has been retrenched without complying the provisions of section 25-F of the Act cannot be reinstated in service, even though his initial appointment was not through a proper selection procedure.

6. It is not disputed in this case that the workman remained in continuous employment from 15.1.1986 to 9.9.1988. Thus, he had completed 240 days of employment in the year preceding his termination. In this case, the Tribunal has taken into consideration the continuation of the correspondence in Bank's letter No. 42/200 dated 13.5.1986 and No. 42/290 dated 17.9.1987. The Branch Manager has stated in that letter that B. Moharana (concerned workman) is still continued to work as Night Watchman of the Branch on daily wage basis and is being paid salary equal to that of a messenger. He further wrote that since the Night Watchman is required to stay in the branch premises over night and is in charge of Bank's guest room, it will be better if a person in regular Bank's service is posted instead of a temporary person. Thereafter, an interview was held and another person was appointed. This itself speaks that the Management did not give employment to the workman after 9.9.1988. It is also not disputed

that the Management did not comply with the provisions of section 25-F of the Act. In that view of the matter, the order passed by the learned Presiding Officer, Industrial Tribunal is correct.

7. The Supreme Court in *Harjinder Singh Vs. Punjab State Warehousing Corporation*, has held that while exercising jurisdiction under Articles 226 and 227 of the Constitution in the matters of industrial dispute, the High Court are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in preamble of Constitution and the provisions contained in Part IV thereof in general and. Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of community to subserve the common good and also ensure that the workers get their dues.

The Supreme Court in *Devinder Singh Vs. Municipal Council, Sanaur*, has held that the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of section 2(s) of the Act. The definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

8. In the aforesaid case, the Supreme Court further held that there is limit in the jurisdiction of the High Court in issuing writ of certiorari under Article 226 of the Constitution. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals: these are cases 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 similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, 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. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. The Supreme Court further held that this limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, the Supreme Court further ruled that a writ of certiorari can be issued if it is shown that in recording the said 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 be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with such cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

9. In applying these principles to the case in hand, this Court comes to the conclusion that the award passed by the Industrial Tribunal does not suffer from any jurisdictional error or any error of law apparent on the face of it, nor there is any grave error of fact based on any admissible evidence or own evidence. Such being the case, there is hardly any scope to interfere in the findings recorded by the Tribunal. It was submitted in course of hearing of the writ petitions that the workman is still discharging his duty and is being paid Rs. 1011.80 paise which was wage of a workman in the year 1988. This is grossly inadequate and it is also against the provisions of the Minimum Wages Act. The workman has claimed for his back wages in addition to reinstatement in service. The Industrial Tribunal has come to the conclusion that the workman is not entitled to back wages in view of the fact that the workman kept silent and did not agitate the matter for over two years. The Tribunal further noted that any direction for payment of back wages for the period of inaction on the part of the workman would be an avoidable and unnecessary burden on the Bank's exchequer. Such reasoning appears correct to this Court and hence, there is no reason to modify the same. So before parting with the cases, this Court directs that the workman be paid minimum wages as a daily wager as long as he is discharging his duties. With the above observations, both the writ petitions are disposed of.

Writ petitions disposed of.