

(2005) 06 OHC CK 0010

In the Orissa High Court

Managing Director, Orissa State Co-operative Bank Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (2005) 106 FLR 1191

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

Bench : Single Bench

Judgement

A.S. Naidu, J.—The State Government in exercise of the powers conferred upon it under Sections 10 and 12 of the Industrial Disputes Act referred the following dispute for adjudication to the Presiding Officer, Labour Court, Sambalpur.

Whether the termination of Sri Bikram Naik, Ex-Peon by the management of Orissa State Co-op. Bank Ltd., Bhubaneswar vide Order No. 412 dated 30.5.1988 of the Assistant Engineer, Zonal Office, Orissa State Co-op. Bank Ltd., Bargarh with effect from 30.5.88 is legal and/or justified? If not, whether is he entitled to the scale of pay/wages prescribed for whether peons of the establishment with effect from the date of his appointment?

2. On the basis of the reference Industrial Dispute Case No. 14 of 1989 was registered. Both the parties appeared and filed their respective pleadings. They also adduced evidence, both oral and documentary, in support of their respective- stands. The contention of the workman was that though he was appointed as a Peon with effect from 21.7.1983 and he worked in several branches, the Management without any rhyme or reason terminated his services unceremoniously. The Management had also not followed the provisions of the Industrial Disputes Act and, as such, the order of termination is unjust, illegal and the workman is entitled to reinstatement in service with all back wages.

Countenancing the said claim, the Management took the plea that the workman had intentionally abandoned his service and, as such, he was not entitled to any

of the relief sought by him.

3. The Labour Court on the basis of the discussion made by him came to the conclusion that the workman was engaged for more than 240 days continuously preceding the date of his retrenchment. Relying upon the evidence of M.W. 1 it was held that the workman was neither paid any retrenchment compensation nor any notice was given to him in lieu thereof. The Labour Court held that the order of termination was illegal, unjustified and directed to reinstate the workman in service with full back wages. The said award dated 30th December, 1993 is assailed in this Writ Petition.

4. According to the petitioner-Management, the termination of service of the workman cannot be equated with retrenchment and, as such, the provision of Section 25-F of the Industrial Disputes Act shall not be applicable. It was further submitted by the learned Counsel for the petitioner that the workman was a casual labourer and he had intentionally abandoned his service. This submission is strongly repudiated by learned Counsel for the opposite party-workman. It is submitted by the learned Counsel for the opposite party-workman that the workman had served more than 240 days continuously preceding the date of his termination and, as such, the order of termination simpliciter is unjust, illegal and is liable to be set aside.

5. I have heard learned Counsel for the parties at length. Though learned Counsel for both the parties relied upon several decisions in support of their respective stands as there is no dispute with regard to the legal position and as the facts of most of the cases are different and distinguishable there is no need to refer the same. Admittedly the workman was initially engaged by the petitioner-Bank, and had served for quite some time. The Labour Court on the basis of the materials produced and after analysing the evidence, both oral and documentary, relying upon the evidence adduced by the Management arrived at the conclusion that the workman had discharged his duties for more than 240 days continuously within one year preceding the date of termination of his service and that the mandatory provisions of Section 25-F of the Industrial Disputes Act were not complied with. The said conclusion is a finding of fact. Law is well settled that this Court while exercising supervisory jurisdiction does not act as an appellate Court and should, not interfere with the findings of the authority below unless the same is perverse contrary to the materials available, and/or shocking to the conscience. After, going through the order I do not find any of the aforesaid infirmities. The Labour Court has not committed any error apparent on the face of the record. It has discussed the materials available and has arrived at just conclusions. Thus the award needs no interference.

6. But then, fact remains the workman who was retrenched on 30.5.1988 has been employed in Allababad Bank as sub-staff with effect from 31.7.1989. He has also not adduced any evidence to reveal that he was not gainfully employed during the period between the aforesaid two dates. In the absence of such pleadings and/or materials it would not be just and proper to direct the

Management to pay back wages for the said period. Under the aforesaid scenario applying the principle of "No work, No pay" the direction issued by the Labour Court to pay back wages is set aside. Further the workman having already been gainfully employed in another bank with effect from 31.7.1989 the direction for reinstatement in service of the workman also does not arise and the said direction is also set aside. Consequently while upholding the award with regard to illegal termination of the workman, this Court directs the Management to pay a lump sum Rs. 7,500/- (rupees seven thousand five hundred) to the workman within three months, which will mitigate his grievance and would be just and equitable.

With the aforesaid observation the writ petition is partly allowed.

Parties to bear their own costs.