
(2013) 03 OHC CK 0019

In the Orissa High Court

Case No : Writ Petition (C) No. 15312 of 2009

Managing Director, Orissa State Co-operative Marketing
Federation Ltd.

APPELLANT

Vs

Mrs. Renupriya Ray and Another

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 17A, 19(3), 19(6), 2(a), 25F

Citation : (2013) LabIC 2966

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Advocate : S.K. Pattanaik, U.C. Mohanty, D.P. Das, P.K. Pattnaik and D. Pattnaik, for the Appellant; N. Patra, A.K. Patra and B.N. Saragi (for No. 1), for the Respondent

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—This writ petition has been filed with a prayer to quash the order dated 09.07.2009 (Annexure-12) passed by the learned Presiding Officer, Labour Court, Bhubaneswar in I.D. Misc. Case No. 90 of 2005 by which the learned Presiding Officer directed the petitioner to pay Rs. 4,10,627.90/- to opposite, party No. 1-Renupriya Ray towards back wages of her husband late Hrudananda Ray, whose dismissal from service by order dated 24.08.1976, while working as an Assistant Secretary, was held to be illegal in the award dated 27.07.1991 passed in I.D. Case No. 77 of 1986. Petitioner's case in a nut-shell is that late husband of opposite party No. 1- Renupriya Ray, was appointed w.e.f. 15.07.1969 and posted as Assistant Secretary in the Regional Co-operative Marketing Society, Bargarh by order dated 30.06.1970. While working as such, he was dismissed from service by order dated 24.08.1976 by way of punishment in a disciplinary proceeding. Husband of opposite party No. 1 raised an industrial dispute after ten years, which was referred to the Labour Court, Bhubaneswar and registered as I.D. Case No. 77/86. By award dated 27.07.1991, the Presiding

Officer, Labour Court held that the dismissal of the applicant was not justified and he was entitled to be reinstated with full back wages and all service benefits with seniority. The said award was subsequently challenged before this Court in O.J.C. No. 4734 of 1991 which was dismissed and during pendency of Review Case No. 92/91, the applicant was reinstated in service under petitioner-Federation vide Office Order dated 25.05.1992 and the applicant joined in duty on 14.09.1992. After reinstatement in service, the husband of opposite party No. 1 was engaged as Godown Manager at Granular Fertilizer Plant, Bargarh and retired from service on 30.04.2001 while working as such. He was paid the salary applicable to the post of Godown Manager. Since the husband of opposite party No. 1 was out of job from 1976 to 1992, his pay had to be revised and increments had to be allowed for all these years. However, his pay was revised and increments were granted up to 01.01.1996 vide office order dated 06.01.1997. The arrears of back wages up to 13.09.1992 were also calculated as per the pay revision and by order No. 6500 dated 06.01.1997 direction was given to release the arrears in five instalments, the first instalment of Rs. 56,500/- was to be released in February, 1997. The salary of the husband of opposite party No. 1 up to his date of retirement has also been paid. As such, the award passed in I.D. Case No. 77/86 has been fully implemented. After husband of opposite party No. 1 was dismissed in 1976, other persons appointed along with him namely, S.M. Mishra and A.K. Biswal were promoted to the higher post, i.e., Area Manager vide office order dated 14.05.1984. They have got promotion in the service of the Federation on the basis of the principle of merit with due regard to seniority as provided in Rule 17 of the Orissa State Cooperative Marketing Federation Employees Recruitment, Classification, Control and Appeal Rules which lays down the criteria of promotion in the Federation. The husband of opposite party No. 1 did not raise any dispute claiming promotion to the post of Area Manager till he retired from service on 30.04.2001. However, after four years of his retirement and after 14 years of passing of the award dated 27.07.1991 in I.D. Case No. 77/86, husband of opposite party No. 1 filed I.D. Misc. Case No. 90 of 2005 u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short, "I.D. Act") claiming higher salary from 01.01.1985 till 2001 at par with the pay drawn by Sri S.M. Mishra and A.K. Biswal, who had drawn higher pay being promoted to the higher post, i.e., Area Manager. The Labour Court passed award holding that husband of opposite party No. 1 is entitled to draw higher salary at par with S.M. Mishra and A.K. Biswal. The Labour Court allowed the benefit of seniority to the husband of the opposite party No. 1 in I.D. Case No. 77 of 1986. Hence, the present writ petition.

2. Mr. S.K. Pattnaik, learned counsel appearing for the petitioner submitted that Mr. S.M. Mishra and Mr. A.K. Biswal got promotion to higher post because of their meritorious service and for that reason, they got higher scale of pay and retired by drawing higher scale of pay. After reinstatement in service since 14.09.1992, the husband of opposite party No. 1 had never questioned their promotion to higher post nor raised any Industrial Dispute or any claim before any Court of

Law regarding his promotion till he retired from service on 30.04.2001. It was submitted that the conditions of service of the employees of Orissa State Co-operative Marketing Federation Ltd. are governed by a set of statutory rules framed by the Registrar of Co-operative Societies, Odisha, Bhubaneswar in exercise of power conferred upon him u/s 33-A of the Orissa Co-operative Societies Act, 1962. The said Rule is called "the Staff Service Rules, 1990 of the Orissa State Co-operative Marketing Federation Ltd., Bhubaneswar". As per Rule 17 of the aforesaid Rules, promotion of in-service personnel to higher post shall be according to merit with due regard to the seniority. Rule 18 provides for training and departmental examination. Promotion to the higher post is not a matter of right and as the husband of opposite party No. 1 was not in service, his individual merit cannot be assessed and in view of the criteria of promotion being "merit-cum-seniority", he cannot claim automatic promotion to any higher grade because of his reinstatement in service by virtue of award of the Labour Court in I.D. Case No. 77 of 1986. The petitioner filed its counter in I.D. Misc. Case No. 90 of 2005 raising all such grounds. There was no adjudication in the said I.D. Case regarding claim of promotion of the husband of opposite party No. 1 to any higher post. So the award passed in I.D. Case No. 77 of 1986 cannot be interpreted to mean that the husband of opposite party No. 1 was entitled to be promoted to any higher post with retrospective effect. Moreover, as the husband of opposite party No. 1 had not worked in any higher post, he cannot claim any financial benefit of such post. Therefore, the claim of late husband of opposite party No. 1 is on the basis of hypothesis. Husband of opposite party No. 1 was holding the post of Godown Manager from the date of his reinstatement till his retirement. In the organization, even Senior Assistants are also kept in charge of Area Manager according to urgent need and smooth functioning of the business without any increase in the scale of pay during in-charge period. Husband of opposite party No. 1 raised question of his promotion to higher post with retrospective effect and such cause of action arose on the date of his joining on 14.09.1992 upon reinstatement in service, and as the husband of opposite party No. 1 had not raised any dispute in the matter of his promotion for the last 13 years, such claim has become grossly barred by limitation and such dispute cannot be raised in the Misc. Case filed in 2005, that too u/s 33-C(2) of the I.D. Act which is only in the nature of an execution case. The award having been passed on 27.07.1991, the application u/s 33-C(2) of the I.D. Act for implementation of that award has also been grossly barred by limitation, as 14 years have passed in the meantime. An application u/s 33-C(2) of the I.D. Act has to be filed within the period of one year from the date of passing of the award. Husband of opposite party No. 1 died on 14.08.2007 during pendency of the I.D. Misc. Case and his wife opposite party No. 1-Renupriya Ray substituted herself in his place. Promotion to the higher post is a personal cause of action and does not survive to the legal heirs. The legal heirs cannot claim promotion for the late employee in this case. Late Mr. Ray was holding the post of Godown Manager when he filed the I.D. Misc. Case No. 90/2005. He was not a workman as defined in Section 2(a) of the I.D. Act. The claim of back wages at par with his

juniors at the time of dismissal was itself not a part of the reference. In any case the claim for higher wages beyond the date of dismissal or prior to the date of award dated 27.07.1991 was beyond the scope of an application u/s 33-C(2) of the I.D. Act. Such claim would have been the subject-matter of an independent claim. At the time of termination from service, husband of opposite party No. 1 was holding the post of Assistant Secretary and on reinstatement he was given the corresponding post as Godown Manager and paid the scale of pay applicable to that post. The back wages from the date of dismissal till reinstatement was also calculated as per the scale of pay drawn by him at the time of dismissal as revised from time to time and increments were also granted accordingly.

Placing reliance upon the judgment of the Hon''ble Supreme Court in the case of Manager, R.B.I., Bangalore Vs. S. Mani and Others, Mr. Pattnaik submitted that opposite party No. 1 cannot claim the promotional benefits which the companions of her late husband have got during the intervening period of his absence from service. In a similar matter in the case of Mathura Electric Supply Co. Ltd. and Another Vs. State of U.P. and Summera, the Hon''ble Supreme Court rejected the claim of deemed promotional benefit while granting back wages to a reinstated employee. The Presiding Officer, Labour Court is not justified in holding that the husband of opposite party No. 1 is entitled to get Rs. 3,75,025.90 towards differential arrear salary for the period from 01.01.1985 till the date of his retirement and leave salary of Rs. 35,062/-. The labour Court while passing the award has no jurisdiction to decide upon the wages payable for the period beyond the scope of the award, i.e., a period subsequent thereto.

In support of his contention, Mr. Pattnaik, learned counsel for the petitioner relied upon a catena of decisions of the Hon''ble Supreme Court in the cases of A.P.S.R.T.C. and Another Vs. B.S. David Paul, State of Uttar Pradesh and Another Vs. Brijpal Singh, Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem,), State Bank of India Vs. Ram Chandra Dubey and Others, A.P.S.R.T.C. and Another Vs. S. Narsagoud, ; Vijay Kumar and Others Vs. Whirlpool of India Ltd. and Others, and judgment of this Court in the case of Bishnu Ch. Ojha and Others Vs. Presiding Officer, Labour Court and Others, .

Concluding his argument, Mr. Pattnaik prayed to allow this writ petition.

3. Mr. N. Patra, learned counsel appearing for opposite party No. 1 submitted that there is no infirmity or illegality in the impugned order passed under Annexure-12. Hence, the writ petition is liable to be dismissed.

4. On the rival, factual and legal contentions advanced by learned counsel for the parties, the following questions fall for consideration by this Court:

(i) Whether husband of opposite party No. 1 is entitled to get any promotional benefit on the basis of the impugned award dated 27.07.1991?

(ii) Whether the Labour Court is justified to pass the impugned award dated

09.07.2009 in I.D. Misc. Case No. 90 of 2005 u/s 33-C(2) of the I.D. Act holding that though husband of opposite party No. 1 had not prayed for promotion to higher grade with retrospective effect, he is entitled to draw higher salary at par with S.M. Mishra and A.K. Biswal as the Labour Court had allowed the benefit of seniority to the husband of opposite party No. 1 in the award in I.D. Case No. 77 of 86?

5. Since both the questions are interlinked, they are dealt with together.

6. Undisputed facts are that on completion of training on 11.05.1970, late H. Ray, husband of opposite party No. 1 was appointed as Zonal Inspector under Orissa State Co-operative Marketing Federation Ltd. (OCMFL). On 30.06.1970, the husband of opposite party No. 1 was posted as Asst. Secretary in Bargarh R.C.M.S. Sri S.M. Mishra and Sri A.K. Biswal were posted as Accountant, Jeypore RCMS and Secretary, Co-operative Cold Store, Aska respectively. On 24.08.1976, Mr. Ray was dismissed from service by way of punishment in the departmental proceeding. Thereafter, late Mr. Ray challenged the order of dismissal in I.D. Case No. 77/86. The said dispute was referred to the Labour Court, Bhubaneswar which was registered as I.D. Case No. 77/86 and the reference made therein is to the following effect:

Whether the dismissal of Sri Hrudananda Ray, Common Cadre Employee w.e.f. 26.06.1973 by the management of M/s. Orissa State Co-operative Marketing Federation Ltd., Bhubaneswar vide their order No. 11863 dated 24.08.1976 is legal and/or justified? if not to what relief he is entitled?

7. On 27.07.1991, the Labour Court passed the following order in I.D. Case No. 77/86:

Hence ordered.

The dismissal of Sri Hrudananda Ray, Common Cadre Employee w.e.f. 26.06.1973 by the management of M/s. Orissa State Co-operative Marketing Federation Ltd., Bhubaneswar vide their Order No. 11863 dated the 24th August, 1976 is neither legal nor justified. The second party workman is entitled to be reinstated w.e.f. the 26th June, 1973 with full back wages and all service benefits with seniority.

(Underlined for Emphasis)

8. Pursuant to the said order, in paragraph 16 of the writ petition it is stated that at the time of termination from service husband of opposite party No. 1 was holding the post of Assistant Secretary and on reinstatement he was given the corresponding post as Godown Manager and was paid the scale of pay applicable to that post. The back wages from the date of dismissal till reinstatement was also calculated as per the scale of pay drawn by him at the time of dismissal as revised from time to time and increments were also granted accordingly.

9. There is no dispute with regard to the appointment given to late Mr. Ray as

contended in Paragraph 16. The only dispute is that in the award dated 27.07.1991 passed in I.D. Case No. 77/86, the Industrial Tribunal directed that the workman is entitled to be reinstated with effect from 26th June 1973 with full back wages and all service benefits with seniority. The promotional benefit was not given to Mr. Ray which his juniors namely, S.M. Mishra and A.K. Biswal had availed. On 14.05.1984, Mr. Mishra and Mr. Biswal who were recruited along with Mr. H. Ray were promoted to the post of Area Manager in the scale of Rs. 750-1,200/- as per decision of the D.P.C.

10. It is difficult to accept the contention of the petitioner-Management that service benefit with seniority does not come within the sweep of the promotional benefit. It may be relevant to note that the award of the Labour Court dated 27.07.1991 passed in I.D. Case No. 77/86 was challenged by the Management in O.J.C. No. 4734 of 1991 and the same was dismissed and thus, the said order of the Labour Court attained finality.

11. Since no promotional benefit was given, late Mr. Ray filed I.D. Misc. Case No. 90 of 2005 u/s 33-C(2) claiming payment of differential salary at par with the salary drawn by Sri S.M. Mishra and Sri A.K. Biswal, who were paid higher salary having been promoted to the post of Area Manager since December, 1984. Vide impugned order dated 09.07.2009 passed under Annexure-12, the Labour Court, Bhubaneswar passed the award holding that even though Sri Ray had not prayed for promotion to higher grade with retrospective effect he is entitled to draw higher salary at par with Sri S.M. Mishra and Sri A.K. Biswal since that Court had allowed the benefit of seniority to the husband of opposite party No. 1 in its award passed in I.D. Case No. 77/86.

12. Apart from the above, points now raised before this Court were also raised by the Management before the Tribunal in I.D. Case No. 90 of 2005 which was disposed of dealing with those points. The relevant portion of the said order is extracted below:

6. The present case was filed by the applicant u/s 33-C(2) of the Industrial Disputes Act, 1947 and no limitation period has been mentioned in the said Section. Of course an application u/s 33-C of the Industrial Disputes Act, 1947 is required to be filed within one year but there is no such stipulation so far as filing of an application u/s 33-C(2) of the Industrial Disputes Act, 1947 is concerned. According to Section 19(3) of the Industrial Disputes Act, 1947 an award shall remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17-A. But again, according to Section 19(6) of the Industrial Disputes Act, 1947 notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party intimating its intention to terminate the award. In this case, there is no material to say that at any point of time the opposite party had given a notice to the applicant u/s 19(6) of the Industrial Disputes Act, 1947 and therefore, the award was in force on the date

the present case was filed by late Hrudananda Ray.

7. The applicant has filed the present case because the award in I.D. Case No. 77/86 was not fully implemented by the opposite party. According to him, this Court in the Award had given direction for his reinstatement with full back wages and all service benefits with seniority. At the initial stage of joining Sri Sachindra Mohan Mishra and Sri Akshya Kumar Biswal were junior to him. After his reinstatement in service the opposite party did not give any importance on his seniority. His pay was fixed at a much lower rate than the persons who were junior to him at the initial stage. He was dismissed from service illegally and this Court had directed the opposite party to give him all service benefits and to maintain his seniority. But that was not done by the opposite party and so he was compelled to file this case. He has not prayed in this case to promote him to a higher grade from retrospective effect. As it appears the opposite party has misunderstood the claim made by him in the present case. Since in the award this Court had given direction to maintain his seniority, the opposite party was bound to implement the same. He was not required to file a different case claiming promotion after his reinstatement. So I find no merit in the objection raised by the opposite party in the above regard. In my view, even though the present case is filed after 14 years of his reinstatement, the same is maintainable.

8. It is stated by the opposite party that according to Section 17 of the Staff Service Rules, 1990, promotion of an in service personnel to a higher post shall be made according to merit with due regard with seniority. Admittedly the applicant was dismissed from service on 14.08.76 and the Award was passed on 17.07.91. Thus it is clear that when the Staff Service Rules, 1990 was given effect to, the applicant was out of service. Since he was out of service from 1976 to 1991, there was no opportunity for him to prove his merit. After he was reinstated in service he had filed several representations, copy of which have been marked as Exts.10 series and 14 series but there is no material to say that any of his representation was rejected by the opposite party at any time. Let us accept that in view of Rule 17 of the Staff Service Rules, 1990, the opposite-party was competent not to promote him to higher post because he was not found meritorious, but there is no material to say that Sri Sachindra Mohan Mishra and Sri Akshya Kumar Biswal were promoted to higher grade after he was reinstated in service on 14.9.92. As it appears from the documents filed by both the parties in this case, the above-named two persons were promoted to higher posts while the applicant was out of service. But then in the Award direction was given to maintain his seniority and therefore, even though the promotion was not given to him as on the date of his joining i.e. on 14.09.92 he was senior to Sri Sachindra Mohan Mishra and Sri Akshya Kumar Biswal in view of the direction given in the Award. As such, he was entitled to get salary and other allowances at least at par with Sri Mishra and Sri Biswal. But as it appears from Exts. A, A/1, A/2 and Exts. 11, 11/a and 11/b his pay was not fixed at par with Sri Mishra and Sri Biswal. Ext. 11 is the copy of the office order No. 12910 dated 20.6.87 by

which the pay of Sri Mishra was fixed at Rs. 1735/- with effect from 1.1.85. After reinstatement of the applicant on 14.9.92 his pay was fixed in the revised scale of pay with effect from 1.1.85 vide order No. 6497 dated 6.1.97 i.e. Ext.A/1 at Rs. 1180/- Ext. 11/a is the copy of the office order No. 8149 dated 31.12.90 and as per this order, the pay of Sri Sachindra Mohan Mishra and Sri Akshya Kumar Biswal were fixed at Rs. 2240/- in the revised scale of pay with effect from 1.5.89. But vide order No. 6500 dated 6.1.97 marked as Ext. A/2 the pay of the applicant was fixed at Rs. 1480 with effect from 1.5.89. Similarly a comparison of the office order No. 4852 dt. 10.9.99 marked as Ext. 11/b and office order No. 189 dated 18.4.2000 marked as Ext. 12 reveals that the pay of Sri Akshya Biswal was fixed at Rs. 8700/- whereas the pay of the applicant was fixed at Rs. 5625/- with effect from 1.4.99. The applicant has filed the copy of the office order No. 2595 dated. 30.6.70 marked as Ext. 3 which reveals that he was placed at Sl. No. 2 whereas Sri Sachindra Mohan Mishra was placed at Sl. No. 3 and Sri Akshya Kumar Biswal was placed at Sl. No. 7. According to the opposite party, Ext. 3 is not the seniority list. If that is so, the opposite-party could have produced any document to prove that there is another seniority list according to which late Hrudananda Ray was junior to Sri Sachindra Mohan Mishra and Sri Akshya Kumar Biswal. But no such document was filed by the opposite-party. Therefore, I believe the fact that late Hrudananda Ray was senior to Sri Sachindra Mohan Mishra and Sri Akshya Kumar Biswal at the time of entry into the service in Ext. 11 Sri Sachindra Mohan Mishra has been described as Commercial Manager. In Ext. 11/a Sri Sachindra Mohan Mishra has been described as Commercial Manager and Sri Akshya Kumar Biswal has been described as Manager (Reconciliation) Ext. 11 was issued in the year 1987 and Ext. 11/a on 31.12.90. That means while the applicant was out of employment. Thus it is clear that when the applicant was out of employment the above-named two persons were promoted to the higher post/grade. He was out of employment for the period from 1976 to 1992 not for his own fault. In I.D. Case No. 77/86 it was held by this Court that his dismissal from service with effect from 26.6.73 was neither legal nor justified. Also as said earlier, this Court had directed to maintain his seniority. So in the circumstances stated above, I would say that his pay was required to be fixed at least at par with his juniors namely Sri Sachindra Mohan Mishra and Sri Akshya Kumar Biswal. But as it is seen from Exts.A/1, A/2 and Ext. 12 his pay was fixed at a lower rate than the above-named two persons. The (sic) pay of the applicant fixed by the opposite party vide Exts.A/1 and A/2 is not in accordance with the Award passed by this Court in I.D. Case No. 77/86 i.e. Ext.4.

X X X X

10. Hence Ordered.

The Misc. Case is allowed on contest in part. The entitlement of the applicant is computed at Rs. 4,10,627.90/- The opposite party is directed to pay the aforesaid amount to the legal heirs of late Hrudananda Ray within three months

from this order failing which the opposite party will be liable to pay interest at the rate of 6% per annum thereafter.

The Misc. Case is disposed of.

13. The reasons given by the Labour Court, Bhubaneswar in allowing the claim of husband of opposite party No. 1 by turning down the objections raised by the Management are fully justified. It is not a fit case where interference of this Court in exercise of its extraordinary power under Article 226 of the Constitution is called for.

14. The decision in Mathura Electric Supply Co. (supra) has no application to the case of the petitioner as in that case deemed promotion was claimed while granting the back wages to a reinstated employee. In the present case, the Labour Court has granted back wages along with all service benefits with seniority. Therefore, this decision has no application to the present case.

15. Similarly, in the judgment of the Hon"ble Supreme Court in the case of Manager, R.B.I., Bangalore Vs. S. Mani and Others, the Ticca Mazdoors were reinstated in service due to non-compliance of the provisions of Section 25-F of the I.D. Act. Therefore, it was held that the petitioner cannot claim the benefit of regularization in service conferred on other Ticca Mazdoors, who were working for long time as per the settlement arrived at during pendency of the proceeding. The fact of that case is completely different from the fact of the case at hand. Therefore, it has no application to the present case.

16. In State of Uttar Pradesh and Another Vs. Brijpal Singh, it is held that the claim has to be adjudicated within the limited scope of execution proceeding u/s 33(C)(2) of the I.D. Act. This decision is of no help to the management as the workman was entitled to me benefit of promotional seniority by virtue of award dated 27.09.1991 passed in I.D. Case No. 77/86 for the reasons stated therein.

17. Other judicial pronouncements relied upon by the petitioner are of no help to me petitioner, as it is not demonstrated how the principles decided in those cases are applicable to the present case. In the result, the writ petition is dismissed.

No order as to costs.