
(1973) 07 OHC CK 0009
In the Orissa High Court

Md. Abul Kalam

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 18-07-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1974) 2 LLJ 6

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Judgement

K.B. Panda, J.—The petitioner was appointed as a clerk in the Nuasahi Chromite Mines belonging to opposite party No. 3, with effect from 10-7-1961. The terms of appointment were purely temporary for six months only, with a condition that opposite party No. 3 will have the right either to terminate or to reappoint the petitioner for any further period (annexure-1). The petitioner joined his duties and continued in service till 26-11-1970. Then he was holding the post of time-keeper. It is averred in the petition that during this span of his service period, there was no allegation of any negligence of duty on his part by the management (opposite party No. 3).

2. The petitioner proceeded on leave for fifteen days from 10-11-1970 for which permission was accorded by the management (annexure 2). After that the petitioner joined his duties on 26-11-1970 at 7 A.M. as per his joining report (annexure 3). Abruptly, however, on 28.11-1970 he received an order of the Chief Labour Officer dated 26-11-1970 (annexure 4) to the effect that his services would stand terminated on the 30th of November, 1970 afternoon. In the said order, the grounds of termination of his service were stated to be unsatisfactory work and disturbing activities which were considered not to be in the best interests of the management. It is this termination order (annexure 4) that is under challenge in this writ petition under Articles 226 and 227 of the Constitution of India.

3. The grievance of the petitioner is that there was no charge framed against him for his alleged unsatisfactory work or for indulging in disturbing activities, that he was not called upon to explain these allegations at any time before terminating his services and thus he was denied natural justice. The petitioner on 4-1-1971 made a representation against the impugned order alleging mala fides and victimisation before the Regional Labour Commissioner (Central) cum Conciliation Officer, Orissa, Bhubaneswar (opposite party No. 2) and demanding his immediate reinstatement with full back wages (annexure 5). On 18-2-1971, the petitioner was intimated about the inquiry held by the Assistant Labour Commissioner, Central, Bhubaneswar which revealed his negligence and dereliction of duty (annexure 6). On receipt of annexure 6 on 2-3-1971, the petitioner gave reply on 16-3-1971 denying the charges and demanding an inquiry in his presence (annexure 7). In the writ petition it is further alleged that neither opposite party No. 2 nor his assistant did draw up any conciliation proceedings under the provisions of the Industrial Disputes Act nor was any opportunity afforded to the petitioner to explain the circumstances under which his services were terminated. The inquiry, if any, held by opposite party No. 2 was challenged as illegal and without jurisdiction. So far as opposite party No. 1 (Government of India) is concerned, the allegation in the petition is that neither opposite party No. 1 nor opposite party No. 2 has referred the disputes for adjudication as provided under the Industrial Disputes Act nor have they assigned any reason for such non-reference.

4. Mr. R.C. Ram, appearing for the petitioner, contended that the termination of the services of the petitioner on the basis of any inquiry held by the Assistant Labour Commissioner in the office of opposite party No. 3, who is very powerful, behind the back of the petitioner is mala fide, illegal, unjustified and actuated by motives of victimisation and, therefore, non-reference of the Tribunal by opposite party No. 1 is unsustainable.

5. Mr. S. B. Nanda, on behalf of opposite party No. 3, raised certain preliminary objections to the maintainability of the petition. According to him (i) initiation of the conciliation proceeding is discretionary, (ii) there was in fact no industrial dispute in existence or apprehended u/s 12 of the Industrial Disputes Act to start a conciliation proceeding or to make a reference to the Tribunal as contemplated u/s 10 of the Act, (iii) the petitioner did not raise any claim before opposite party No. 3 which the opposite party No. 3 declined to entertain so as to give rise to any dispute existing or apprehended; and (iv) the petitioner has not alleged any mala fides on the part of the Assistant Labour Commissioner (Central) in respect of the inquiry held by him so as to disturb his finding.

6. That the present alleged dispute is not (sic) a public utility service is not disputed. Thus a conciliation proceeding is discretionary. It is also not disputed that the petitioner has not approached the management raising any claim which it did not (sic) served no useful purpose in approaching the management. Further his answer as to how he dislodges the finding of the Assistant Labour

Commissioner when mala fides are attributed, is that it could be presumed as it was done behind the back of the petitioner in the office of the management. None of these explanations offered by Mr. Ram is convincing.

7. To appreciate the preliminary objections raised by Mr. Nanda, the prayer of the petitioner need be quoted:

The petitioner, therefore, prays that your Lordships will be pleased to consider the facts stated above and issue a writ of mandamus and/or certiorari and/or any other appropriate writ directing the opposite party No. 1 to refer the issue as to whether the termination of the petitioner by the opposite party No. 3 is illegal and justified for adjudication by an Industrial Tribunal ;

Obviously, there is no allegation in the petition against opposite party No. 1, that is the Government of India ; nor, as admitted, did the petitioner ever approach opposite party No. 1, to refer to the Industrial Tribunal the issue of termination of the services of the petitioner (sic) does not arise. Secondly, there must be an industrial dispute either existing or apprehended which is to be referred to under the provisions of the Industrial Disputes Act, 1947. "Industrial dispute" as defined under the Act means ;

any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

Thus, in the instant case, there was no dispute as contemplated under the Act which needed adjudication. What the management would have done if any claim would have been laid cannot be presumed. Besides, the Assistant Labour Commissioner under annexure 6 asked the petitioner to give his reply to what transpired in his inquiry in the following terms:

In view of the said recorded evidence showing serious dereliction of duty and grave misconduct on your part, you are advised to furnish satisfactory evidence to prove how the termination of your service was improper and mala fide, etc., particularly when the management have been lenient towards you. Your reply should reach this office on or before 27th February, 1971, failing which, your complaint will be treated as closed.

Evidently the petitioner did not offer any explanation within 27th February, 1971, but under annexure 7 only wanted to fix a date in his office before treating his complaint as closed. From this it is clear that the allegations that no opportunity was given to the petitioner to controvert the allegations of the management is not correct. It is unnecessary to go into the various items of dereliction of duty embodied in annexure 6 which are undoubtedly of a serious nature. From annexure 4 it is clear that the management terminated the services of the petitioner on payment of full compensation, i.e., one month's salary in lieu of notice and the leave wages due to him. There is no denial that full compensation

has not been received by the petitioner. As it appears, the Chief Labour Officer called the petitioner, brought home to him the series of misconduct in his part and asked him to say what he had to say in the matter. But the petitioner desired that his dues and compensation be paid and he be relieved from service. Accordingly, the management terminated the services of the petitioner and gave a sum of Rs. 1,406 on 5th December, 1970 which was duly acknowledged by the petitioner.

8. In view of the above discussion, namely, there being no dispute in the inquiry against him, the petitioner having been given a chance to offer his explanation to the allegations of the management, the petitioner not having approached the management with any claim, but on the contrary having received the compensation granted without protest, there was nothing to be referred to the Tribunal as prayed for. It is not that the petition has no merit but it appears to be frivolous.

9. As such it is rejected with costs. Hearing fee of Rs. 100 (Rupees one hundred only) to be paid to opposite party No. 3.