

(2023) 10 OHC CK 0133

In the Orissa High Court

Case No : Writ Petition (C) Nos. 9842, 16443 Of 2009

M/s Indian Farmers Fertilizer Co operative Limited,
Jagatsinghpur And Another

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 18-10-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10(1)(d), 12(4), 12(5), 25F, 25M, 25N, 25FF, 36(4)

Citation : (2023) 10 OHC CK 0133

Hon'ble Judges : Dr. B. R. Sarangi, J;Murahari Sri Raman, J

Bench : Division Bench

Advocate : S.P. Mishra, S.P. Sarangi, P.K. Dash, B.C. Mohanty, D.K. Das, A. Pattnaik, S. Palit, P.K. Das (1), S. Das, S.P. Das, N. Singh

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. Both the above noted writ petitions have been filed impugning the award dated 18.05.2009 passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No.4 of 2005. W.P.(C) No.9842 of 2009 has been filed by the Management seeking following reliefs:-

"In the circumstances, it is therefore prayed that this Hon'ble Court would graciously be pleased to issue a Rule NISI calling upon the Opposite Parties to show cause as to why the impugned award dated 18.05.2009 vide Annexure-2 shall not be quashed and if Opposite Parties fail to show cause or show insufficient cause make the said Rule absolute.

Issue such other writ/ writs, order/ orders, direction/ directions, as this Hon'ble Court may deem fit and proper.

And for this act of kindness, the Petitioners shall as in duty bound ever pray."

whereas, W.P.(C) No.16443 of 2009 has been filed by the workmen with the following prayers:-

"It is therefore humbly prayed that the writ application may kindly be admitted and the LCR may be called for in I.D Case No.4 of 2005 from the industrial Tribunal, Bhubaneswar and this Hon'ble Court may be kind and gracious enough to issue "RULE NISI" calling upon the Opposite Parties to show cause and if the Opposite parties fail to show cause or show insufficient cause then make the rule absolute."

And be pleased to issue a writ of mandamus and /or certiorari and modify the award in I.D Case No.4 of passed by the Industrial Tribunal, Bhubaneswar under Annexure -14 from granting reinstatement to eight workmen without backwages" to reinstatement to all the 51 workmen with full backwages and continuity of services.

And/or be pleased to direct the IFFCO to take back and reinstate all the 51 workmen from the date of their termination/ refusal of employment as stated in the reference order under Annexure-2 with all back wages and continuity of service and to consider the same the O.P No.4 may be directed to co- operate the IFFCO as in the case of the other general employees of the erstwhile factory / plant of OCFL at Musadia, Paradeep including protecting their Provident Fund and Gratuity intact;

And/ or be pleased to pass any other order as deem fit and proper;

And for which act of kindness, the petitioners as in duty bound shall ever pray."

Since both the writ petitions are directed against a common order, they were heard together and are disposed of by this common judgment, which will govern in both the cases.

2. The factual matrix, which led to filing of these writ petitions, succinctly put as follows:-

2.1. One hundred fifty-one (151) workmen were stated to have been selected and appointed through the selection process conducted by the Management of M/s. OSWAL Chemicals and Fertilizers Ltd. for its Paradeep factory/plant. They were all regular workmen, being members of the Provident Fund Scheme OR/5640, having been issued with appointment letters and identity cards. They had worked for about four years with continuity in service from 2000 to 2004 with 240 days in every year and to the preceding one year of illegal termination of their services. They were terminated from service in three phases, i.e., on 29.07.2004 (50 workmen), on 03.08.2004 (47 workmen) and on 07.08.2004 (54 workmen). Their termination of services, in the guise of refusal of employment, was completely illegal, because no letter of termination was issued nor any compensation was paid to them.

2.2. They were the active members of the Paradeep Industrial Workers' Union.

Therefore, on their request and authorization, the Union raised an industrial dispute on 15.09.2004, which was admitted to conciliation proceeding by the District Labour Officer (DLO), Jagatsinghpur, vide notice/memo no.1961 dated 04.10.2004/DLO, Jagatsinghpur, after completing all formalities under the provisions of Industrial Disputes Act, 1947 and the Rules made thereunder. The views of the Management was sought on 21.09.2004, vide DLO's memo no.1907, and a meeting was held on 04.10.2004, wherein the Management did not attend but sent a letter objecting the locus standi of the Union to espouse the cause of the ousted workmen.

2.3. The workmen and the Union participated in the said conciliation proceeding on 15.10.2004 with the authorization Form 'G' under Rule-38 of the Odisha Industrial Disputes Rules, 1959 and the matter was adjourned to 03.11.2004 and 29.11.2004, but the conciliation failed due to non-cooperation of the Management of M/s. OSWAL Chemicals & Fertilizers Ltd. The District Labour Officer, Jagatsinghpur, vide letter no.2410/DLO dated 30.11.2004, submitted the failure report under Section 12(4) of the Industrial Disputes Act, 1947 to the appropriate State Government.

2.4. In exercise of powers conferred by sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the State Government referred the dispute to the Presiding Officer, Industrial Tribunal, Bhubaneswar constituted by the Government of Odisha in the Labour and Employment Department Notification No.12198/LE dated 7th September, 1995 read with Notification No.3718/LE dated 13.04.2005 for adjudication, which reads as follows:

"Whether the action of the management of M/s-OSWAL Chemicals & Fertilizers Ltd., Musadia, Paradeep in refusing employment to Shri Biswanath Choudhury and 49 others from 29.7.2004 (as per list), Sri Ajay Sahoo and 46 others with effect from 3.8.04 (as per list) and Sri Guru Charan Rout & 53 others with effect from 7.8.04 (as per list) is legal and/or justified ? if not, what relief they are entitled to ?

2.5. The said reference was registered as I.D. Case No.4 of 2005 on the file of the learned Presiding Officer, Industrial Tribunal, Bhubaneswar, wherein workmen filed their claim statement on 01.09.2005 contending that M/s. OSWAL Chemicals & Fertilizers Ltd., which have its head office at 7th floor, Anthriksh Bhawan, 22 Kasturba Gandhi Marg, New Delhi and Regd. Office, At/P.O: Piprola, Sanajahanpur (U.P) and factory at Musadia, Paradeep, Dist-Jagatsinghpur, started its production in the year 1999 and its commercial production from January, 2000 onwards having a workforce of about 3000 workers, out of which about 1500 are permanent workmen and rest about 1500 are contractor-workers. Though the financial position of the Management was a bright one, but the workmen were treated in-humanly like the bonded labourers and there was complete breakdown of Labour laws. Since the Management was engaged in violating the Factory Act, 1948, E.P.F. & Misc. Provision, 1952, Contract Labour

Regulation and Abolition Act, 1970 and Industrial Disputes Act, 1947 etc. by adopting 12 hours duty, without giving overtime, medical or ESI facility, provident fund and maternity benefits to female workers, and creating discrimination in grade and scale to the contractor workers as well as permanent workers, the workers formed and organized themselves into a Trade Union, i.e., Paradeep Industrial workers Union, having Regd. No.OTO829-CTC-2005. As the Union became a weapon in the hands of the workmen to free them from the various type of exploitations, its active members became target of the Management. As a consequence thereof, the Management disengaged 151 permanent workmen. Biswanath Choudhury and 49 others from 29.07.2004, Ajay Sahoo and 46 others from 03.08.2004 and Guru Charan Rout and 53 others from 07.08.2004 (50 + 47 + 54) =151 were disengaged/stopped from duty arbitrarily without any rhyme or reason and their services were terminated without complying Sections 25-F and 25-N of the Industrial Disputes Act, 1947 and the Rules framed therein. Section 25-M of the Industrial Disputes Act, 1947 was also violated by the Management.

2.6. It was further stated that the Management did not issue any written communication/order to the said 151 workmen, but terminated their services in the name of refusal of employment out of colourable exercise of employer's rights. The workmen through the Union gave a demand letter addressing to the Labour Department and a copy to the Management, vide its letter dated 15.09.2004, wherein other demands including the cause of 151 workmen were raised in the form of an industrial dispute since they were victimized by terminating their services without following due procedure.

2.7. When the Union raised industrial dispute on behalf of 151 members/workmen, it was objected to by the Management stating that the Union, being unregistered one, cannot raise industrial dispute. In reply thereto it was stated by the Union that it is well settled in law who can raise industrial disputes and what is the definition of industrial disputes and there is no bar for an unregistered Union to raise an industrial dispute, when its 151 active members were victimized and the Union was pushed to the grave yard. It was also stated that 131 out of 151 terminated/retrenched employees were in distress and moving unemployed and they were not engaged for any financial gain anywhere. Other 20 workmen, who were forced to resign from service, were reengaged afresh from the period they joined. Therefore, it was claimed that these workmen are entitled to reinstatement in their previous services with retrospective effect with all back wages/salary and other benefits. Meanwhile, the Union got registered bearing Registration No.829/CTC dated 12.08.2005 under the Trade Union Act, 1926 and Rules framed therein. Therefore, it was prayed that the Tribunal may answer the reference in favour of the workmen by holding that the action of the Management-M/s. OSWAL Chemicals & Fertilizers Ltd., Paradeep in refusing employment to Biswanath Choudhury and 49 others from 29.07.2004, Ajay Sahoo and 46 others from 03.08.2004 and Guru Charan Rout and 53 others from 07.08.2004 is neither legal nor justified and may direct the Management to

reinstate these 151 workmen in their previous posts with retrospective date and give all back wages, continuity in service and other service benefits.

2.8. During pendency of the Industrial Dispute Case No.4 of 2005, the Management sold their establishment to the Executive Director, Indian Farmers Fertilizer Cooperative Ltd (IFFCO), Orissa Unit, At-Musadia, Paradeep, having its Head Office at 34, Nehru Palace, New Delhi by way of restructuring in accordance with the provisions of law. Therefore, the workmen impleaded the principal employer, i.e., the Executive Director, IFFCO, Musadia, Paradeep, Jagatsinghpur as a necessary party to the proceeding and also filed a petition for amendment of the statement of claim, which was allowed, though the same was objected to.

2.9. The Management-M/s. OSWAL Chemicals & Fertilizers Ltd., Paradeep also filed written statement raising objection with regard to locus standi of the Union to represent the workmen contending that the workmen have not authorized the Union to take up their cause before the Tribunal and, as such, the Union is not competent and has no authority to represent the workmen. The Union, at no point of time, had any activities in the establishment and never represented the workers in the establishment. The Union was not legally existed, when the alleged dispute arose. By its own admission, it was registered on 12.08.2005. It was also stated that none of the workmen had signed the statement of claim and none of them authorized the Union to file the claim. Therefore, no valid claim exists before the Tribunal. The terms of reference made by the Government of Odisha relates to refusal of employment to 151 employees by the Management, as per the list appended to the order of reference from different dates as indicated against each name therein. It was further stated that the Management never denied employment to those persons mentioned in the schedule of reference, as alleged.

2.10. It was also stated that out of 151 workmen, who are alleged to have been denied employment, 101 workmen submitted their resignations voluntarily and left the services of the management. 18 workmen are still continuing in the employment even after sale of the establishment to M/s. IFFCO, 22 employees have been absconding and their whereabouts are not known. Three workmen, namely Ramroop Yadav, Ashok Parida and Gurvind Singh were never employed and were not on the rolls of the Company at any point of time. There is double entry in respect of one workman, namely, Khageswar Samal in the said statement of claim of the Union at Sl. No.87 and 137. Rest six workmen were working with a Contractor, i.e. M/s. D.K. Enterprises, who engaged for certain miscellaneous jobs at the relevant point of time and at no point of time, they were on the rolls of the Management-M/s. OSWAL Chemicals & Fertilizers Ltd., Paradeep.

2.11. It was also stated that out of 101 workmen, who resigned on personal grounds from their services, 59 workmen collected their dues towards full and final settlement of their accounts. 37 of resigned workmen did not turn up to collect their dues after settlement of their accounts. Remaining 5 workmen, after

submitting their resignations, did not turn up to settle their accounts. Therefore, the allegations made by the Union that the Management had refused employment to the workmen do not hold good. Except for those workmen, who continued to work with the Management and now continuing to work with IFFCO, after the sale of the plant, w.e.f. 01.10.2005, none of the workmen contained in the annexure to the statement of claim ever approached the Management for reemployment as long as the Management was owning the plant at Paradeep, i.e. up to 30.09.2005. Therefore, the refusal to employment, as alleged is not correct.

2.12. After the purchase, IFFCO was impleaded as a party to the proceeding and then it filed a detailed written statement on 02.11.2007. In response to same, rejoinder affidavit was also filed by the workmen on 13.11.2007.

2.13. On the basis of pleadings available on record, the Industrial Tribunal, Bhubaneswar, vide order dated 02.11.2007, framed the following issues:-

“(1) Whether the reference is maintainable?

(2) Whether the action of the Management of M/S OSWAL Chemicals & Fertilizers Ltd., Musadia, Paradeep in refusing employment to Shri Biswanath Choudhury and 49 others from 29.07.2004 (As per list), Sri Ajay Sahoo and 46 others with effect from 03.08.2004 (as per list) and Sri Guru Charan Rout and 53 others with effect from 07.08.2004 (as per list) is legal and/or justified? If not, what relief they are entitled to?”

2.14. To substantiate their contentions, the workmen examined nine witnesses, including eight involved in the dispute, and exhibited 27 documents and submitted other necessary documents and papers in support of their claim. Similarly, the Management filed two affidavits; one by Manoj Rai, Manager, H.R. and the other by Lalit Paul, Vice-President, and the workmen filed their objection to the contentions of such affidavits on 10.12.2007. Since the matter was pending and lingering, the workmen/Union approached this Court by filing W.P. (C) No.2488 of 2007 for early disposal of I.D. Case No.4 of 2005 by the Industrial Tribunal, Bhubaneswar and the said writ petition was disposed of vide order dated 25.07.2007 with a direction to the Industrial Tribunal to dispose of the said I.D. Case by the end of that year. In the said writ petition, both the Managements, i.e., M/s. OSWAL Chemicals & Fertilizers Ltd., Paradeep and IFFCO were the opposite parties no.1 & 2 respectively.

2.15. The Management of IFFCO had filed two writ petitions, namely, W.P.(C) No.15203 of 2007 and W.P.(C) No.15204 of 2007 before this Court against refusal order dated 13.11.2007 and 16.11.2007 to engage an advocate under Section 36(4) of the I.D. Act, 1947 and against refusal of adjournment for some time to collect documents respectively, wherein the Union was made opposite party no.2 and the Management-M/s. OSWAL Chemicals & Fertilizers Ltd., Paradeep as opposite party no.3. But, both the writ petitions were disposed of on 04.04.2008 as withdrawn and infructuous respectively.

2.16. The Industrial Tribunal, Bhubaneswar, vide order dated 18.05.2009, while answering issue no.1 with regard to ventilating the grievances at the instance of Union, specifically held that the reference of the dispute is maintainable and while answering issue no.2, the Tribunal held that the workmen, namely, Ajay Kumar Sahoo, Niranjana Thatoi, Alekh Kumar Das, Guru Charan Rout, Basant Jena, Prafulla Kumar Barik, Himanshu Ranjan Mohanty and Prafulla Biswal are entitled to reinstatement in service under the Management of IFFCO on the same terms and conditions of employment of other workmen, who were absorbed by the Management of IFFCO on its taking over of the factory from M/s. OSWAL Chemicals & Fertilizers Ltd., Paradeep. The Industrial Tribunal further held that since nothing is there in the evidence of the workmen that after their termination from service they have not been gainfully employed elsewhere, they are held not entitled to any back wages for the period.

3. Challenging the above finding of the Industrial Tribunal, Bhubaneswar, the Management approached this Court by filing W.P.(C) No.9842 of 2009 stating, inter alia, that the Presiding Officer, Industrial Tribunal, Bhubaneswar failed to appreciate the documents available on record and the evidence adduced by the parties in their proper perspective and thus the impugned award is liable to be set aside. Further the Presiding Officer, Industrial Tribunal, Bhubaneswar has no power to change the terms of reference and from the schedule of reference, it is crystal clear that the dispute was between the Management of M/s. OSWAL Chemicals & Fertilizers Ltd., Paradeep and its workmen and, as such, the Management of IFFCO had no earlier connection either directly or indirectly with their workmen. As the IFFCO was not a party to the dispute, it should not have been directed by the Tribunal to reinstate 8 workmen by the impugned award. Since there was error on the face of the record by issuing direction to the Management to give employment to 8 workmen, the award passed by the Industrial Tribunal cannot be sustained in the eye of law and, therefore, the same should be quashed. It is further contended that M/s. OSWAL Chemicals & Fertilizers Ltd. was sold to IFFCO by virtue of an agreement dated 16.03.2006, Clause-11 whereof stipulates about the employees employed by M/s. OSWAL Chemicals & Fertilizers Ltd. Therefore, while passing the impugned award, the Industrial Tribunal committed error in granting relief of reinstatement to 8 workmen in the employment of IFFCO, which is in complete disregard to Clause-11.7 of the Sale Agreement, marked as Exhibit-A to the award. In terms of Clause-11.5 of the Sale Agreement, the IFFCO is liable to pay salary and other emoluments relating to the employees after the period from 01.10.2005. But, while passing the award, the Industrial Tribunal has not taken into account Clause-2.3.3 of the Sale Agreement. Thereby, the award so passed cannot be said to be justified and is liable to be set aside.

4. Likewise, questioning the selfsame award passed by the Industrial Tribunal the workmen filed W.P.(C) No.16443 of 2009 contending that there was uncontroverted evidence available on records in favour of the workmen/Union that all the workmen have worked for and completed 240 days preceding to the

date of refusal of their employment, but the Industrial Tribunal has failed to appreciate the same and awarded reinstatement to only 8 workmen and concluded that all other workmen are not entitled to any relief, which is contrary to the provisions of law. It is further contended that the denial of back wages to 8 workmen, who have been granted reinstatement is a wrong application of mind on the materials available on record. W.W.S Nos.1, 2 & 3 have categorically deposed that the workmen are idle, moving unemployed and are not gainfully employed elsewhere, but the observation of the Industrial Tribunal "since nothing is there in the evidence of the workmen that after their termination from service they have not been gainfully employed elsewhere, they are held not entitled to any back wages for the period" is nothing but contrary to the evidence on record. Therefore, it is contended that the award so passed by the Industrial Tribunal is liable to be set aside or modified.

5. Pursuant to notice issued in both the writ petitions, learned counsel for the Management appeared and participated in the process of hearing. After hearing learned counsel for the parties, this Court passed order on 12.08.2010 in W.P.(C) No.16443 of 2010, which reads as follows:-

"Heard learned counsel for the parties.

Both the writ petitions having been arisen from one order they are heard together and the following common order is passed thereon.

The Petitioners in both the writ petitions challenge the order dated 18.5.2009 passed by the Industrial Tribunal Bhubaneswar in I.D. Case No.4 of 2005. The reference made in the said case is:

"Whether the action of M/s OSWAL chemicals & Fertilizers Ltd. Musadia, Paradeep in refusing employment to Shri Biswanath Choudhury and 49 others with effect from 29.7.2004, Shri Aja Sahuy and 46 others with effect from 8.8.2004 and Shri Guru Charan Rout & 53 others with effect from 7.8.2004 is legal and/or justified,? If, not what relief they are entitled to?

Altogether 151 workmen challenge the refusal of their employment by OSWAL. M/s Indian Farmers Fertilizer Co-operative Limited (hereinafter referred as "M/s IFFCO"), is the petitioner in W.P.(C) no. 9842 of 2009 and opposite party in W.P.(C) No.16643 of 2009 They were directed by the Tribunal to reinstate only 8 workmen that too without back wages. So, the workmen through their Union filed W.P.(C) No. 16443 of 2009 for reinstatement of the remaining workmen and for back wages of 8 workmen who were directed to be reinstated. On the other hand, M/s IFFCO challenges the said award on the ground that they are not liable to give employment to any of the aforesaid workmen.

Learned counsel appearing for M/s IFFCO drew the attention of this Court to the middle of paragraph -12 of the award passed by the Tribunal which reads as follows:-

"The OSWAL being no more in existence and in the meantime it has been taken

over by the management of M/s IFFCO organization". Learned counsel appearing for M/s IFFCO submits that the M/s IFFCO have taken the plea in their written statement before the Tribunal that they are not liable for providing employment to the aforesaid workmen, in view of the sale agreement executed between them and M/s OSWAL but no issue has been framed in that regard. SO, he prays to frame an issue in that light and remand the matter back to the Industrial Tribunal with a direction to decide that issue and remit back the matter to this Court in a stipulated period. Learned counsel appearing for the Union has no objection to it.

The Industrial Tribunal ought have framed an issue in the light of the submission of learned counsel for the petitioner, as it is essential for right decision of the case, but it has not done so. So the following issue is framed.

Issue

"Whether M/s. IFFCO is liable to give employment to all the 151 workmen (members of the petitioner's Union) ?

I.D. Case No.4 of 2005 is remanded back to the Industrial Tribunal, Bhubaneswar with direction to give its findings and reasons therefor on the aforesaid issue, after giving opportunity to both the parties to adduce additional evidence and return the record to this Court with evidence adduced and its findings within a period of three months from the date of receipt of this order. Parties are directed to appear before the Tribunal on 02.9.2010."

6. In compliance thereof, the Industrial Tribunal considered the additional issue framed by this Court and passed a detailed order on 16.12.2010. While passing the said order, the Industrial Tribunal took note of clauses-2.3.3 and 11 of the Sale Agreement and gave opportunity to the parties for adducing evidence on the additional issue framed. Consequentially, W.W. No.10 was examined by the workmen and the Management of IFFCO examined M.W.No.2 and exhibited one document as Ext.B. The workmen claimed reinstatement of the disputant workmen by application of the proviso to Section 25-FF of the Industrial Disputes Act, 1947. W.W. No.10 stated that the transfer of ownership and management of the Unit having taken over during pendency of I.D. Case No.04 of 2005, the Management of IFFCO Ltd. is liable to comply with the award. The Industrial Tribunal in its order dated 16.12.2010 took note of the judgment of the apex Court in Central Inland Water Transport Corporation Ltd. v. Workmen and another, 1974(29) FLR 56 (SC), wherein reference was made to Anakapalla Co-operative Agricultural and Industrial Society v. Workmen, AIR 1963 SC1469, so far as claim for compensation by the workmen against a transferred undertaking is concerned. The workmen of a transferred undertaking can legitimately make their claim for compensation against their employer unless the transfer satisfied the three requirements of the proviso to Section 25-FF. The apex Court held that if the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law and if not the employees of the transferred concern are entitled to claim compensation against the transferor and

they cannot make any claim for reemployment against the transferee of the Undertaking, and further observed that if the transfer does not fall under the proviso to Section 25-FF, question of fair play or social justice would not justify the claim by the workmen that they ought to be reemployed by the transferee of the Undertaking. Therefore, the prime duty of the Industrial Tribunal is to consider whether the proviso is applicable to the workmen or not. While answering the same, the Industrial Tribunal came to a definite conclusion in paragraph-7 of the order dated 16.12.2010, which reads as follows:

"7. Admittedly, during the pendency of this I.D. Case the purchaser took over the Unit w.e.f. 1.10.05. The purchaser agreed to absorb all the employees of the Vendor employed in the Undertaking who were covered by the Act. A list of all the employees has been annexed to the Sale Agreement. The list contains names of all the employees including the workmen, Officers and Trainees on the Roll as on 30.9.05. Since the names of the disputant workmen are not there in the list the purchaser takes the plea that it has no liability to absorb them. Their names were not mentioned in the list as because their services had been interrupted prior to 30.9.05. If the disruption of their services which is under reference is found to be illegal, then they are to be deemed to be on the Roll of the Vendor as on 30.9.05. It is not the case of the purchaser that at the time of the take-over there was surplus man-power for which a section of the workmen could not be retained by it. In the Sale Agreement it is contemplated that so far the Officers and Trainees on the Roll as on 30.9.05 are concerned, the purchaser shall be entitled to select such persons as it may in its sole discretion deem appropriate to be absorbed. In spite of such contemplation, it appears on record, the purchaser absorbed all the 1292 employees of the Undertaking including the Officers and Trainees whose names were on the Roll as on 30.9.2005. Thus, it is found that he purchaser absorbed all the employees of the erstwhile Management without interruption in service. It is not the case of the purchaser that subsequent to the take over the Management has retrenched any of its employees. It is also not the case of the Vendor that services of the disputant workmen were terminated on account of surplus work-force. Therefore, a strong presumption is available to the effect that if the disputant workmen were on the Roll as on 30.9.2005 they would have been absorbed by the purchaser without interruption in service. Therefore, this Tribunal is of the considered view that if the retrenchment of all or any of the disputant workman is found to be illegal, the purchaser will be liable to absorb them without interruption in service."

7. In Paragraph-9 of the order dated 16.12.2010, the Industrial Tribunal held as follows:-

"9. In view of the discussions made above, it is held that all those disputant workmen whose retrenchment is found to be illegal are deemed to be the employees of the Undertaking as on 30.09.05. There is no dispute that all the employees who were on the Rolls as on 30.09.05 have been absorbed by the purchaser without interruption in their services. Therefore, those disputant

workmen in whose favour the reference is answered are deemed to be entitled to be absorbed without interruption in service. That way, the first condition in Clause-(a) of Section 25-FF of the Act is found satisfied. As regards the other two conditions, no discussion is required in as much as neither of the first party-Management has taken any plea that these conditions, so far the absorbed employees are concerned, were not satisfied. Therefore, this Tribunal concludes that all the conditions in the proviso to Section 25-FF of the Act are satisfied and the transferee has a liability to absorb the disputant workmen whose retrenchment is found to be illegal. The additional issue is answered.”

8. Taking into consideration the above finding of the Industrial Tribunal, this Court passed order on 30.03.2022, which reads as follows:-

“xxxxx

3. The issue concerns the expression ‘disputant workmen’. Without categorically answering the issue framed for the Tribunal to address by this Court viz., whether IFFCO is liable to give employment to all the 151 workmen, the Tribunal seems to have indirectly restricted the relief to only eight workmen by describing them ‘disputant workmen’.

4. Mr. Das, learned counsel appearing for 51 of such Workmen as well as Mr. Singh, learned counsel for another 51 Workmen make a grievance that their clients are ready with additional evidence to be adduced as proof of their employment with M/s. OSWAL before it was taken over by IFFCO. Their grievance is that no opportunity was given by the Tribunal to them to place the said evidence before it.

5. With a view to obviating a further remand which will delay the matter, the Court considers it appropriate to direct as under:

(i) The Workmen who wish to be reinstated in service and who have not crossed the age of superannuation shall present themselves before the General Manager, IFFCO at Paradip between 18th and 22nd April 2022 with all relevant documents.

(ii) The General Manager will arrange to have those documents checked and verified. It will be open to the IFFCO if the documents are found to be in order to either offer the Workmen, whose identity is established, reinstatement or compensation in lieu of reinstatement. This is without prejudice to the rights and contentions of both the Workmen as well as IFFCO. It is expected that at least some of the issues that the Workmen might have, might get settled in that process.

(iii) The written report of such proceedings be placed before the Court on the next date.”

9. In compliance of the order dated 30.03.2022, some of the workmen approached the Management for compliance of the observation made in sub-paragraphs (i) & (ii) of paragraph-5 and taking note of the same, this Court

passed order on 21.06.2022, which reads as follows:-

"1. Mr. Sarangi, learned counsel for the Petitioners states that 61 workmen had approached the Management pursuant to the order passed by this Court on 30th March, 2022. According to him, of the said 61 persons, around 15 persons had already attained the age of superannuation. He has prepared a chart for remaining 46 persons who have given their particulars including the PF slips, pay slips, appointment letter and so on. He needs some more time to verify their PF details from the PF office.

2. Learned counsel for the Workmen, on the other hand, insists that there are certain other persons who are outside Odisha who could not reach in time to appear before the Management on the dates stipulated by this Court i.e. between 18th and 22nd April, 2022. He states that he will file an affidavit providing the details of such persons. If those details are provided to Mr. Sarangi, learned counsel for the Management, not later than 27th June, 2022 then Mr. Sarangi will further verify those details along with the details of the 46 persons and prepare a final chart not later than 10th August, 2022."

10. This Court, on 15.12.2022, passed the following order:-

"1. Mr. Mishra, learned senior advocate appears on behalf of petitioners. He submits, impugned award dated 18th May, 2009 directing reinstatement of workers, who had been appointed by the transferor management. His clients are transferee management. The transfer had clear term requiring his clients to take over the management and existing workers. Awardee workers are not and cannot be called existing workers as their services were terminated. Hence, impugned award directing reinstatement stands challenged by his clients.

2. Mr. Palit, learned senior advocate appears on behalf of the interveners. He submits, he represents fifty-one workmen, who want to intervene in the writ petition. This was recorded by the first Division Bench in order dated 30th March, 2022. He submits, his clients have also filed WP(C) no.16443 of 2009. Said order dated 30th March, 2022 was made on both writ petitions.

3. Mr. Palit submits further, controversy between the parties was adjudicated and certain directions made by said order dated 30th March, 2022. All that remains is implementation of those directions. Hence, contrary submissions being made before this Bench should not be entertained. Mr. Mishra replies, eight workmen were directed to be reinstated by impugned award. Intervenors have not had their applications allowed, to have become parties in either writ petition.

4. This Bench is prepared to proceed with adjudication of both the writ petitions. However Mr. Palit submits, only thing remaining is implementation of the directions made on said order dated 30th March, 2022. He reiterates, there has already been adjudication of the writ petition, pursuant to which those directions were made. He submits, the Bench is available and in the circumstances, there be direction for release of the writ petitions for his clients to take steps for

assignment before the first Division Bench. In this context he draws attention to subsequent orders dated 21st June, 2022 and 17th August, 2022 also made by said Bench. He points out, the management had obtained time to finalise list of eligible workmen. On query from Court Mr. Mishra submits, the list has not yet been finalized.

5. In view of submissions recorded above, we release the writ petitions leaving Mr. Palit's clients to take appropriate steps for special assignment."

11. In compliance of the order dated 30.03.2022, learned Senior Counsel appearing for the Management in W.P.(C) No.9842 of 2009 provided information that in respect of 56 workmen, the IFFCO is prepared to comply with the requirements of Section 25F of the Industrial Disputes Act, 1947 in a time bound manner. Accordingly, this Court, on 16.01.2023, passed the following order:-

"1. Pursuant to the order passed by this Court on 30th March, 2022 and further orders, the exercise of verification of the details provided by the Petitioners-workmen as well as the Intervener-workmen have been undertaken by the Management, i.e., M/s. IFFCO at Paradeep. Today in Court Mr. S.P. Mishra, learned Senior Counsel appearing for the IFFCO has handed over a list containing names of fifty-six of such workmen who are admittedly similarly placed as the earlier terminated eight 'disputed workmen'.

2. Mr. Mishra, learned Senior Counsel informs the Court that in respect of these fifty-six workmen, the present Management of IFFCO is prepared to comply with the requirements of Section 25F of the Industrial Disputes Act, 1947 (Act) in a time bound manner. This submission was made in light of the chart handed over by him today in Court indicating in a separate column, the number of years of 'left over service' in regard to each of the said fifty-six workmen.

3. The Court, accordingly, directs that in respect of the said fifty-six workmen in the list produced in Court today, the Petitioners-IFFCO will comply with the requirements of Section 25F of the Act within a period of twelve weeks from today.

4. The writ petition is disposed of in the above terms."

12. In view of the order dated 16.01.2023, this Court directed the IFFCO to comply with the requirements of Section 25-F of the Industrial Disputes Act, 1947 within a period of 12 weeks. Then, the matter was listed on 11.04.2023, on which date, this Court passed the following order:-

"1. This is an application filed by Opposite Party Nos.4 to 18 for modification of the order dated 16th January, 2023.

2. Mr. S.P. Mishra, learned Senior Advocate appearing for the Petitioners has handed over a complete list of 56 workmen, who according to him have been paid the compensation amount in terms of the order of this Court. On instructions, he states that there is a repetition of the name of Shyam Sundar

Rout (Workman) both at Sl. No.43 and 52 in the said list. However, he states that the said person and all the others in the list have been paid the compensation amounts by way of cheques that have been dispatched to each of them individually by Registered Post on 7th April, 2023.

3. Mr. Niranjana Singh, learned counsel appearing for the Applicants-Opposite Parties makes two submissions. One, according to him, the compensation should be paid in terms of Section 25FF of the Industrial Disputes Act, 1947 and not Section 25F as has been directed by this Court in its order dated 16th January, 2023. Secondly, he states that two more workmen i.e. Nadia Sethy, S/o. Bana Bihari Sethy with Employee Identity Card Code No.52737 and Mahendra Kumar Das, S/o. Niranjana Das, Employee Identity Card Code No.53030 are not found in the list handed over today in Court and their cases are identical to the cases of others who have been paid.

4. On both the above submissions, Mr. Mishra, learned Senior Counsel for the Petitioners states that he will have the record verified and will revert on the next date of hearing. The documents in regard to the aforementioned two persons be handed over to Mr. Sarangi, learned counsel for the Petitioners by counsel for the workmen to enable Mr. Sarangi to seek instructions.

5. List on 12th May 2023.”

13. Thereafter, I.A No.4647 of 2023 and I.A. No.6905 of 2023 were filed in W.P. (C) Nos.9842 of 2009 and I.A. No.6987 of 2023 was filed in W.P.(C) No.16443 of 2009 and this Court on 19.05.2023 passed the following order:-

“I.A. Nos.4647 & 6905 of 2023 (arising out of W.P.(C) No.9842 of 2009 AND I.A. No.6987 of 2023 (arising out of W.P.(C) No.16443 of 2009)

1. All these applications seek either a recall or modification of the order dated 16th January, 2023 passed by this Court which recorded the statement of Mr. S.P. Mishra, learned Senior Counsel appearing for the Petitioner-Management that compensation would be paid to the workers in terms of Section 25 F of the Industrial Disputes Act, 1947 (‘Act’). The contention now raised on behalf of the workmen is that the compensation ought to have been under Section 25 FF of the Act and not Section 25 F of the Act.

2. It is claimed that the workmen were in service of the employer as on 30th September, 2005 the date on which the present Management, i.e., IFFCO took over and, therefore, Section 25 FF of the Act would apply.

3. Since this was the bone of contention between the parties prior to the hearing on 16th January 2023, this Court had in its order dated 30th March, 2022 put in place a mechanism to obviate the delay in their getting relief. IFFCO was to undertake the exercise of verification of the claims of the workmen. It is upon the conclusion of this exercise that the order dated 16th January, 2023 came to be passed.

4. On the previous date of hearing of these applications, i.e., 12th May, 2023 the Court was informed that although cheques had been distributed to each of the workmen by IFFCO in compliance with the order dated 16th January 2023, those cheques had not been encashed by the workmen and that they would be prepared to return the un-encashed cheques to M/s. IFFCO.

5. Today, the Applicants in I.A. No.4647 of 2023 have filed an affidavit enclosing a list of workmen who are returning the un encashed cheques to the Management. While there are 44 cheques, there is an explanation offered in respect of the remaining 8 workmen (except one) whose cheques were not encashed. Even in respect of one of them, i.e., Sri Benudhar Paramanik, it is stated that he is prepared to return the money that has been encashed within a period of two weeks from today.

6. As regards the Applicants in I.A. No.6905 of 2023, a separate memo has been filed returning 11 cheques issued to the Applicants therein. The original cheques pertaining to the workmen in both applications have handed over to Mr. S.P. Sarangi, learned counsel appearing for the IFFCO and the memos are retained on record.

7. In view of the above developments and without expressing any view on the merits of the claims of the workmen and leaving it to both IFFCO as well as the workmen to urge all their pleas upon restoration of the writ petitions, this Court recalls its order dated 16th January, 2023 and restores W.P.(C) No.9842 of 2009 and W.P.(C) No.16443 of 2009 to file.

8. The applications are disposed of.

W.P.(C) No.9842 of 2009 & W.P.(C) No.16443 of 2009

9. The point on which the present writ petitions are set down for hearing is whether in respect of the Petitioner workmen, the provisions of Section 25 F or Section 25FF of the Industrial Disputes Act, 1947 would apply?

10. List for hearing on 23rd August, 2023."

14. This Court, vide order dated 19.05.2023, restored W.P.(C) Nos.9842 of 2009 and 16443 of 2009 to file and formulated the following question:-

"The point on which the present writ petitions are set down for hearing is whether in respect of the Petitioner workmen, the provisions of Section 25-F or Section 25FF on the Industrial Disputes Act, 1947 would apply?"

15. Mr. S.P. Mishra, learned Senior Counsel along with Mr. S.P. Sarangi, learned counsel appearing for the Management contended that so far as 8 workmen are concerned, they have been given employment and their cases can be covered under Section 25-FF of the Industrial Disputes Act, 1947 and all other workmen are to be covered under Section 25-F of the Industrial Disputes Act, 1947. Since those 8 workmen, in whose favour award was passed, are continuing in service and the benefit has also been extended to them, in their cases the award having

been implemented, in respect of the workmen, whose services were terminated, they were offered with cheques in compliance of Section 25-F of the Industrial Disputes Act, 1947, as directed by this Court in earlier order. Out of 56 workmen, some of them have received the benefit and some of them have not. Those who have not received the benefit, the Management has no objection to comply with Section 25-F of the Industrial Disputes Act, 1947, but question of compliance of Section 25-FF in respect of such workmen does not arise.

16. Mr. S.P. Das, learned counsel appearing for the workmen, while refuting the contentions raised by the learned Senior Counsel appearing for the Management, contended that all 51 workmen, for whom the Union is espousing the cause, are entitled to get the benefit of Section 25-FF of the Industrial Disputes Act, 1947. Therefore, the question of compliance of Section 25-F of the Industrial Disputes Act, 1947 in respect of rest 43 workmen does not arise. As such, the award so passed by the Industrial Tribunal, Bhubaneswar should be modified by extending the benefit to 51 workmen, whose cause is espoused by the Union, by complying Section 25-FF of the Industrial Disputes Act, 1947. Therefore, it is contended that if the benefit has already extended to 8 persons, rest 43 workmen should be granted such benefit in compliance of Section 25-FF of the Industrial Disputes Act, 1947.

17. This Court heard Mr. S.P. Mishra, learned Senior Counsel along with Mr. S.P. Sarangi, learned counsel appearing for the Management and Mr. S.P. Das, learned counsel appearing for the workmen in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, both writ petitions are being disposed of finally at the stage of admission.

18. Before delving into the issues in question, Sections 25F and 25FF of the Industrial Disputes Act, 1947 are extracted hereunder for just and proper adjudication of the case:-

"25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

[x x x]

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]

25-FF. Compensation to workmen in case of transfer of undertakings.—Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if—

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.”

19. On perusal of the above mentioned provisions, it is made clear that both the provisions are being used in two different ways and for two different purposes. Section 25F of the Industrial Disputes Act, 1947 was enacted realizing the position that an employer could not be expected to carry the economic dead weight of surplusage of labour, the Legislature provided for the compensation under this section to soften the rigour of hardship resulting from an employee being thrown out of employment through no fault of his.

20. In *Hindustan Steel Ltd. v. The Workmen*, (1973) Lab.I.C. 461 (SC), the apex Court held that in enacting Section 25-F, the Legislature has also standardized the payment of compensation to workmen, “retrenched in normal or ordinary sense in an existing or continuous industry”.

21. In *Hariprasad Shivashankar Shukla v. A.D. Divikar*, AIR 1957 SC 121, the apex Court held that before the enactment of the provision under Section 25-F, the Tribunals had to deal with a perplexing variety of factors for determining appropriate relief and, by and large, adopted a simple yardstick of length of service of the retrenched workmen.

22. In *Associated Cement Companies (Chaibasa Cement Works, Jhinkapani) v. Their Workmen*, (1960) 1 L.L.J. 1 (SC), the apex Court held that the right created by Section 25-F is based on grounds of humane public policy and on the consideration that involuntary unemployment causes dislocation of trade and industry and may result in general economic insecurity.

23. In *State of Bombay v. Hospital Mazdoor Sabha*, (1960) 1 L.L.J. 251(SC), the apex Court held that non-compliance of the mandatory conditions of Section 25-F

would render the impugned retrenchment invalid and inoperative. Similar view has also been taken by the apex Court in *National Iron and Steel Co. Ltd. v. State of West Bengal*, (1967) II L.L.J. 23 (SC).

24. In *Swadesamitran Ltd. v. Their Workmen*, (1960) 1 L.L.J. 504 (SC), the apex Court held that where the retrenchment is found to be illegal and invalid for noncompliance of the mandatory requirements of Section 25-F, it is imperative for the Tribunal to award the relief of reinstatement with full back wages and it has no discretion to award any other relief.

25. The original Chapter V-A as inserted by the Industrial Disputes (Amendment Act), 1953, did not contain Section 25-FF. The Industrial Disputes (Amendment) Act, 1957 inserted Section 25-FF. This Section was enacted as it was not clear from Section 25-F whether the transfer, reconstitution and amalgamation of companies would be a ground for claim for retrenchment compensation even if the service of the workman is continued without interruption and the terms and conditions of his service remain unaltered. This Section, therefore, was substituted by present Section 25-FF along with Section 25-FFF by the Industrial Disputes (Amendment) Act, 1957. This amendment was necessitated by the Supreme Court's decision in the case of *Hariprasad Shivshankar Shukla* (supra) and also in *Barsi Light Railway Co. Ltd. v. K.N. Jogelkar*, (1957) 1 L.L.J. 243 (SC), in which it was held that no retrenchment compensation under Section 25-F was payable, on the construction of the term 'retrenchment' in Section 2(oo) to workmen whose services were terminated by an employer on a real and bona fide closure of business or when the termination of service occurred as a result of transfer of ownership from one employer to another. In the case of transfer of an undertaking, if the workman is re-employed on terms and conditions which are not less favourable to him, he will not be entitled to compensation. Therefore, Section 25-FF entitles a workman to notice or wages in lieu of notice and compensation in case of transfer of the ownership or management of an undertaking from one employer to another, as has been held by the apex Court in *R.S. Madho Ram & Sons (Agencies) (P.) Ltd. v. Its Workmen*, (1964) 1 L.L.J. 366 (SC). The compensation payable under this provision is determinable in accordance with the provisions of Section 25-F, "as if the workmen had been retrenched". But before a workman is entitled to compensation under this Section, the following conditions must be cumulatively satisfied:

"(1) There should be a transfer of the ownership or management of the undertaking from one employer to another by (a) agreement, or (b) operation of law;

(2) the undertaking should be an industry within the meaning of S.2(j);

(3) the workman claiming compensation should be a workman within the meaning of S.2(s); and

(4) the workman should have put in minimum one year of continuous service within the meaning of S. 25-B immediately before the transfer of the ownership

or management of the undertaking.”

26. Taking into account the above mentioned conditions of Sections-25-F and 25-FF of Industrial Disputes Act, 1947 and the purpose for which they have been enacted and applying the same to the present context, this Court arrives at a conclusion that the Tribunal has not given any finding with regard to compliance of Section 25-FF, so far as transfer of the Management is concerned, as that was not the dispute at the initial stage because the dispute was raised with the Management of M/s. OSWAL Chemicals and Fertilizers Limited, for which reference was made. When the matter was pending before the Industrial Tribunal for adjudication, at that point of time transfer of Management took place and in that case, Section 25-FF may apply. In any case, looking at the various orders passed by this Court, as mentioned above, it has come to fore that 56 employees, as per the list furnished by the Management, were retrenched and they are entitled to get compensation as per Section 25-F and this Court directed the Management to comply with the same, pursuant to which some employees have received compensation and some have not, that itself can be considered by the Management for payment to the workmen. Now, coming to the question of compliance of Section 25-FF of the Industrial Disputes Act, 1947, the award is very clear so far as 8 employees are concerned and their names have been indicated in the award itself.

27. As already indicated, Mr. S.P. Mishra, learned Senior Counsel appearing for the Management contended that in respect of 8 employees, Section 25-FF of the Industrial Disputes Act, 1947 has already been complied with.

28. In view of such position, the award so passed by the Tribunal has already been implemented in respect of 8 employees in terms of Section 25-FF. So far as rest of the workmen are concerned, since 56 workmen have been treated as retrenched employees, for them Section 25-F has been complied with and some of them have received compensation and some have not received the benefits even if cheques were offered to them.

29. In the above view of the matter, it is directed that if the workmen, those are entitled to get the benefit in compliance of Section 25-F of the Industrial Disputes Act, 1947, have not yet received the same, they may receive their benefit and the Management will cooperate to disburse them the compensation amount, as they are not entitled to get the benefit of Section 25-FF.

30. Accordingly, W.P.(C) No.9842 of 2009 filed by the Management stands allowed and W.P.(C) No.16443 of 2009 filed by the workmen stands dismissed. However, under the facts and circumstances of the case, there shall be no order as to costs.

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