(2010) 08 OHC CK 0062

In the Orissa High Court

Case No : Writ Petition (C) No. 7196 of 2004

Nayeem Md. Latif — APPELLANT

Vs

The Industrial Development Corpn. of Orissa Ltd. and Another — RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25FF

Citation : (2010) 2 ILR (Ori) 1146 : (2011) 1 OLR 727 Supp

Hon'ble Judges : B.P. Ray, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Ray, J.—In this writ application under Articles 226 and 227 of the Constitution of India, the Petitioner Prays for a direction to the opp. parties to pay him the revised scale of pay with effect from 1.4.1998 along with the cumulative benefits and the arrear salary within a stipulated time.

2. The brief fact of the case is that the Petitioner was appointed as a Typist-cum-clerk under the Industrial Development Corporation, Orissa (in short, "I.D.C.") and joined at SAIL office of Hira Cement, a unit of I.D.C. on6.6.1973 on 1.9.1974 the Petitioner was transferred to the Head Office of I.D.C. at Kolkatta by Office Order Annexure-1. On promotion to the post of Supervisor, the Petitioner was again transferred to Ferro Chrome Plant, a unit of I.D.C. on 9.1.1981 by order under Annexure-2. On 10.10.1984, under Annexure-3, the Petitioner was again transferred to East Cost Beverage Ltd. Which is also a unit of IDC. On 3.10.1988 the Petitioner was transferred to Hira Cement Works at Bargarh under Annexure-5 and thereafter on 13.10.1988 he was again transferred to Hira Cement Works, Kolkatta (Annexure-6). The Petitioner''s scale of pay was revised on 29.1.1996 w.e.f. 1.4.1990 under Annexure-7. On 31.12.1998 (Annexure-8) the Petitioner was promoted to the post of Junior Officer and his scale of pay was

revised w.e.f. 1.4.1998 meant for the Junior Officer of I.D.C. Thereafter the Petitioner was asked under Annexure-9 to give his option whether he intends to enjoy the ICL pay structure, but the Petitioner did not give any option. While the matter stood thus, the revised scale of pay, under Annexure-10, came into force. The Petitioner made representation on 6.4.2001 under Annexure-11 praying therein to revise his scale of pay. When no action was taken by the opp. parties the Petitioner filed a writ application vide W.P.(C) No. 11468 of 2003. During pendency of that writ petition on 29.1.2004 the name "ICL" was changed and was renamed as "Bargarh Cement Ltd." (in short, "BCL") under Annexure-12. On 15.3.2004 the aforesaid writ application was disposed of directing the Petitioner to file a representation before the New Management and opp. parties were directed to take a decision within a period of three months. Accordingly, the Petitioner made a representation to the BCL (Annexure-13) on 1.4.2004. But the BCL on 10.5.2004 requested the IDC to examine the case of the Petitioner. On 23.6.2004 under Annexure-15 the BCL refused to pay the revised scale of pay and advised the Petitioner to approach the IDC. On 28.6.2004 (Annexure-16) finally the BCL rejected the representation of the Petitioner. On the other hand, the IDC vide its letter dated 24.6.2004 (Annexure-17), directed the Petitioner to take the matter to the BCL on the ground that the Petitioner is not the employee of IDC. Hence, the Petitioner has approached this Court by the present writ application.

3. On receipt of notice the opp. party No. 1-IDC and the opp. party No. 2 BCL filed their respective counter affidavits. The opp. party No. 1 in their counter affidavit stated that the IDCOL Cement Ltd./ BCL was transferred since 31.3.1993 in due compliance of the provision of Section 25FF of the I.D. Act, 1947. So the Petitioner is not an employee of IDC. Their further case is that since the company converted into a separate company, namely; IDCOL Cement Ltd. W.e.f. 1.4.1993, all the assets and liabilities were transferred. Since the Petitioner is primarily an employee of IDCOL Cement Ltd., he is ceased to claim any benefit as an employee of IDC. The opp. party No. 1 further stated that since now the Petitioner is an employee of BCL, the grievance of the Petitioner should be considered by the BCL. It is worthwhile to mention here that the Petitioner is paragraph 6 of his writ petition has alleged that some of the junior officers, like one Goutam Mukherji, who were working with the Petitioner, have been paid the revised scale of pay w.e.f. 1.4.1998.

4. The opp. party No. 2 BCL in their counter affidavit has raised a question of maintainability of the writ application. Their further case is that since the Petitioner has not given any option as asked by opp. party No. 2, he is not eligible to get the revised scale of pay.

5. During the course of hearing an additional affidavit was filed on behalf of opp. party No. 1 by one Padma Lochan Mahanta, working as Head (HRD), IDC wherein they have annexed a letter dated 26.6.2004 issued to the BCL in which the IDC had requested to consider the case of the Petitioner. On further direction of this

Court opp. party No. 1 filed another affidavit indicating that since the ACC has purchased the shares of the ICL together with all rights and benefits, liabilities and obligations, they are liable to pay the claim of the Petitioner. They have also annexed a judgment of this Court passed in O.J.C. No. 5391 of 1997 (Narendra Nath Biswal V. State of Orissa and Ors.) wherein this Court held that since the ACC has purchased the shares, the ACC is required to retain the services of all permanent employees, who were in employment of the Company as on the closing date.

6. It is the admitted case of the parties that during the continuance of the service of the Petitioner, the scale of pay of the Junior Officer was revised. Though the Petitioner has rendered his service he was not allowed to get the revised scale and was paid the old scale of pay till his retirement. Further, none of the opp. parties has stated that the Petitioner is not liable to get his higher scale. They are only shifting their responsibility to each other.

7. The Petitioner has retired from his service w.e.f. 31.12.2004 on attaining the age of superannuation. The Petitioner is running from pillar to post to get his legitimate claim since 1998. Learned Counsel for the Petitioner submits that the Petitioner is suffering from heart disease and to meet the medical expenses he needs money.

8. It is the admitted fact that the IDC was the owner of the Industrial Unit and the Petitioner was appointed by the IDC. Subsequently, the cement factory in question was renamed as "IDCOL Ltd.," but it continued to be a unit of IDC and the Petitioner was allowed to continue as an employee of being the employee of IDC. While continuing as such the Petitioner filed a writ petition against IDC and IDCOL for revised scale of pay. While the Petitioner was sub-judice before his Court the IDC sold and transferred the unit to BCL and the Petitioner was allowed to continue as such under the Management of BCL which was subsequently named as ACC Ltd. In view of the above facts, the ACC is the successor-in-interest of IDC and has taken over all the assets and liabilities of the IDC/IDCOL as per the agreement made between the parties. In the case of Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, the Hon''ble Apex Court has categorically held that the subsequent purchaser of an industrial unit is the "successor-in-interest" of the previous owner and liable to take over the assets and liabilities and also liable to pay the service benefits to the employees of the previous owner.

9. It has been settled by various judicial pronouncements that the transferee is the ''successor-in-interest'' of the transferor and the employees of the business shall continue to entitle to all the rights and privileges acquired by them by reasons of past services even after the transfer if there is continuity of service and there is identity of business. In the present case the Petitioner was allowed to continue till his superannuation under the present management is continuing the business of the previous management. Hence, the present management is liable to pay the arrear salary of the Petitioner at the revised scale of pay.

10. This Court in the case of Narendra Nath Biswal (supra) decided the similar matter like that of the Petitioner and held that the ACC Ltd. Is the successor-in-interest of IDC/IDCOL and the Petitioner is entitled to get the service benefits from the ACC Ltd. Being an employee of IDCOL. In view of the decision of this Court as well the apex Court, it is clear that the ACC Ltd. Being the successor-in-interest of the IDC/IDCOL has taken over all the liabilities. It has carried out the same business of the previous owner and there is no break or change of business. The ACC Ltd. Has not only purchased the industrial unit, but also purchased the good will and the services of the Petitioner were also taken over by the ACC and he was allowed to continue till his superannuation.

11. Considering the facts and circumstances of the case and in view of the discussions made above, the writ application is allowed. The opp. parties are directed to pay the arrears of the Petitioner after calculating his pay at revised scale of pay w.e.f. 1.4.1998 along with interest. Writ petition allowed.

