
(2004) 04 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 8193 of 2001

Orissa Air Products Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : (2004) 102 FLR 938 : (2004) 3 LLJ 968 : (2004) 2 OLR 47

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

Bench : Single Bench

Advocate : J.K. Tripathy, B.P. Tripathy, P.K. Chand, D. Satpathy, P. Tripathy and M. Tripathy, for the Appellant; S. Das, S. Mohanty and G. Bhol, for the Respondent

Judgement

A.S. Naidu, J.—This writ application has been filed invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India by Orissa Air Products Ltd. challenging the order dated April 25, 2001 passed by the Labour Court, Bhubarreswar in I. D. Misc. Case No. 5/94. The said Industrial -Disputes Misc. Case was registered on the basis of an. application filed by opposite party No. 2 workman u/s 33-C(2) of the Industrial Disputes Act (hereinafter referred to as the "Act"), inter alia, praying for issuance of a direction to the Management for computation of full wages during the period of his suspension from service and disbursement of the same.

2. For adjudicating the dispute, it would be pertinent to mention some of the facts. Admittedly, opposite party No. 2 was working as Assistant Depot Superintendent in the petitioner's establishment at Rourkela. After receiving allegation of gross misconduct and indiscipline as well as allegations of malfeasance and misfeasance he was put under suspension with effect from March 4, 1993. The suspension order clearly stipulated that opposite party should report daily between 9 A.M. and 9.30 A.M. on all working days at Rourkela Depot and should sign the attendance register kept there. Thereafter a

Departmental Proceeding was initiated and opposite party No. 2 was charge sheeted on June 15, 1993 on several grounds. Opposite party No. 2 being aggrieved by such actions approached the District Labour Officer, Dhenkanal. He also complained about non-receipt of the subsistence allowance. In course of conciliation of the dispute, on being 1 persuaded by the Labour Officer, it is alleged that the Management agreed to revoke the order of suspension pending completion of the Departmental Proceeding. In consonance with the settlement, the order of suspension was revoked pending completion of the Departmental Proceeding and opposite party No. 2 was directed to join the duty at Rourkela Depot. During pendency of the Departmental Proceeding, opposite party No. 2 filed an application u/s 33-C(2) of the Act before the Presiding Officer, Labour Court claiming subsistence allowance as well as arrear salary. While the matter stood thus, the departmental enquiry was concluded, opposite party No. 2 was found guilty of all the charges and was awarded punishment of dismissal from service. Challenging order of dismissal, opposite party No. 2 raised an industrial dispute before the District Labour Officer, Dhenkanal-cum-Conciliation Officer and the conciliation having failed, the Government referred the dispute to the Presiding Officer, Labour Court for adjudication. The said reference registered as I.D. Case No. 56/96 and is pending adjudication.

3. In the meanwhile, the Labour Court disposed of the application filed by opposite party No. 2 u/s 33-C(2) of the Act and held that he is entitled to get the subsistence allowance and when the suspension is revoked, the period of suspension is bound to be treated as duty and computed the amount payable to the petitioner to be Rs. 17,976/- and directed the petitioner-Management to pay the same. The said order, as stated earlier, is impugned in this writ application.

4. After receiving notice, opposite party No. 2 has appeared and filed a counter affidavit supporting the reasoning arrived at by the Labour Court. It is asserted that as the suspension order was unconditionally revoked the period of suspension should be treated as duty and the petitioner is entitled to all the benefits. It is further averred that the Labour Court has rightly appreciated the facts and the submissions as well as questions of law and the order directing payment of Rs. 17,976/- does not suffer from any infirmity and the present writ application is to be dismissed in limine.

5. In course of hearing Mr. J.K. Tripathy, learned senior counsel appearing for the petitioner-Company contended, rather forcefully, that the proceedings before the Labour Court are not maintainable as the opposite party No. 2 is not a workman. According to Mr. Tripathy, the Court below should have dismissed the petition filed by the opposite party No. 2 u/s 33-C(2) of the Act on the said ground alone. This submission of Mr. Tripathy is strongly repudiated by Mr. Das, learned counsel appearing for opposite party No. 2. According to Mr. Das, opposite party No. 2 is a workman and any submission to the contrary is unfounded.

6. After hearing learned counsel for both the sides, I find that the dispute as to whether opposite party No. 2 was a workman or not has to be adjudicated by the

Labour Court in the pending reference which has been registered as I.D. Case No. 55/96. Any observation made by this Court at this stage would amount to prejudging the issue and as such, I decline to decide the dispute as to whether opposite party No. 2 is a workman or not and leave the said issue to be answered by the Labour Court in the pending reference. The second contention of Mr. Tripathy, learned counsel for the petitioner is that admittedly opposite party No. 2 was suspended with effect from March 4, 1993. During the conciliation proceeding, as agreed to by the parties, the order of suspension was revoked by order dated September 14, 1993 pending completion of the Departmental Proceeding. Thus as to how the period of suspension shall be treated depends upon result of the disciplinary proceeding which was admittedly pending on the date on which the order of suspension was revoked. It is further submitted that even otherwise, opposite party No. 2 did not attend the office on each working day as stipulated in the order of suspension. The condition of the suspension having been infringed opposite party No. 2 is not entitled to any subsistence allowance,

7. Admittedly, the Departmental Proceeding has been completed in the meanwhile and the petitioner was found guilty of all the charges and was dismissed from service. The said order of dismissal is the subject matter for the I.D. Case No. 55/96.

8. Rule 14(2) of the Orissa Industrial Employment (Standing Orders) Rules, 1946 deals with suspension of an employee. Rule 14(4)(b) of the aforesaid Rules stipulates that a workman who is placed under suspension shall, during the period of suspension, be paid a subsistence allowance at the stipulated rates. Clause (c) of the aforesaid Rules reads as follows:

"(c) If on the conclusion of the inquiry, or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass order accordingly:

Provided that when as an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period and the subsistence allowance already paid to him shall not be recovered:

Provided further that where the period between the date on which the workman was suspended from duty pending the investigation or trial and the date on which an order of suspension was passed under this clause exceeds four days, the workman shall be deemed to have been suspended only for four days or for such shorter period as is specified in the said order of suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the

subsistence allowance paid to him for such period:

Provided also that where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period:

Provided also that in the case of workman to whom the provisions of Clause (2) of Article 311 of the Constitution apply, the provisions of that Article shall be complied with."

But then the proviso to Clause (c) is more important for adjudication of the present case. The said proviso stipulates that when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period and the subsistence allowance already paid to him shall not be recovered. Admittedly in the case at hand, in the departmental enquiry all the charges levelled against opposite party No. 2 were proved and the order of dismissal was passed. In view of the fact that the Departmental Proceeding ultimately ended by an order of dismissal, opposite party No. 2 shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period as has been stipulated in Rule 14(4)(c) (supra).

9. Being confronted with such position, Mr. Das, learned counsel for the opposite parties submitted that the Orissa Industrial Employment (Standing Orders) Rules, 1946 is not applicable to the petitioner's establishment. This submission, however is found to be not correct inasmuch as opposite party No. 2 in his deposition given before the Court below in Misc. Case No. 5/94 has clearly admitted as follows:

"On December 11, 1989 there was a conciliation settlement between Orissa Air Products Ltd. Employees' Union and the opposite party. In that settlement, it was agreed that the Model Standing Order will be applicable to the opposite party- Factory. "

In view of the aforesaid clear admission made by opposite party No. 2, there is absolutely no ambiguity with regard to the application of the Standing Order to the present case. The Labour Court has lost sight of the aforesaid provision and thus, the order suffers from the vice of non-consideration of substantial question of law and the fact involved in the case.

10. A cumulative assessment of the entire case as discussed in the preceding paragraphs leads to the irresistible conclusion that as to whether opposite party No. 2 would be entitled to any subsistence allowance and as to how the period of suspension shall be treated depends upon the answer to the reference made by

the State Government, that is, as to whether the order of dismissal passed by the Management is just and proper. The said reference is pending before the Labour Court. Thus at this juncture no conclusion can be arrived at with regard to entitlement of subsistence allowance and as to how the period of suspension of opposite party No. 2 should be treated. All these questions depend upon the result of I. D. Case No. 55/96.

11. I, therefore, allow this writ application, set aside the order dated April 25, 2001 passed in I.D. Misc. Case No. 5/94 and direct that entitlement to subsistence allowance of opposite party No. 2 shall depend upon the result in I.D. Case No. 55/96. This I.D. Misc. Case No. 5/94 shall be de novo heard after disposal of the I.D. Case No. 55/96 or along with the said case.

12. With the aforesaid observations, the writ application is disposed of.