

(2005) 02 OHC CK 0052

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6507 of 1994

Orissa Forest Development Corporation Limited

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 2, 25F

Citation : (2005) 105 FLR 1146 : (2005) 2 LLJ 928 : (2005) 1 OLR 595

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

Bench : Single Bench

Advocate : S.K. Patnaik, for the Appellant; D.N. Nayak, for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The word dated 18th April, 1994 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No. 128 of 1990 is assailed in this Writ application by the Orissa Forest Development Corporation Limited.

2. Opposite Party No. 2-workman raised an industrial dispute inter alia challenging the order of the management terminating his service. Conciliation having failed, the following dispute was referred to the Labour Court by Government in exercise of power conferred upon it under Sections 10 and 12 of the Industrial Disputes Act :-

"Whether the termination of services of Sri Sarat Chandra Dash, Stenographer by the management of M/s. Orissa Forest Corporation Limited, Bhubaneswar with effect from 20.8.1982 is legal and/or justified ? If not what relief is Sri Dash entitled ?"

3. According to opposite party No. 2 he was working as a Stenographer under the opposite party Corporation with effect from 28.1.1981 and his tenure of appointment was being extended from time to time. The management without following the mandatory requirements stipulated under the Industrial Disputes

Act, terminated his service with effect from 20.8.1982. He further alleged that he worked for about nineteen months and therefore termination of his service by the management without complying with the provisions of the I.D. Act or paying him retrenchment/ notice pay is illegal, unjust and, as such, the order of retrenchment should be quashed with direction to the management to reinstate him in service, with full back wages.

4. The management filed its written statement inter alia taking the stand that the workman was an outsider. He had been temporarily appointed as a Grade-III Stenographer by order dated 27.1.1981. His appointment was purely temporary and for a specified period, i.e. from 28.1.1981 to 25.4.1981. Thereafter it was extended for a period of three months. In course of service it was noticed that the performance of the workman was not up to mark. He had very poor knowledge in Stenography and also in typewriting. But then in order to give him opportunity to improve, the services of the workman were extended up to 24.10.1981. The order of extension contained a specific clause to the effect that the workman would appear in a test and in case of his failure in the test his service would be terminated. On 23.10.1981 a test was conducted. But then the performance of the workman in the test was very poor and he was unsuccessful. Still taking a liberal view opportunity was again given to him by extending his service up to 23.1.1982. Thereafter another test was held on 22.1.1982 in which also he became unsuccessful. On the prayer of the workman he was, however, allowed to continue in service for another three months; i.e. up to 22.4.1982. On 19.4.1982 again test was conducted and still the workman became unsuccessful. Thereafter his temporary appointment was extended for a further period up to 22.7.1982 as last chance. In a subsequent test held on 19.7.1982 the workman again failed to become successful, and consequently his service was terminated with effect from 19.7.1982. According to the management, the workman was a temporary and contractual employee engaged for a specific period. Thus no right had accrued to him and as his performance was very poor the management had no way out but to terminate his service.

5. On the basis of the aforesaid averments, the Labour Court framed three issues. Both sides in order to establish their respective cases adduced evidence, both oral and documentary. The Labour Court on an analysis of the materials on record came to the conclusion that termination of service of the workman did not come within the exceptional categories mentioned in Section 2(OO) of the I.D. Act and that the contract for service never came to an end, nor was there any condition in the original appointment order, Ext. 1. The stipulation in the order of termination that the service of the workman was dispensed with from 19.8.1982 amounted to retrenchment. It was further held that as the mandatory requirement of Section 25-F of the I.D. Act was not complied with, the order of retrenchment could not be sustained. On the basis of such conclusion the Labour Court held that the order of termination of the service of the workman-opposite party No. 2 was neither legal nor justified and therefore it directed reinstatement of the workman in service with full back wages until reinstatement.

6. Learned counsel for the petitioner, relying upon the original order of engagement of the workman, vide Annexure-1, submitted that the initial period of engagement of the petitioner was for three months, i.e. from 28.1.1981 to 23.4.1981. Thus the same should be construed to be contractual engagement. The engagement of the workman was subsequently extended time to time, but always with a condition that a test would be conducted and if he failed in the test his service would be terminated. The petitioner has also annexed the typed answer sheets of the workman in the tests held, as Annexure-4 series, Annexure-G series, Annexure-10 series, Annexure-11 series and Annexure-12 series to establish that the workman in spite of opportunity being given did not improve his standard/performance.

7. A perusal of the said answer sheets shows the poor standard of the workman in stenography. As a matter of fact, this Court was shocked after going through the answer sheets which are full of mistakes and wonders as to how the workman with such poor standard in stenography had been tolerated for such a long time. A Stenographer cannot be equated with an ordinary workman. A lot depends upon the standard of performance of a Stenographer, who, if efficient, is considered as an asset to the institution, otherwise a liability.

8. No doubt the workman had served the management for more than 240 days in phases in one calendar year. But then the order of his engagement was initially for three months. The same was extended from time to time with certain condition. The workman had accepted the orders of extension of his service with the condition that he was required to appear in tests and if found unsuccessful his service would be terminated. His service itself being a conditional one, non-fulfilment of the condition imposed would lead to the consequence stipulated in the orders. This aspect was not kept in mind by the Labour Court.

9. The workman has not adduced any evidence to show that he was not gainfully employed elsewhere during the period he was out of employment of the Corporation. In absence of such material, the Labour Court also acted illegally and with material irregularity in not applying the principle of no work no pay and directing payment of full back wages to the workman.

10. Considering all the facts and circumstances of the case and after going through the answer sheets of the workman in the tests held, I feel that the Labour Court has not properly appreciated the materials on record while passing the Award. I have, therefore, no hesitation to quash the impugned Award.

11. In the result, the Writ application is allowed. The impugned Award dated 18.4.1994, Annexure-15, is quashed and it is held that the order of termination of service of the workman-opposite party No. 2 is legal and justified.