

(2011) 07 OHC CK 0005
In the Orissa High Court
Case No : Writ Petition (C) No. 426 of 2003

Orissa Mining Corporation Ltd.

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal-
Cum-Labour Court and Another

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

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

Citation : (2012) 132 FLR 258

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : J. Mohanty, A.K. Panigrahi and A.N. Upadhyaya, for the Appellant;
S.S. Das, B.R. Das, Miss. K. Behera and D. Tripathy, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—The Management - Orissa Mining Corporation Ltd. has called in question the legality of the award dated 10.9.2002 passed by the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar in Tr. I.D. Case No. 254 of 2001. The opp. party No. 2 - workmen represented by the President, Orissa Mining Workers Federation raised the industrial dispute, which ultimately culminated in a reference made by the Government of India in the Ministry of Labour under Clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") to the following effect:--

Whether the demand of Orissa Mining Workers Federation for regularization of services of S/Shri G.C. Bisoi, S.K. Prusty, A.K. Sahoo and S.K. Das as Labour Welfare Supervisors with effect from 8.6.1989 and payment of stopped increments amount along with other service benefits from the year 1992 by the Management of Orissa Mining Corporation Ltd. is justified? If so, to what relief the workmen are entitled to?

The workmen Shri G.C. Bisoi and Shri S.K. Prusty were employees of the Management earlier, as Assistant Store Keeper and Junior Accountant respectively. The other two workmen Shri A.K. Sahoo and Shri S.K. Dash were outsiders. Vacancies having arisen in the post of Labour Welfare Supervisors, the names of Shri Sahoo and Shri Dash were sponsored by the Employment Exchange in 1987. The existing employees Shri Bisoi and Shri Prusty were called to face the interview as departmental candidates. For the above purpose, a selection committee was constituted as per the rules, which is admitted by the parties. The committee so framed selected Shri Sahoo and Shri Dash as sponsored direct candidates and Shri Bisoi and Shri Prusty as candidates already in employment under the Corporation. All the four workmen were issued with appointment letters and were appointed with effect from 8.6.1988, 28.6.1988, 2.12.1988 and 27.10.1988 respectively. They worked continuously for more than nine years against their respective posts without being regularized after which, only in 1997 their services were confirmed by regularizing them on issuance of appropriate orders. However, the workmen having been deprived of the financial benefits like annual increments, they raised the industrial dispute and after failure of conciliation, the reference was made. It was prayed by the workmen that they should be held to have been regularized with effect from the date of their appointments.

The Management filed its written statement more or less admitting the case of the workmen. However, it was pleaded on behalf of the Management that as per the selection panel, eight candidates were selected for the post of Labour Welfare Supervisors. Shri Bisoi was placed at serial No. 7 as unreserved candidate, Shri Prusty was placed at serial No. 6 also as un-reserved candidate and it was decided to offer regular appointment to the candidates at serial Nos. 2 to 5 since there were no suitable Scheduled Caste/Scheduled Tribe candidates for appointment to the said posts. Such appointment, according to the Management, was urgently required and, therefore, it was decided to offer ad hoc appointment to serial Nos. 6 to 8 only and posts were filled up by unreserved candidates. It was further pleaded that as the candidates placed at serial No. 8 did not join and one Shri S.K. Ranjib resigned from service, the post was filled up by giving ad hoc appointment to Shri A.K. Sahoo and Shri S.K. Dash, who were direct recruits. In substance, therefore, the stand of the Management was that the appointments given to all the workmen who have raised the dispute were on ad hoc basis. In the written statement, the Management further stated that the candidates were allowed to receive annual increments regularly for the year 1989-90 and 1991 along with other facilities and thereafter objection was raised as the posts were reserved for Scheduled Caste and Scheduled Tribe candidates, but were filled up by un-reserved candidates for which, the Management was compelled to withdraw the annual increments extended to the ad hoc employees. The revised scale of pay with effect from 1.5.1989 in respect of these ad hoc employees was made as per the procedures implemented by the State Government and, therefore, the disputant workmen are not entitled to any relief.

2. After the parties led evidence before the Tribunal on the issues framed by it, the Tribunal came to the finding in the award, on analysis of the materials on record, that the disputant workmen have completed more than 240 days in a calendar year in their respective posts and no materials have been placed before it that Scheduled Caste and Scheduled Tribe candidates have been appointed in the said vacancies. In view thereof, the Tribunal concluded that the workmen are entitled for regularization from the date of their appointment, i.e., with effect from 8.7.1989. With regard to financial benefits, the Tribunal came to the conclusion that the Management cannot withdraw the financial benefits on the ground that there was objection regarding appointment of the workmen and when they have rendered continuous service, they are entitled to get the annual increment and other financial benefits. Hence, withholding of the annual increments by the Management is not justified. On the above basis, the Tribunal concluded that the workmen are entitled for regularization with effect from 8.6.1989 and they are entitled to get their annual increments which was withheld or stopped by the first party - Management.

3. It was strongly urged by the learned Counsel for the petitioner that the Presiding Officer, Industrial Tribunal failed to appreciate that the employment provided to the disputant workmen was temporary in nature and was only for a specific period, i.e., till the appointment of suitable candidates. It was further urged that the Presiding Officer has mis-interpreted the decision in the case of Registrar General of India and Another Vs. V. Thippa Setty and Others, ; and has wrongly directed retrospective regularization in respect of the disputant workmen. Learned Counsel further urged that the Presiding Officer has ignored the ratio of the decisions in the cases of Ashwani Kumar and Others Vs. State of Bihar and Others, , and Subedar Singh and Others Vs. Distt. Judge Mirzapur and Another, .

4. Learned Counsel for the opp. party No. 2, on the contrary, submitted that even conceding for the sake of argument that the rules regarding appointment of Scheduled Caste and Scheduled Tribe candidates were not followed during selection, but the disputant workmen having been allowed to continue in the said posts continuously for more than nine years and this being not a case of removal or discharge from service, the Management cannot take advantage of the ratio of the aforesaid judgments of the Apex Court.

5. This Court further finds that the Presiding Officer, CGIT has taken note of the aforesaid judgments of the Apex Court and has rightly held that the facts of the present case differ from the facts involved in the aforesaid decisions of the apex Court to the effect that in the present case, the disputant workmen were appointed to the posts which were lying vacant and have completed more than 240 days of service in a calendar year and all financial benefits were given to them, more, importantly, no materials were produced by the Management to show that subsequent to the appointment of the disputant workmen, candidates belonging to S.C. and S.T. categories have been appointed in the said vacancies.

This Court is also of the view that the ratio of the aforesaid two decisions in the cases of Subedar Singh and others (supra) and Ashwani Kumar and others (supra) cannot be made applicable to the facts of the present case, where the disputant workmen have continuously worked in the said posts for more than nine years, but have been deprived of the annual increments.

6. In view of the above position, this Court in the present writ petition, wherein a prayer has been made for issuance of writ of certiorari to quash the impugned award, finds no illegality or impropriety on the face of the award, and, therefore, is hesitant to exercise its jurisdiction under Articles 226 and 227 of the Constitution by, issuing a writ of certiorari for quashing the impugned award. In the result, the writ petition, being devoid of merit is dismissed, but in the circumstances without costs.