

(2005) 06 OHC CK 0015
In the Orissa High Court

Orissa State Co-operative Milk Producer's Federation Ltd.	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 25F

Citation : (2005) 107 FLR 97 : (2005) OLR 787 Supp

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

Bench : Single Bench

Judgement

A.S. Naidu, J.—The Orissa State Co-operative Milk Federation Limited (for short "OMFED") has filed this writ, application challenging the award dated 7th April, 1954 passed by the Presiding Officer, Labour Court, Bhubaneswar in Industrial Dispute Case No. 147 of 1992 directing reinstatement of the workman-opposite party No. 2 in service under the petitioner with full back wages.

2. Opposite Party No. 2, Shri Bhanja Kishore Jena, was an employee under the petitioner OMFED. Alleging that he had been disengaged from service by the petitioner with effect from 14.3.1989 without following the mandatory requirements as stipulated under the Industrial Disputes Act, 1947, the said opposite party had raised an industrial dispute. Conciliation having failed as per the report of the Conciliation Officer-cum-Assistant Labour Commissioner, Bhubaneswar, the dispute was referred for adjudication to the Labour Court at Bhubaneswar by the State Government in exercise of power conferred upon it u/s 10 read with Section 12 of the Industrial Disputes Act, 1947. Tine reference read as follows:

Whether the termination of service of Shri Bhanja Kishore Jena, NMR worker of OMFED Plant, Chandrasekharapur by the Management of OMFED, Bhubaneswar with effect from 14.3.1989 is legal and/or justified? If not, to what relief he is entitled?

3. According to opposite party No. 2 he was engaged as an NMR worker on daily

wage of Rs. 10.00 which was subsequently enhanced to Rs. 11.50. He had joined on 16.9.1986. Without any rhyme or reason the management terminated his service on 18.3.1989 and even without following the mandatory requirements of the Industrial Disputes Act. According to him, many others who had been engaged later than him were retained in service and therefore his retrenchment being unjust, illegal was liable to be set aside.

4. The petitioner filed its written statement taking the stand that the workman-opposite party No. 2 was only a daily labourer and was being engaged as and when work was available. He was never engaged by the petitioner on regular basis. He had been caught red-handed by the security guards while stealing milk packets and he had filed an undertaking before the management not to repeat such act and thereafter for reasons best known to him he did not turn up to duty with effect from 18.3.1989 and absconded. Therefore, it was not possible for the management petitioner to engage him any further.

5. On the basis of the pleadings of the parties the Labour Court framed two issues; in order to substantiate their respective cases, both sides adduced both oral and documentary evidence, Though, opportunity was given to the management petitioner to cross-examine the witnesses examined on behalf of the workman opposite party No. 2, it did not avail the same. On the basis of the materials available on record, the Labour Court arrived at the conclusion that non-engagement of the workman opposite party No. 2 amounted to retrenchment as defined u/s 2(oo) of the Industrial Disputes Act. It further observed that the management petitioner had not followed the mandatory requirement of Section 25-F of the said Act and as the workman opposite party No. 2 was in continuous service exceeding 240 days in the calendar year prior to his retrenchment, payment of retrenchment compensation or notice pay was mandatory. According to the Labour Court the management petitioner having violated the said mandatory requirements of the Act, the order of retrenchment of the workman opposite party No. 2 could not be sustained. On the basis of such conclusion the reference was answered in affirmative and the retrenchment of the workman opposite party No. 2 being found unjustified he was directed to be taken back in service with full back wages. The said Award of the Labour Court is assailed in this writ application.

6. I have heard learned Counsel for the parties at length and have perused the materials available on record meticulously. The averments made before the Labour Court clearly revealed that the workman-opposite party No. 2 had been caught red-handed while stealing milk packets. He had given an undertaking not to repeat such act in future. A copy of the undertaking given by the workman-opposite party No. 2 is also Annexured to this writ application. The tenor of the undertaking clearly reveals that there was no objection for continuance of the petitioner in service subject to the condition that he shall not repeat the mischief. That apart, it appears that the management never initiated any departmental proceeding nor did take any step against the workman opposite party No. 2

except filing an FIR at the concerned police station. The ultimate result of the said FIR is also not brought to the notice of this Court. The stand taken by the management in its written statement that the petitioner had voluntarily abandoned the service and as such he could not be engaged, clearly reveals that the management had no objection to the engagement of the workman opposite party No. 2, but the latter failed to report for duty. Under such circumstances this Court finds no reason to interfere with the direction of the Labour Court directing reinstatement of the workman opposite party No. 2 in service under the petitioner.

7. The only other question is as to whether the workman would be entitled to any back wages. Admittedly the workman has not averred that he was not gainfully employed anywhere else during the period after his retrenchment and he has also not adduced any evidence in that regard. This Court in its earlier decision in the case of Braja Kishore Pradhan v. Tribal Development Corporation 74 1992 CLT 1248 while confirming such an order of reinstatement in service of the workman had come to the conclusion that the workman would not be entitled to any salary from the date of his discharge from service till his reinstatement.

8. I have carefully scrutinized the materials available in the case at hand in the touch-stone of the decision of this Court (supra) as well as the decisions of the Supreme Court. I am conscious of the fact that in many cases the Apex Court while setting aside illegal retrenchment has awarded back wages, but then according to me awarding back wages depends on the facts and circumstances of each case and on scrutiny of the materials available on record a Court may pass orders as would be deemed just and proper. In the present case, as stated earlier, the workman opposite party No. 2 was allegedly involved in the offence of stealing milk packets. He has not pleaded that he was not gainfully employed after his retrenchment from service, and has not adduced any evidence in that regard. The Labour Court has not considered this aspect of the case. That apart the workman opposite party No. 2 was only a daily labourer. Considering all these facts, this Court feels that it is a fit case where the principle of "No work-No pay" squarely applies. Accordingly, I direct that the petitioner shall not be entitled to back wages, but then he shall be reinstated in service on the same terms and conditions which he was availing on the date of his retrenchment.

The writ application is thus partly allowed.