
(2013) 06 OHC CK 0001
In the Orissa High Court
Case No : W.P. (C) No. 9314 of 2010

Pravakar Rout

APPELLANT

Vs

M.D., Industrial Development Corporation of Orissa Ltd.

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2014) 1 ILR (Ori) 266

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Sanju Panda, J.—This Writ Petition has been filed by the petitioner with a prayer to direct the opposite parties to release his arrear salary along with cumulative service benefits within a stipulated period. The brief facts of the case are that the petitioner joined as a Typist in Industrial Development Corporation of Orissa Ltd., (hereinafter referred to as "IDCOL") in the month of April, 1981. Thereafter, he was posted in Baripada Spinning Mill, Ambika Road, Baripada on 01.5.1981, which was a sister unit of IDCOL at that time. While working at Baripada Spinning Mill, Baripada the petitioner made several representations to the Chairman-cum-Managing Director, IDCOL with a prayer to withdraw him from Baripada Spinning Mill and repost in IDCOL but the same were not considered. It appears that on 01.4.1990 IDCOL transferred the ownership of Baripada Spinning Mill to a newly formed separate Corporate entity A.B.S. Spinning Orissa Ltd. It further appears that on 17.9.2001 Baripada Spinning Mill was closed down. It is stated that due to closure of Baripada Spinning Mill the petitioner became jobless and as the opposite parties have not released his salary and other allowances his children were deprived of higher studies. The petitioner again filed representations before the Chairman-cum-Managing Director of IDCOL to release his salary/allowances for maintenance of his family or to post him in any other similar establishment but the same were not considered. It is stated that on 16.2.2008 the petitioner received a letter from A.B.S. Spinning

Mill to appear in an interview on 26.2.2008 at Corporate Office of IDCOL, Bhubaneswar for assessment of his suitability for deployment on deputation in other subsidiary Company. According to the petitioner though he has appeared in the said interview but no intimation was given to him about the result of the interview. It is stated that after A.B.S. Spinning Orissa Ltd., a subsidiary Unit of IDCOL has been winded up and sold, though similarly situated persons to that of the petitioner were transferred to other Units of IDCOL and are still continuing in service the case of the petitioner has not been considered by the opposite parties in spite of repeated requests made by him. The petitioner claims his arrear salary and other consequential service benefits w.e.f. 01.4.1986 to 31.3.2010, the date of his superannuation in the revised scale. It is further stated that the petitioner was appointed by IDCOL, Bhubaneswar and worked at Baripada Spinning Mill as per the direction given by the Welfare Officer, IDCOL on 29.4.1981, and on closure of the said Unit the petitioner has not received his arrear salary and the service benefits as applicable to the employees of IDCOL. It is stated that as the opposite parties have not considered the representations filed by the petitioner for release of his arrear salary and other consequential service benefits, he has approached this Court by filing this Writ Petition for redressal of his grievance.

2. After receiving notice, the opposite parties have filed a counter affidavit admitting the fact that the petitioner was appointed as a Typist in Baripada Spinning Mill, the erstwhile unit of IDCOL in the year 1981 and he as worked in the said establishment as such till 01.4.1990. Thereafter, vide agreement dtd. 16.2.1990, IDCOL transferred the entire Unit of Baripada Spinning Mill along with Aska Spinning Mill to Sonapur Spinning Mill Ltd. w.e.f. 01.4.1990, a separate subsidiary Company registered under the Companies Act, 1956 and enjoying separate legal entity status in the eye of law. As per the said agreement, Sonapur Spinning Mill Ltd. took over all the assets, liabilities and personnel of Baripada Spinning Mill and Aska Spinning Mill. Subsequently the name of Sonapur Spinning Mill Ltd. was changed to A.B.S. Spinning Orissa Ltd. In compliance of the said agreement the services of the petitioner, who was continuing in Baripada Spinning Mill as a workman as on 01.4.1990 got transferred to A.B.S. Spinning Orissa Ltd. as per notice No. G-4731 dtd. 30.3.1990 issued u/s 25FF of the Industrial Disputes Act, 1947 along with the services of all other permanent employees of Baripada Spinning Mill and Aska Spinning Mill. Thus all such employees are legally in the roll of A.B.S. Spinning Orissa Ltd. The petitioner has continued to work in Baripada Spinning Mill by remaining in the roll of A.B.S. Spinning Orissa Ltd. Since the three Spinning Mills of A.B.S. Spinning Orissa Ltd. have become sick, the Company was referred to BIFR for its revival. However, as BIFR could not find out any prospect of its viability, ultimately recommended for winding up of the Company in public interest and Company Act Case No. 4 of 2002 was registered before the Court. In the winding up proceeding all the assets of A.B.S. Spinning Orissa Ltd. have been sold as per orders of the Company Judge and the entire sale proceeds have been deposited with the Official Liquidator for disbursement in accordance with the

mandatory provisions of the Companies Act, 1956. As per order dtd. 15.10.2009 the Company was wound up and the liabilities of the Company are to be settled by the Official Liquidator out of the sale proceeds as per law. In view of the above, it is stated that the petitioner instead of approaching this Court should have approached the Official Liquidator, who has invited claims from the employees and creditors by notice dtd. 19.2.2010 and as such this Writ Petition is not maintainable.

3. Considering the rival submission of the parties and after going through the materials available on record, it appears that the petitioner was appointed by IDCOL and he was posted at Baripada Spinning Mill as per order of the Welfare Officer of IDCOL and it was also not disputed that the petitioner was entitled to his arrear salary and consequently service benefits. The opposite parties also not disputed that similarly situated employees are continuing in other units of IDCOL. However, the case of the petitioner has not been considered by the opposite parties though he has made several representations. This Court in the case of Nayeem Md. Latif Vs. The Industrial Development Corpn. of Orissa Ltd. and Another, relying on a decision of the Supreme Court in the case of Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, 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. In view of the above settled position of law and considering the fact that A.B.S. Spinning Orissa Ltd. being the successor-in-interest of Baripada Spinning Mill has taken over all its liabilities and as the petitioner has worked under it he is entitled to get his service benefits, this Court disposes of this Writ Petition directing A.B.S. Spinning Orissa Ltd.--opposite party No. 2 to pay all the service benefits of the petitioner till his superannuation i.e. 31.3.2010, as expeditiously as possible, preferably within a period of three months from the date of production certified copy of this judgment.