

(2013) 07 OHC CK 0009
In the Orissa High Court
Case No : Writ Petition (C) No. 17487 of 2010

Raj Kishore Rao

APPELLANT

Vs

Orissa State Cooperative Agricultural and Rural Development
Bank Ltd. and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 139 FLR 977

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Siba Pr. Sethy, for the Appellant; Baidhar Sahoo and G.N. Sahu, for the Respondent

Judgement

Sanju Panda, J.—In this writ petition, the petitioner-workman has challenged the award dated 5.6.2010 passed by the learned Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No. 65 of 2004 holding that the action of the opp. party No. 1-management in terminating his service with effect from 13.6.2002 is legal and justified and further he is not entitled to any relief sought for. The brief facts of the case are as follows:

The petitioner was working as a Driver under the opp. party No. 1-management since 1.11.1977 by virtue of the appointment order issued by it. There were two departmental disciplinary proceedings against the workman vide Order No. 917 dated 8.5.2000 and Order No. C/150 (M.D.) dated 14.9.2000. The workman was ordered by the Managing Director of the management to proceed with Office Jeep to Bargarh CARD Bank for one week, i.e., from 18.2.2000 to 25.2.2000 with the Law Officer of Sambalpur Branch in connection with collection duty. But on 22.2.2000, as the said vehicle was not in running condition, the workman reported the matter to the Secretary, Bargarh CARD Bank. But the Secretary without taking any step for repairing the vehicle, asked the workman to wash the vehicle in question. Since there was no sufficient water at Bargarh CARD Bank, the workman was directed by the Secretary to take the Jeep to the canal to wash

it. While the workman was washing the Jeep, unfortunately, the Jeep went inside the canal. On 22.2.2000, the petitioner with the help of the local villagers, lifted the Jeep out of the canal water and brought the Jeep to the campus of Bargarh CARD Bank and informed about the matter to the Secretary of CARD Bank.

2. On the above issue, the management framed charge against the petitioner on the ground that due to his negligence, the vehicle met with accident and that the workman had taken the vehicle unauthorized. Other charges including misbehavior of the workman to the staff of the Bank and also to the Law Officer of Sambalpur Branch of CARD Bank were framed against the petitioner. It also appears that an additional charge was framed against the workman alleging that on 17.1.2000 at about 11.00 A.M. he had been to Head Office of the management in a drunken state of mind and scolded the Superintendent of Type Section in abusive language and thereafter the workman up-rooted the flower trees of the office garden and broken the window glasses of the office.

3. In view of the aforesaid charges, a show cause notice was issued to the petitioner and on 23.5.2000, in response to which the workman submitted his show-cause. During pendency of the enquiry, the workman was put under suspension and an Enquiry Officer was appointed to enquire into the matter. The Enquiry Officer fixed the date of enquiry on 11.8.2000 and the workman was duly intimated about this, but the workman could not attend the enquiry due to his illness and made a request in writing for an adjournment. But the Enquiry Officer conducted the enquiry in absence of the workman.

4. With regard to the additional disciplinary proceeding, the workman submitted his show-cause on 10.10.2000 and the Enquiry Officer enquired into the matter and intimated the workman to attend the enquiry on 15.12.2000. On 15.12.2000, the workman had to perform special puja in his house, therefore, he sought for an adjournment. The Enquiry Officer allowed the adjournment and fixed the date to 23.1.2001. The workman attended the enquiry proceeding as per the date fixed. After completion of the enquiry, the Enquiry Officer submitted his report before the authority. The authority issued second show-cause notice to the workman as to why major punishment should not be imposed on him as he was found guilty of the charges. After receipt of the show-cause, the workman submitted his explanation on 25.6.2001. But the management without considering the show-cause properly, terminated the service of the workman.

5. After termination of service, the workman raised industrial dispute and when the conciliation failed, the petitioner has approached before the learned Labour Court Bhubaneswar in I.D. Case No. 65 of 2004 for appropriate relief.

6. It appears from the record that initially this case was disposed of by the learned Tribunal on 13.3.2007 holding that the action of the management of opp. party No. 1-Bank in terminating the services of the petitioner with effect from 13.6.2002 was legal and justified. Challenging the said award, the workman preferred W.P. (C) No. 14268 of 2007 before this Court, and, ultimately, this

Court vide order dated 20.10.2009 disposed of the matter and observed as follows:

As the dispute is of the year 2004, the Labour Court, shall do well to dispose of the matter as expeditiously as possible, preferably, within a period of four months from the date of receipt of the order.

7. After taking into consideration the materials available on record, the Labour Court came to the following findings:

The pleadings and evidence of the workman make it clear that the workman had not supplied with all the relevant documents regarding the alleged charges levelled against him and he had been duly intimated about the date of enquiry and due opportunity was given to him to defend himself. Therefore, there is no violation of principle of natural justice. The management has proved the documents under the domestic enquiry proceeding which was conducted duly following the procedure prescribed. The materials available on record reveals that the workman was seriously misconstrued and dereliction in his duty and the punishment imposed by way of termination from service is proportionate to the delinquency of the workman as he was found guilty. The termination of service is after completion of domestic enquiry and the workman is not entitled to get any relief as sought for and the Tribunal has answered the reference accordingly.

8. Learned Counsel appearing for the petitioner submitted that neither the Managing Director of the opp. party No. 1 is the appointing authority nor the disciplinary authority and he without obtaining prior approval from the Registrar, Co-operative Societies, Orissa has initiated the disciplinary proceedings, as such, the entire proceeding initiated against him is vitiated. Accordingly, the impugned order is liable to be interfered with.

9. Learned Counsel for the opp. party No. 1, however, supported the impugned award and submitted that as the Tribunal has gone into the merit of the case and taking into consideration the materials available on record, passed a reasoned award, the same need not be interfered with.

10. Considering the rival submissions of the parties and after going through the L.C.R., it appears that the petitioner has not raised questions regarding the jurisdiction of opp. party No. 1 to initiate a domestic enquiry or disciplinary proceeding before the Tribunal, rather he has taken the plea of non-compliance of natural justice for which this Court earlier remanded the matter back to the Tribunal to reconsider afresh and after remand, the matter was reconsidered by the Tribunal and the Tribunal passed a reasoned award dealing with all the materials available on record. Therefore, there is no error apparent on the face of the record, so as to be interfered with the impugned order by this Court in exercising its jurisdiction under Article 227 of the Constitution of India.

Accordingly, the writ petition stands dismissed. No cost.