

**(1998) 02 OHC CK 0025**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 4999 of 1993**

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| Raman Rao P.V. and Others        | Vs | APPELLANT  |
| J.K. Corporation Ltd. and Others |    | RESPONDENT |

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**Date of Decision :** 13-02-1998

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F

**Citation :** (1998) 85 CLT 280 : (1998) 1 LLJ 1084

**Hon'ble Judges :** Susanta Chatterji, J;C.R. Pal, J

**Bench :** Division Bench

**Advocate :** A.K. Bose, for the Appellant; D.P. Nanda, for S.B. Nanda, Respondent Nos. 1 and 2 and Additional Government Advocate Respondent No. 3, for the Respondent

**Final Decision :** Allowed

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## Judgement

Susanta Chatterji, J.—One P.V.Raman Rao and four others who were working previously with M/s.Straw Products Limited have challenged the award passed by the Presiding Officer, Labour Court, Jeypore in I.D. Case No. 73 of 1991. Their prayer is:

"Under the above circumstances the petitioners pray for the following reliefs:

- (a) writ of certiorari be issued quashing An-nexure-4 that is the award of Presiding Officer, Labour Court, Jeypore in I.D.Case No.73/1991;
- (b) The petitioners may be declared to be in service without any break under the opposite parties No. 1 and 2 and direction be issued for payment of the back wages for the period they remained out of job;
- (c) writ of mandamus be issued to the opposite parties No. 1 and 2 for their reinstatement in the service forthwith;
- (d) Any other appropriate order be passed/direction be made or writ be issued which this Hon''ble Court deems just and proper;

(e) The writ application be allowed with cost."

2. It is contended that all the petitioners are workmen and they were regularly appointed under opposite party No. 1, i.e., M/s. Straw Products Ltd. (Forest Organisation) at Rayagada in the district of Koraput, Orissa. While they were in service, the State Government issued a notification on September 21, 1988 under Sub-section (3) of Section 1 of the Orissa Forest Produce (Control of Trade) Act, 1981 in pursuance of which the trade of bamboo was nationalised with effect from October 1, 1988. The Orissa Forest Corporation Limited was entrusted with the work of extraction and trading in bamboos by the State Government. The Straw Products Forest Employees' Union then filed O.J.C.No.3686/1988 before this Court for protection of their livelihood as opposite parties 1 and 2 wanted to retrench near about 100 workmen under its establishment who at the relevant time had been engaged under the Forest Organisation Union of J.K.Paper Mill owned by the Straw Products Ltd. The Union alternatively prayed for continuance of their services under the Orissa Forest Corporation Ltd. in case opposite parties 1 and 2 refused to continue the workmen under different units of the same industrial undertaking, namely, J.K.Paper Mill.

3. On September 28, 1989 the above writ petition filed by the Union was allowed to be withdrawn with liberty to approach this Court again if aggrieved by any subsequent action. It is stated that the Union was persuaded to withdraw the writ application because the State Government in its letter dated August 12, 1989 addressed to the Managing Director, Orissa Forest Corporation Ltd. gave direction to give employment to the retrenched employees of different paper mills in some specified posts. In the said letter it was stated that due to pendency of writ petitions before this Court the Government was not able to take any action and with a hope of getting alternative employment the Union wanted to withdraw the writ application.

4. The petitioners thereafter made a representation to the Vice- President (Forest), Straw Products Ltd., Rayagada against their illegal retrenchment alleging non-compliance with the mandatory provisions of the Industrial Disputes Act, 1947. A copy of the said representation was also sent to the District Labour Officer, Rayagada with a prayer to intervene in the matter. The District Labour Officer issued notice to the management and as conciliation failed, a failure report was submitted to Government who referred the dispute to the Presiding Officer, Labour Court, Jeypore. The said reference was made under the following terms :

"Whether retrenchment of Shri P. V.Raman Rao, Sri B.Rajeswar Rao, Sri H.K.Dutta, Sri A.K.Dutta and Sri S.Thomas by the management, from July 4, 1989 in accordance with the provisions of Section 25-F of I.D. Act, 1947 on the basis of the category-wise seniority list drawn for the purpose was legal and/or justified? If not, what relief were the workmen entitled to?"

5. Upon such reference, the Presiding Officer, Labour-Court framed the following issues :

"(i) Whether the reference is valid and maintainable?

(ii) Whether the industrial dispute is barred by the judgment/order of the Hon"ble High Court?

(iii) Whether there was retrenchment of the workmen coming within the meaning of Section 2(oo) of the Industrial Disputes Act?

(iv) Whether retrenchment was justified and valid?

(v) Whether M/s. Straw Products Ltd. (Forest Organisation), Rayagada is a separate unit from M/s. J.K.Paper Mills, Rayagada and either of the units are independent within their sphere of work?

(vi) Whether the category-wise seniority list prepared by the management of M/s. Straw Products Ltd. (Forest Organization) alone is valid and proper?

(vii) To what relief the workmen are entitled?"

6. The Presiding Officer, Labour Court held that the retrenchment of the workmen was justified and valid and the category-wise seniority list prepared by the management was also proper. Ultimately the award was made observing that the workmen were not entitled to any relief from the management.

7. Being aggrieved by and dissatisfied with the said award of the Presiding Officer, Labour Court, the petitioners have come to this Court. Their grievance is that the management is having three units, namely, (1) J.K.Paper Mills at Rayagada in Orissa, (2) Laxmi Cement, Jaykaypuram, Shirohi in Rajasthan and (3) J.K. Magnetics at Surajpur, Dist-Gaziabad in Uttar Pradesh. Besides, the management has several other new and old establishments where thousands of employees are continuing and there are transfers and retirement. It is stated that there could have been absolutely no difficulty in adjusting the petitioner-workmen in other sections/units or sister concerns. The appointment orders issued by the Company also clearly goes to show that the services of the employees could be transferred to any office/ railway depot/forest organisation/ transport division/mills or any sister concern that were in existence or might come into existence in future. In view of this it is alleged that the retrenchment of the workmen under the plea of bamboo nationalisation is not bona fide. They have also challenged the gradation list as not true and correct.

8. The case of opposite parties 1 and 2 as stated, in their counter-affidavit is that the State Government in exercise of powers under subsection (3) of Section 1 of the Orissa Forest Produce (Control of Trade) Act, 1981 issued a notification on September 21, 1988, as per An-nexure A/1 to the counter affidavit, and following the said notification Government also further notified on the said date that in public interest, an agent for extraction of bamboos of all species from Government forests and trade thereof was expedient to be appointed and,

accordingly, in exercise of powers under the said Act read with Sub-rule (7) of Rule 3 of the Orissa Forest Produce (Control of Trade) Rules, 1983, the State Government appointed the Orissa Forest Corporation Ltd., now renamed as "Orissa Forest Development Corporation Ltd.", a public-sector undertaking of the State, as the sole agent for extraction of and trade in bamboos of all species on behalf of the Government with effect from October 1, 1988. The challenge to the said notification by opposite party No. 1 in this Court in O.J.C.No.3100 of 1988 proved futile and the decision of this Court was also confirmed by the. Supreme Court. Since the Forest Organisation of opposite party No. 1 had no further activities in the matter of felling, cutting and removing of bamboos, the extraction of bamboos from the forest was completely stopped by operation of law, with effect from October 1, 1988. No work remained for the Forest Organisation of opposite party No. 1 except for removal of bamboos already felled out from the leasehold forests prior to nationalisation of forest working. Opposite party No. 1 had to fight out for the said right of removal of the said property from forest. In the meantime, the Straw Products Forest Employees" Union apprehending termination of services of the workers by opposite party No. 1 approached this Court in O.J.C.No.3686 of 1988, but ultimately the said writ application was allowed to be withdrawn. It is stated that the Labour Court has considered all these aspects and found the retrenchment of the petitioners to be justified. The seniority list was correctly prepared and the challenge of the petitioners to the award of the Labour Court is stated to be misconceived.

9. We have perused the pleadings of the parties. We have also perused the impugned award made by the Labour Court. We have considered the challenges to the said award.

10. There is no dispute that the petitioners were properly and validly appointed by M/s.Straw Products (Forest Organisation) Limited which is a J.K.Enterprise/Organisation in terms of the letters of appointment. The said letters of appointment are very important. The conditions of service are incorporated therein. It was open to the management to transfer the services of the employees to any one of their units dealing with several types of business and multifarious diversification. The notification issued by the State Government is also not in dispute as to nationalisation of trade in bamboo and extraction of bamboo from forest areas. Although the said notification was challenged up to Supreme Court, the challenge failed. Though the Employees" Union filed a writ petition in this Court, yet a Division Bench of this Court by order dated August 18, 1989 held that it was however open to the petitioners to challenge the order of retrenchment in appropriate manner before the proper forum. Pursuant thereto the industrial dispute arose relating to retrenchment and a proper reference was made as indicated above. The Labour Court had gone into the matter for effective adjudication by framing several issues and discussing the points. The Labour Court had failed to take note of the terms of appointment. If admittedly there are other units of M/s. Straw Products Limited and the services of the petitioners were transferable, it is not appreciated as to why and how the

Labour Court did not consider the failure of the management to transfer the employees thought to be retrenched. No issue had been framed regarding this aspect as to whether the service of the petitioners could have been transferred to any other unit. The award holding the retrenchment to be justified thereby denying any relief to the petitioners, in our considered view, suffers from irregularity and there has been erroneous exercise of jurisdiction in refusing to accommodate the petitioners in any other unit or sister concern of the principal management.

11. Thus we allow the writ application. The impugned award of the Labour Court is set aside and we remand the matter to the Labour Court for re-hearing and going into the question as to whether the opposite party management ought to have taken steps to transfer the petitioners in the vacancies in its other units as far as practicable. We direct this exercise to be complete within four months of issue of writ. No costs.

C.R. Pal, J.

12. I agree.