

(2006) 12 OHC CK 0023

In the Orissa High Court

Samal Barrage Employees' Union and Another and Mohan
Chandra Sahu and Another

APPELLANT

Vs

Chief Engineer and Basin Manager, Brahmani Left Basin and
Another

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2007) 103 CLT 681 : (2007) 114 FLR 382 : (2007) 1 OLR 331 Supp

Hon'ble Judges : Pradip Mohanty, J; P.K. Mohanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—In the present review petitions, the Petitioners pray for review of the Judgment dated 13-04-2005 passed by this Court in WP(C) No. 7902 of 2003 and W.P.(C) No. 9787 of 2003. By the said Judgment, both the Writ Petitions were disposed of, and by relying upon the decisions of the Apex Court Union of India and others Vs. Deep Chand Pandey and another, and L. Chandra Kumar Vs. Union of India and others, , it was held that this Court has no jurisdiction to entertain the Writ Petitions. It was also observed that since the matters are pending before the Orissa Administrative Tribunal, which is the Court of first instance having ample power and jurisdiction to effectively deal with the grievance of the employees, the Petitioners should pursue their remedy before the Tribunal.

2. Mr. Bijan Ray, Learned senior advocate, appearing for the Petitioners contended that the plea of retrenchment is not pending before the Tribunal nor had the Petitioners been retrenched. He further contended that the factual matrix was misconceived inasmuch as the materials on record were not considered. The decision of the Hon'ble Apex Court in Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India and another, ,

which was relied on by the Petitioners, has not been considered in the Judgment. He also contended that an error has crept in paragraph-8 of the impugned Judgment to the effect that "the Petitioners have assailed the orders of retrenchment under Annexures 4 and 5". The last contention of Mr. Ray was that the orders of the Tribunal and those of the Hon''ble Apex Court as well as the interim orders passed by this Court operate as res judicata. In support of his connections, he relied on the decisions of the Supreme Court in Arjun Singh Vs. Mohindra Kumar and Others, ; Green View Tea & Industries v. Collector, Golaghat, Assam 98 (2004) C.L.T. 157; and Indian Charge Chrome Ltd. v. Union of India AIR 2005 SC 1998.

3. Perused the records of W.P. (C) Nos. 7902 and 9787 of 2003 and the Judgment passed therein. The Petitioners had made the following prayer in W.P. (C) No. 7902 of 2003:

It is, therefore, prayed that the Hon''ble Court may be graciously be pleased to:

(i) Issue a Rule Nisi in the nature of writ of mandamus and/ or certiorate and/or any other appropriate writ/writs, order/orders, direction/directions, calling upon the Opposite Parties to show cause as to why Annexure-3, 4 and 5 shall not be quashed, declaring that the Petitioners continue as work-charged employees of the work-charged Establishment of Samal Barrage;....

From the plain reading of the prayer, it is crystal clear that the Petitioners had prayed for quashing of Annexure-3, 4 and 5, i.e., the orders of retrenchment.

In the Original Applications, which are pending before the Tribunal, the Petitioners have sought for the following reliefs:

Your applicants most humbly say and submit that the original application ought to be allowed and that this Hon''ble Court may be graciously be pleased to:

(i) direct/mandate the Respondents to regularize the services of the applicants with all consequential benefits;

(ii) direct/mandate the Respondents to faithfully implement the order of the Govt. of Orissa dated 15-05-1997 filed and relied upon on oath before the Hon''ble Supreme Court of India within a time span prescribed by this Hon''ble Tribunal; and

(iii) quash the letter/order, dated 29.05.2001 of the Water Resource Department of Govt. of Orissa and declare the same void, non-est, illegal and noneffective; and

(iv) direct/mandate the Respondents to faithfully implement the directions as in the Judgment of this Hon''ble Tribunal in O.A. No.47 of 1993, affirmed by the Hon''ble Supreme Court of India in SLP(C) 10362-10363/95, inter alia being of similarly placed workmen, i.e. employees in similar projects identically circumstanced in the discharge of the nature similar duties cannot be treated unequally and in two different manner(s) thereby treating equals as unequals,

within a time span stipulated by this Hon''ble Tribunal; and

(v) direct/mandate to disburse all arrears of salary with 18% interest thereon.

From the above quoted reliefs, it appears that in sub-para (iii) the Petitioners have sought for quashing of the letter dated 29.05.2001. The said letter was issued by the Addl. Secretary to the Government in Water Resources Department to the E.I.C., Water Resources, Orissa, Bhubaneswar for review of the cases of surplus staff of different projects and circles and for retrenchment of the said surplus staff from service on certain terms and conditions. Perusal of Annexures-3, 4 and 5 to W.P. (C) No. 7902 of 2003 shows that orders have been issued to different Executive Engineers for retrenchment. In view of the aforesaid, the contention of the Petitioners that the plea of retrenchment is not pending before the Tribunal is contrary to the records.

4. The next contention of Mr. Roy is that the decision of the Hon''ble Apex Court in *Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India and another*, which was relied on by the Petitioners, has not been considered in the Judgment under review. Perusal of the said decision shows that it arose out of a case under the Industrial Disputes Act wherein the Apex Court held that if the Petitioners were holding civil posts, the necessary conclusion would be that the Industrial Tribunal has no jurisdiction to adjudicate the dispute on a reference u/s 10(1) of the Industrial Disputes Act and the proper remedy for the Petitioners would be to approach the Constitutional Court under Articles 226 of the Constitution or the appropriate Administrative Tribunal u/s 19 of the Administrative Tribunals Act. Admittedly, the present Petitioners are holding civil posts and their matter is pending before the Orissa Administrative Tribunal and the Tribunal is to adjudicate the matter on merit. Therefore, the said decision is not applicable to the facts and circumstances of this case, and the Judgment under review has rightly been delivered basing on Deep Chand''s case (supra) and L. Chandra Kumar''s case (supra).

5. The next contention of Mr. Ray is that an error has crept in paragraph 8 of the Judgment to the effect that "the Petitioners have assailed the orders of retrenchment". To clarify the position, paragraph 8 of the Judgment is quoted below:

Shri Roy, Learned Senior Counsel for the Petitioners submitted that despite the interim orders dated. 7.3.2002 and 4.7.2002 passed in O.A. Nos. 122(C) to 126(C) of 2002, the Opposite Parties have passed the interim orders of retrenchment under Annexures-4 and 5. Therefore, there was no other alternative than to approach this Court for appropriate and speedy remedy. He also submitted that the Tribunal having refused to modify its earlier order, as would appear from Annexure-2, it was not open to the Opposite Parties to issue orders of retrenchment. Shri Roy, further submitted that neither the retrenchment orders have been served upon the individual employees nor has

the retrenchment compensation been paid to them. Therefore, there is no retrenchment or termination in the eye of law. His further submission is that by virtue of interim Order dated 20.8.2003 passed in W.P.(C) No. 7902 of 2003, the services of the members of the Petitioner-Union are protected. This order was also affirmed by Order dated 23.9.2003 wherein it was directed that in view of the Order dated 20.8.2003, the N.M.R. employees had to be continued till further orders passed by this Court. On 29.10.2003, when the matter was taken up, the Court observed that the employees must be continuing in service in terms of earlier order.

On a bare reading of the aforesaid paragraph, it would be manifest that nowhere this Court has mentioned, "the Petitioners have assailed the orders of retrenchment". Therefore, this contention has to be rejected.

6. The last contention of Mr. Ray is that the orders of the Tribunal and those of the Hon"ble Apex Court as well as the interim orders passed by this Court operate as res judicata. In support thereon, he has filed an additional explanatory notes of written submission. On examination, this Court finds that the said contention has no substance inasmuch as the principle of res judicata has no application to the case at hand. Hence the said contention is rejected.

7. Since the matters are pending before the Tribunal for adjudication, this Court in the Judgment under review felt it proper not to delve into the merits as the same might weigh in the mind of the Tribunal. In other words, any observation that would have been made might prejudice either of the parties.

8. There are definite limitations to the exercise of the power of review. The same could be exercised on the discovery of new and important matters or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review, or could not be produced by him at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of record was found, or on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. The power of review is not to be confused with the Appellate power, which may enable the Appellate Court to correct all manner of errors committed by the subordinate Court. The law in this regard has been summarized in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, . In the present case, none of the aforesaid factors exist warranting review of the Judgment delivered by this Court.

9. In the result, the review petitions are dismissed. No costs.

P. K. Mohanty, J.

10. I agree.