
(2005) 04 OHC CK 0030

In the Orissa High Court

Case No : Writ Petition (C) No's. 7902 and 9787 of 2003

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

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 100 CLT 452 : (2005) 2 OLR 1

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

Bench : Division Bench

Advocate : Bijan Ray, B.S. Tripathy-I, K.K. Ray and R.K. Sahoo, for the
Appellant; A.G.A., for the Respondent

Judgement

Pradip Mohanty, J.—Both the writ applications filed under Articles 226 and 227 of the Constitution of India involve common questions of law and fact. Therefore, they were heard together and are disposed of by this common judgment.

2. In all these writ applications, the petitioner, namely, Samal Barrage Employees' Union, seeks to assail the orders of retrenchment under Annexures-3, 4 and 5. By those orders, it has been directed to take steps to retrench the work-charged employees as per the list. Samal Barrage Employees' Union claims to be a registered trade union espousing the cause of work-charged employees of Samal Barrage. According to the said union, 1224 NMR employees of Samal Barrage approached the Orissa Administrative Tribunal in a batch of Original Applications (O.A. No. 1560(C) of 1993 and others) for regularisation of their services. The Tribunal disposed of all the Original Applications by a common judgment dated 02.06.1995, inter alia, with the following direction :-

"(i) The regularisation of 1224 NMRs in Work-charged establishment shall be with effect from 02.09.1993."

3. It appears that the aforesaid judgment of the Tribunal was affirmed by the Supreme Court. The review petition filed by the State Government was also dismissed. It is alleged by the petitioner-Union that the common judgment dated 02.06.1995 of the Tribunal was not carried out. Therefore, apprehending mischief, the petitioner-Union again approached the Orissa Administrative Tribunal by filing O.A. No. 122(C) of 2002. The Tribunal by order dated 07.03.2002 granted interim protection. This order was sought to be modified by the State Government, but the Tribunal declined to do so, as would appear from the order dated 04.07.2002 (Annexure-2).

4. According to the petitioner, notwithstanding the direction of the Tribunal, the opposite parties have passed orders under Annexures-4 and 5 stating, inter alia, that the members of the petitioner-Union were not protected by any order of the Tribunal in O.A. No. 122(C) of 2002 and, therefore, action may be taken in terms of common judgment dated 02.06.1995 in O.A. No. 1560(C) of 1993 of the Tribunal. These writ applications have been filed assailing the said orders of the State Government.

5. A counter affidavit has been filed by the opposite parties challenging the maintainability of the writ applications. It is also stated in the counter that in compliance of the common judgment dated 02.06.1995 of the Tribunal, 1224 NMR employees were taken over to work-charged establishment with effect from 02.09.1993. But, in view of the poor economic condition, measures were taken to abolish the base level posts. As the State Government found that employees were in surplus, there was no other alternative than to retrench the surplus. Since the 1224 work-charged employees represented through the petitioner-Union were surplus, they were issued retrenchment orders in phases. It is further stated in the counter that out of 1224 work-charged employees, already 951 have received their retrenchment benefits and have been relieved.

6. At the time of hearing, learned counsel for both the parties raised various contentions. One of the contentions raised on behalf of the State was regarding the maintainability of the writ applications. Since maintainability touches the root of the matter, this Court proposes to deal with the said contention at the first instance. In the event, this Court holds that the writ applications are maintainable, then other contentions raised on behalf of the parties shall be dealt with.

7. Shri Routray, learned Additional Government Advocate appearing on behalf of the opposite parties vehemently urged that the petitioners having already approached the Orissa Administrative Tribunal in O.A. Nos. 122(C) to 126(C) of 2002, wherein interim order has been passed and the said Original Applications are pending disposal before the Tribunal, the present writ applications are not maintainable. He further submitted that the employees represented by the petitioner-Union being work-charged employees are holders of civil posts under the State Government. Therefore, in view of Section 15 of the Administrative Tribunals Act, 1985, the Orissa Administrative Tribunal has exclusive jurisdiction

to deal with such matter. In other words, the High Court has no jurisdiction. In support of such contention, he placed reliance on the decision in Union of India and others Vs. Deep Chand Pandey and another, Relying on L. Chandra Kumar Vs. Union of India and others, Mr. Routray further submitted that the Tribunal being the Court of first instance, the petitioner should approach it first, whereafter it is open to the petitioners to approach this Court under Article 227 of the Constitution of India. Additionally, it is submitted that in view of the decision of the Supreme Court in Civil Appeal Nos. 1500 to 1502 of 1993 decided between the parties, the remedy lies before the Tribunal and not before this Court.

8. 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 23.9.2002 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.

9. Undisputedly, the members of the petitioner-Union have approached the Tribunal by filing O.A. Nos. 122 (C) to 126(C) of 2002. In those original applications, the Tribunal, has passed interim order protecting the interest of the employees. Since the employees have already approached the Tribunal the present writ applications at their instance are not maintainable. Moreover, the employees represented by the petitioner-Union are working in the work-charged establishment and as such are holders of civil post under the State Government. Section 15 of the Administrative Tribunals Act, 1985 vests jurisdiction in the Administrative Tribunal to deal with all matters pertaining to service under the Government. Therefore, the Orissa Administrative Tribunal has ample power and jurisdiction to effectively deal with the grievances of the employees. In Deep Chand's case (supra), it was held by the Supreme Court that in respect of a claim by the daily wager employees, the remedy lies before the Tribunal not before the High Court. In view of such decision of the Apex Court, this Court is of the considered opinion that the remedy available to the present petitioners is to agitate their grievance before the Tribunal and not before this Court. Accordingly,

this Court is constrained to hold that the present writ applications are not maintainable.

10. In the midst of hearing, the petitioners filed interim applications, which have been registered as Misc. Case No. 2412 of 2005 and Misc. Case No. 2411 of 2005. In these misc. cases, the petitioners have prayed for interim release of their current/ arrear salaries. Mr. Roy submitted that some of the employees similarly situated like the petitioners have filed separate writ applications claiming for their current/arrear salaries, which have been registered as W.P.(C) Nos. 12734 and 12736 of 2003, which are now pending before this Court. In the said writ petitions, order has been passed by this Court for interim release of the arrear salaries basing upon the letter dated 20.12.2004 of the Executive Engineer, O.E.C.F. Division No. V, Sukinda, where the Government has conceded for release of salaries. After perusal of the records of the aforesaid writ petitions and the orders passed therein, this Court is of the considered view that the present petitioners are also entitled to the similar relief. But since this Court has already held that these writ applications are not maintainable, it is not proper to pass any further interim orders. This Court, however, observes that in the event the petitioners file interim applications before the Tribunal, the Tribunal shall do well to pass appropriate orders in the light of interim orders passed in W.P.(C) Nos. 12734 and 12736 of 2003. This observation is made in order to maintain parity. This Court considering the nature and urgency of the matter directs the Tribunal to dispose of O.A. Nos. 122(C) to 126(C) of 2002 within four months of the receipt of this order. Till then, the interim orders dated 20.8.2003 and 23.9.2003 shall continue.

11. With the aforesaid observation and direction, the writ applications are disposed of.

P.K. Mohanty, J.

12. I agree.