

(2021) 08 OHC CK 0152

In the Orissa High Court

Case No : Writ Appeal. Nos. 256 Of 2015, 394 Of 2016

Sobhan Kumar Mishra

APPELLANT

Vs

Management Of SAIL, Rourkela And Another

RESPONDENT

Date of Decision : 31-08-2021

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 25F

Citation : (2021) 08 OHC CK 0152

Hon'ble Judges : Dr. S. Muralidhar, CJ; B. P. Routray, J

Bench : Division Bench

Advocate : Kiran Rout, D.P. Nanda

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, CJ

1. The challenge in both the writ appeals; one by the Management and another by one Workman is to the same impugned judgment dated 10th April, 2015 of the learned Single Judge in W.P.(C) Nos.17543 to 17548 of 2010.

2. This litigation appears to have a long history. The workman was admittedly engaged by an agency M/s. Mishra Enterprises to work in the establishment of the Central Power Training Institute (CPTI), a Unit of Rourkela Steel Plant (SAIL) to carry out certain job contract. The contract was awarded to M/s. Mishra Enterprises with effect from 16th July, 1993. A new tender was awarded with effect from 24th October, 1997 and according to the Management, M/s. Mishra Enterprises was no longer engaged by CPTI.

3. At the instance of ten workmen, an industrial dispute was raised and the following reference was made by the State Government under Section 12(5) read with Section 10 (1) of the Industrial Disputes Act, 1947 (I.D. Act) to the Labour Court:

"3. The appropriate Government under Section 10(1) read with Section 12(5) of

the I.D. Act, vide its Memo No.3321(7), dated 06.03.2000, made the following Reference for adjudication by the Presiding Officer, Labour Court, Sambalpur.

"Whether the action of the Management of M/s. Mishra Enterprises and M/s. Jai Maa Santoshi Enterprises terminating the services of Sri B.B. Chatriya, A. Bag, P.K. Rout, B. Mohanty, S. Mishra, P.K. Tandi, C. Suna and B. Mahakud (workers of M/s. Mishra Enterprises) and Sri D.R. Sen and Sri S. Samal (workers of Jai Maa Santoshi Enterprises) is legal and justified. If not, what relief they are entitled to and whether they can be regular employees of Central Power Training Institute ?"

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4. The Labour Court framed the following two issues for consideration:

"(1) Whether the action of the Management of M/s. Mishra Enterprises and M/s. Jai Maa Santoshi Enterprises terminating the services of Sri B.B. Chatriya, A. Bag, P.K. Rout, B. Mohanty, S. Mishra, P.K. Tandi, C. Suna and M. Mahakud (workers of M/s. Enterprises and Sri D.R. Sen and Sri S. Samal (workers of Jai Maa Santoshi Enterprises) is legal and justified?

(2) To what relief they are entitled to and whether they can be regular employees of Central Power Training Institution?"

5. On 6th March, 2000 the Labour Court passed an Award declaring that the termination of the services of the workmen by M/s. Mishra Enterprises to be illegal and unjustified and that Section 25-F of the I.D. Act had been violated. The said agency was directed to pay the unpaid wages and all other legal dues of the workmen along with a consolidated sum of Rs.5,000/- to each of the workmen towards interests and litigation expenses.

6. Challenging the aforementioned Award, M/s. Mishra Enterprises filed W.P.(C) No.6275 of 2002 in this Court and the workmen filed W.P.(C) No.4163 of 2003. A learned Single Judge of this Court passed a common order in both the writ petitions setting aside the impugned Award of the Labour Court and remanding the matter to it for a fresh adjudication and decision in accordance with law.

7. On remand, the Labour Court passed a fresh Award dated 30th September, 2009 in which it came to the conclusion that the action of M/s. Mishra Enterprises was justified and legal. Answering the second issue, the Labour Court held that the workmen were not the regular employees of the C.P.T.I. and were not entitled to reinstatement as such.

8. Aggrieved by the above Award, the aforementioned writ petitions were filed by the workmen in this Court. The learned Single Judge noticed that the Labour Court had not addressed the issue whether there was a notification under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act) despite the Management having specifically raised the issue. The learned Single Judge then concluded in para 16 and 17 of the impugned judgment, as under:

"16. In the present case though learned Labour Court has given a finding that prohibition notification under Section 10(1) of the C.L.R.A. Act has not yet been issued in respect of C.P.T.I., no material on that point has been discussed. The reference quoted in para-3 of the judgment clearly shows that there are two limbs in the reference; the first limb refers to action of M/s. Mishra Enterprises etc. in terminating the services of the petitioners, and the second limb reflects on the entitlement of the petitioners to claim regularization under the C.P.T.I. the petitioners being admittedly employees of M/s. Mishra Enterprises, a Labour Contractor, the question which could have been decided was whether the contract between C.P.T.I. and M/s. Mishra Enterprises is a sham contract, and whether the petitioners can be regular employees of the C.P.T.I. Learned Labour Court has not at all addressed this issue. This being a pure question of fact cannot also be decided in a writ petition. The parties may be required to adduce evidence also on this point.

17. In view of such fact, I feel constrained to remand the matter for decision of the Labour Court on the aforesaid point. The petitioners are without job since 1997. They must be fighting litigations with much pain and financial stringency. Taking into consideration the plight of the petitioners, I direct the Management of C.P.T.I. to pay Rs.30,000/- (rupees thirty thousand) to each of the petitioners within 15 (fifteen) days of the appearance of the parties before the Labour Court, Sambalpur or within such further time as extended by the learned Labour Court on proper application being filed to that effect. The aforesaid payment shall be over and above the payment to be made by M/s. Mishra Enterprises. Parties are directed to appear before the Labour Court, Sambalpur on 30.04.2015. Learned Labour Court is directed to dispose of the proceeding on the issue, as aforesaid, within six months from the date of filing of additional pleadings, if any, by the parties."

9. It appears that on the appointed date before the Labour Court on remand, the Management of CPTI paid Rs.30,000/- to each of the workmen. However, it simultaneously filed W.A. No.256 of 2015 in this Court challenging the order of the learned Single Judge.

10. On 30th June, 2016 this Court admitted the appeal and stayed the order passed by the learned Single Judge on the submission of learned counsel for the Management that the learned Single Judge had expanded the scope of the reference which was not permissible in law. As a result, the proceedings before the Labour Court has not proceeded for over six years now.

11. Thereafter, the workman was constrained to file a separate writ appeal i.e. W.A. No.394 of 2016 which obviously was delayed. Both the writ appeals were clubbed for being heard together.

12. The Court has heard the submissions of Mr. D.P. Nanda, learned Senior Counsel for the Management and Mrs. Kiran Rout, learned counsel for the workman.

13. Considering that the dispute did arise in the context of engagement of M/s. Mishra Enterprises by the CPTI for providing workers to attend to the cleaning job in CPTI, the workman in question was certainly a contract labourer. The question whether such contractual employment was specifically prohibited under the CLRA Act or not vi-a-vis CPTI and what would be the legal consequences in either situation was certainly a question that was required to be discussed by the Labour Court in arriving at a conclusion in respect of the first issue framed by it. To that extent, this Court is unable to hold that the impugned order of the learned Single Judge is beyond the scope of the reference made to the Labour Court. Undoubtedly the Labour Court has to confine itself to the terms of the reference made to it but in answering the issues arising therefrom, it was not prevented from examining the legal implication of contract labour being prohibited or not under Section 10 (1) of the CLRA Act.

14. In that view of the matter, while not expressing any view whatsoever on the merits of the contentions of either the Management or the Workman, the Court declines to interfere in the impugned order of the learned Single Judge.

15. The reference shall now stand revived before the Labour Court, Sambalpur and be listed there on 4th October, 2021 for directions. The Labour Court record be returned forthwith by a Special Messenger along with a certified copy of this order. It will be open to both the counsel for the Management and the Workman to produce the certified copy of this order before the Labour Court on the said date. The Labour Court will proceed to dispose of the reference in accordance with law preferably within a period of four months thereafter.

16. The writ appeals are disposed of in the above terms.

17. An urgent certified copy of this order be issued as per rules.

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