
(2010) 03 OHC CK 0053

In the Orissa High Court

Case No : Writ Petition (C) No. 1194 of 2003

Sri Arjuna Chandra Sahoo

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(4), 2, 25B(2), 25F

Citation : (2010) 110 CLT 318

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—This Writ Petition has been filed by the workman-Petitioner against the award dated 14.11.2002 passed by the Presiding Officer, Industrial Tribunal, Rourkela. On an industrial dispute being raised upon failure of conciliation, the matter was referred to the Industrial Tribunal u/s 10(1)(d) r/w Section 12(4) of the Industrial Disputes Act, 1947 (for short "I.D. Act"), the same was registered as I.D. Case No. 23 of 2001. The reference was as follows:

Whether the termination of services of the workman Sri Arjun Charan Sahoo, working as Peon at Fertilizer Branch, Rourkela of the Bank by the Secretary, Sundargarh, Dist. Central Co-operative Bank Ltd., Sundargarh w.e.f. 28.7.2000 is legal and/or justified? If not, to what relief the workman Sri Sahoo is entitled to?

2. After filing of the respective statements by the parties, the Tribunal framed three issues, which read as follows:

1. Whether the 2nd party workman was in continuous employment for more than one year under the 1st party management?

2. Whether the termination of services of 2nd party workman by the 1st party management w.e.f. 28.7.2000 is legal and/or justified?

3. If not, to what relief the 2nd party is entitled to ?

4. Whether the reference is maintainable?

3. In answering Issue No. 1, the Tribunal held that the Petitioner was engaged in the services of the Bank on daily wage basis & worked there continuously for more than 240 days in 12 calendar months & his daily wage was enhanced from time to time. In answering Issue No. 2, it was held that the Petitioner-workman was retrenched from service with effect from 28.7.2000 & was not entitled for regularization in services of the Bank. His retrenchment or termination or dismissal from service is justified because there has been restriction imposed by the Government from time to time on any employment & the appointment of workman was ab-initio void in view of the fact that the authority of the Bank, who appointed the Petitioner was not competent under the Staff Service Rules to appoint him.

4. In answering Issue No. 3, the Tribunal held that it will be justified & equitable to award compensation at the rate of wages for 15 days for completion of every 240 days for which the Petitioner has worked in the bank at the existing & prevalent scale of Rs. 80 per day. Being aggrieved by the said award, the Petitioner-workman has approached this Court in the present Writ Petition.

5. Admittedly, the Petitioner was engaged on daily wage basis by the opposite-bank. Such workman was also being paid annual bonus & arrears of revised wages, which were being revised from time to time. The Petitioner also claimed that large numbers of vacancies are available in the Bank.

6. Learned Counsel for the Petitioner submitted that since the Tribunal found that the reference was maintainable; the establishment is an industry & the Petitioner is a workman, undisputedly, the provisions of the Act are applicable to the facts of the present case. The Tribunal having found that the Petitioner was in continuous employment for more than one year under the management of the bank and his daily wage was enhanced from time to time, it is to be examined as to whether there was violation of the provisions of Section 25F of the Act, by the management. Learned Counsel further contended that the Tribunal is wrong in its conclusion that the decisions cited by the workman are only applicable to the workmen, who are under regular appointment, is unsustainable. He submitted that the Tribunal has committed an error in holding that engagement of the Petitioner was ab-initio void. Learned Counsel for the Petitioner in support of his contentions has relied upon the decisions in the cases of *Pottery Mazdoor Panchayat v. The Perfect Pottery Co. Ltd. and Anr.* AIR 1979 SC 1356, *The State Bank of India Vs. Shri N. Sundara Money, , Cuttack Municipal Council and Anr. v. Presiding Officer, Labour Court and Ors.* 65 (1988) CLT 467, *H.D. Singh Vs. Reserve Bank of India and Others, & Executive Engineer CAD, Kota v. Satya Narain and Ors.* 1999 LAB. I.C. 3386.

7. Learned Counsel for the Opp. Party No. 2, on the contrary, submitted that the stand of the management before the Tribunal was that the Petitioner was never given appointment in terms of the Staff Service Rules, 1984 & rather he was

engaged by the concerned Branch Manager, who did not have any authority to appoint any such person. The Tribunal has rightly observed that engagement of the Petitioner was orally made by the concerned Branch Manager as well as his disengagement was also made orally. The terms of employment & the service condition of staff of Central Co-operative Banks in the State of Orissa are governed by a set of Rules, namely, Staff Service Rules, 1984, which has been prescribed by the Registrar Co-operative Societies, Orissa in exercise of power conferred u/s 33-A(b) of the Orissa Co-operative Societies Act, 1962. The mode of appointment & the appointing authority are prescribed in the said rules. The departure from the aforesaid provisions in engaging the Petitioner, having been made, such engagement is ab-initio void & illegal for which the bank directed for recovery of the amount paid to the Petitioner, from the salary of the Branch Manager. He relied upon the decision in the case of Eranalloor Service Co-operative Bank Ltd. v. Labour Court and Ors. reported in 1986 (2) LLJ 492. It was submitted that the Kerala High Court in the said case has held that appointments made without obtaining prior approval of the Registrar of Co-operative Societies will be declared as appointments made without the authority of law & hence ab-initio void. The contract of service in such cases can be terminated even without any enquiry. If the services of such an appointee is terminated without complying with the provisions of Section 25F of the I.D. Act, he will not be entitled to reinstatement & retrenchment compensation because, in law, the effect of an order sending him out will not be a termination of service but will only be a declaration that he never had been appointed to that post. Though all retrenchment is termination of service, the vice-versa is not always true. According to the Learned Counsel, not allowing the Petitioner to work with effect from 27.7.2000 was not a voluntary act of the management rather the same was an out come of administrative measure, which was guided by the Government Circular under Exts. A, B and C issued from time to time prohibiting the bank from engaging daily rated casual workers.

8. Learned Counsel for the Petitioner, however, in reply, submitted that service rules will not prevail over the I.D. Act & denial on the ground that the appointment was not as per the bank's rules, is not proper. Hence, the Petitioner was entitled to reinstatement with full back-wages. For the above contention, Learned Counsel for the Petitioner relied upon the decision in the case of Vikramaditya Pandey Vs. Industrial Tribunal and Another, .

9. The findings recorded by the Tribunal on Issue No. 1 clearly shows that the Petitioner was engaged to work in the Bank as a Peon on daily wage basis from 1.10.1995 to 27.7.2000. This claim was not seriously questioned by the management. Documents produced before the Tribunal prove this fact. The Petitioner was in continuous services of the Bank for more than one year. The Tribunal, therefore, concluded that the Petitioner was engaged in the services of the Bank on daily wage basis & worked there continuously for more than 240 days in a calendar year & his daily wage was enhanced from time to time. With regard to issue No. 2, the Tribunal held that there is no controversy that the

workman was terminated from the services of the Bank with effect from 28.7.2000 but stating that there was no regular employment of the workman & no appointment letter was issued by the Bank to the workman even though the Branch Manager conducted an interview & no appointment letter was asked for by the workman, taking into consideration the Staff Service Rules of the Bank, concluded that the appointment of the Petitioner was not according to the said rules. It, therefore, arrived at a finding that the workman was not entitled to regularization in services of the Bank & his retrenchment or termination or dismissal from service was justified because there has been restriction imposed by the Government from time to time on any employment whatsoever & his appointment is found to be ab-initio void. It was further held that there was no violation of the provisions of Section 25F of the I.D. Act & the Petitioner at best can be compensated by giving him wages for 15 days for completion of every 240 days " Rs. 80 per day.

10. The moot question, therefore, which arises in this case, is that even accepting that engagement of the Petitioner was not in accordance with the Staff Service Rules, 1984, it having been found that the Petitioner was a" workman who has rendered continuous service of 240 days in one calendar year, whether there was necessity for compliance of Section 25F of the I.D. Act. A similar issue came up before the Supreme Court in the case of Vikramaditya Pandey (supra) where the Supreme Court was considering a question of denial of relief of reinstatement with back wages on the ground that recruitment of the workman was not as per the service rules. In the said case quoting Regulation 103 of U.P. Co-operative Societies Employees Service Regulations (1975), it was held that in the said Regulation 103 it has been clearly provided that the provisions of the said Regulations to the extent of their inconsistency with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 & any other Labour Laws for the time being in force, if applicable to any Co-operative Society or class of Co-operative Societies, shall be deemed to be inoperative. The Supreme Court, therefore, came to the conclusion that the High Court has misread the said provisions which lead to a wrong conclusion.

11. In the present case, the Central Co-operative Banks Staff Service Rules 1984 which was relied upon by the Opp. Parties to show that appointment of the Petitioner was illegal, prescribes in Rule 58 thereof as follows:

58. Rights & Privileges Under Any Other Law:

Nothing contained in these Staff Service Rules shall operate in derogation of any law, applicable or to the prejudice for any right under a registered agreement, settlement, or award for the time being in force or in-future or contract of service, if any, as per general law applicable to the members of the staff.

A plain interpretation of the above Rule would go to show that none of the rules prescribed thereunder shall operate in derogation of any law applicable. The

Petitioner having been found to be a workman, by the Tribunal, who has put in more than 240 days work in one calendar year, therefore, cannot be deprived of his rights under the I.D. Act. The Learned Tribunal has categorically held that the Petitioner was retrenched from service. These findings have not been challenged by the management & have become final. In the case of State Bank of India (Supra), the Supreme Court while considering the case of retrenchment & the question of violation of the provisions of Section 25F of the I.D. Act, in the facts of the said case where the workman was appointed as cashier, off & on by the Bank, held that notwithstanding the intermittent breaks, his total number of days of employment answered the test of "deemed" continuous service within Section 25B(2). It was further observed that statutory construction when Courts consider welfare legislation with an economic justice bias, cannot turn on cold print glorified as grammatical construction but on teleological purposes & protective intendment. In such situation, it was held that Section 25F will facilitate the diagnostic task thus observing, the Supreme Court held as follows:

Without further ado we reach the conclusion that if the workmen swim into the harbour of Section 25F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Section 25B(2). But argues the Appellant, all these obligations flow only out of retrenchment, not termination outside that species of snapping employment. What, then is retrenchment? The key to this vexed question is to be found in Section 2(oo) which reads thus: 2(oo) retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (a) Voluntary retirement of the workman; or
- (b) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer & the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill-health.

For any reason whatsoever-very wide & almost admitting of no exception. Still, the employer urges that when the order of appointment carries, an automatic cessation of service, the period of employment works itself out by efflux of time, not by act of employer. Such cases are outside the concept of "retrenchment" & cannot entail the burdensome conditions of Section 25F of course, that a nine-days employment hedged in with an express condition of temporariness & automatic cessation, may look like being in a different stree (if we may use a colloquialism) from telling a man off by retrenching him. To retrench is to out down. You cannot retrench without trenching or cutting. But dictionaries are not dictators of statutory construction where the benignant mood of a law &, more emphatically, the definition clause furnish a different denotation. Section 2(oo) is the master of the situation & the Court cannot truncate its amplitude.

12. Applying the ratio of the aforesaid decisions to the facts of the present case,

it is clear that the conclusion arrived at by the Tribunal is fallacious. It is also seen that in the case at hand, the provisions of Section 25F of the I.D. Act have been utterly violated by the employer entitling the Petitioner-workman to an order of reinstatement as the retrenchment is found to be illegal.

13. Coming to the question of back wages, since the Petitioner has been retrenched with effect from 28.7.2000 & in the meantime about nine years have elapsed in view of this, the Petitioner is not entitled to get full back wages but for a compensation of Rs. 50,000. The impugned award is thus set aside. It is directed that the Petitioner be reinstated in service & a compensation of Rs. 50,000 (Rupees fifty thousand only) be paid to him, in lieu of back wages.

The Writ Petition is, accordingly, allowed, but in the circumstances, there shall be no order as to cost.