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**(2009) 03 SC CK 0002**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 1966 of 2009 (Arising out of SLP (C) No. 4166 of 2007)

State of Orissa and Another

APPELLANT

Vs

Bilash Chandra Ojha

RESPONDENT

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**Date of Decision :** 27-03-2009

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 12, 25F, 25I

**Citation :** (2009) 121 FLR 728 : (2009) 4 JT 518 : (2009) 3 LLJ 231 : (2009) 5 SCALE 326 : (2009) 12 SCC 264 : (2009) 2 SCC(L&S) 781 : (2009) 5 SCR 1219

**Hon'ble Judges :** Asok Kumar Ganguly, J;Arijit Pasayat, J

**Bench :** Division Bench

**Advocate :** Shibashish Misra, for the Appellant; C.K. Sucharita, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Orissa High Court dismissing the writ petitions filed by the appellants. In the Writ Petitions filed by the appellants the challenge was to the order passed by the Presiding Officer, Labour Court in I.D. Case No. 71 of 1988.

3. Background facts in a nutshell are as follows:

The industrial dispute was initiated by the respondent workman, inter alia, challenging the termination of his service. Conciliation having failed, the State Government in exercise of the powers conferred upon it u/s 10 read with Section 12 of the Industrial Disputes Act, 1947 (in short the 'Act') referred the following dispute to the Labour Court for adjudication. The reference read as follows:

Whether the termination of Sri Bilash Chandra Ojha, Compositor from service by the management of M/s. Information and Publication Printing Press, Krushi Sambada Sarabaraha Sanstha in November, 1981 is legal and/or justified? If not

to what relief Sri Ojha is entitled?

The case of the workman before the Labour Court was that he was engaged as a Compositor by the Management from 14.3.1980 till 10.10.1981. He asserted that as statutory provisions of Section 25F of the Act having not been complied with the order of termination of his service was unjust, illegal and he was entitled to reinstatement in service with full back wages.

The management appeared before the Labour Court and filed a written statement admitting the fact that the workman was engaged under it but then took a stand that he had voluntarily abandoned his service and, as such, he was not entitled to any relief. It was also pleaded that the appellant is not an industry and, therefore, the Act had no application. It was also pleaded that the claim of the workman of having worked for more than 240 days was without any basis. The workman had appeared at a test for selection, but was not successful.

The labour court found that the workman worked continuously for more than 240 days in the calendar year preceding the date of termination of the service. Therefore, the mandatory provisions of Section 25I of the Act were not complied with and, therefore, the termination was unjust and illegal. Therefore, the Labour court directed reinstatement but without back wages. The Award was assailed by the appellants in a writ petition. The High Court dismissed the same holding that the conclusion of the Labour Court that the workman had worked for more than 240 days, was based on available material. Additionally, the mandatory provisions of Section 25F were not complied with.

3. In support of the appeal learned Counsel for the appellant submitted that various stands taken by the appellant have not been considered. Basic stand was taken before the Labour Court that the appellant is not an industry. That question has not been decided. The Labour Court had directed and held that though the respondent was engaged on casual basis, he deserves to be regularized. Further stand of the appellants that he had abandoned the work has not been considered also. It is pointed out that the Conciliation Officer categorically recorded while holding that there was failure of conciliation that a test was held in February, 1982 where the respondent had appeared and was unsuccessful. It was also noted that the respondent had not worked for more than 240 days in one calendar year, and he was engaged only as a casual labourer and had abandoned the job and was not thrown out employment as claimed.

4. Learned Counsel for the respondent on the other hand submitted that the Labour Court and the High Court have taken note of the relevant aspects and there is no scope for any interference.

5. We find that neither the Labour court nor the High Court considered the relevant aspects like whether the Agricultural Department of the Government of Orissa is an Industry and that whether there was any scope for being regularised when admittedly the Labour court found that the respondent was engaged on

casual basis. The other question was whether there was any termination or whether the respondent had abandoned the work. These factors apparently have not been considered. Further the question whether the respondent had worked for more than 240 days in a calendar year has also not been considered in the proper perspective. That being so, the impugned order cannot be maintained and is set aside. The matter is remitted to the High Court to consider the relevant aspects afresh.

6. The appeal is allowed.