

(2007) 03 OHC CK 0057
In the Orissa High Court
Case No : O.J.C. No. 10981 of 2000

State of Orissa and Others		APPELLANT
	Vs	
Sri Trinath Jena and Others		RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : (2007) 03 OHC CK 0057

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Government Advocate, for the Appellant; Manoj Mishra, Promod Kumar Das, S.K. Pradhan and A.K. Nayak, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This writ application is directed against the award dated 26th July, 1999 passed by the Labour Court, Bhubaneswar in I.D. Case No. 115 of 1993 answering the reference in favour of workmen-opposite parties and directing their reinstatement in services with 50% back wages.

2. Reference is as follows:

Whether termination of services of Sri Trinath Jena and 37 Ors. (as per list enclosed) by the Executive Engineer, Mayurbhanj Investigation Division, Udala with effect from dates mentioned against their names is legal and justified? If not, what relief they are entitled to?

3. Though the reference was made in respect of 38 workmen, the Petitioner subsequently engaged 8 persons out of the said 38, as a result of which, 30 workmen filed their claim through Zonal Secretary of their union. The case of the management-Petitioner is that the said workmen were engaged as N.M.R. on as and when required basis during execution of the Kalo Irrigation Project and the construction of the said Irrigation Project having been closed, some of the workmen were disengaged. It is also the case of the management that out of 30

workmen before the labour Court, two namely, Shri Bidyadhar Nayak and Mohendra Tripathy were retrenched after payment of their retrenchment compensation and two other workmen namely, Sri Girish Chandra Biswal and Rabindranath Jena were never engaged by the management. It is also the case of the management that prior notices were issued to nine workmen due to closure of the work and seventeen workmen had voluntarily abandoned the work. Those workmen, who voluntarily abandoned the work, could not be served with notice as their addresses were not known. The case of the workmen is that although the management issued notices to the workmen, such as, Sri Trinath Jena, Syam Mahakud, Tika Dehuri, Dinabandhu Mahakud, Ramanath Behera, Surendra Samal, Gangadhar Jena, Baidyanath Mohakud, Ratnakar Jena and Bhagabat Jena, no retrenchment compensation was paid to them. It is also the case of the workmen that out of 30 workmen, 20 workmen had neither been served with any prior notice nor paid any notice pay or retrenchment compensation. The principle of "first come last go" was not also followed by the management. Accordingly, a prayer was made for reinstatement in-service.

4. On pleadings of the parties, the labour Court framed two issues in relation to the reference. So far as issue No. 1 is concerned, the labour Court on facts and evidence found that the management had failed to issue any prior notices to seventeen workmen and no retrenchment compensation was paid to them whereas their services were terminated. The notices issued to nine workmen were on pick and choose method and there was no rational behind it. So far as issue No. 2 is concerned, the labour Court held that even though a stand was taken by the management that the Government have imposed total ban on appointment of N.M.R. but there was no evidence in respect of such stand. With the above findings, the labour Court allowed reference and directed reinstatement of all the 30 workmen apart from a direction for payment of 50% of back wages.

5. Learned Counsel appearing for the State-Petitioner submitted that if retrenchment had been done violating Section 25-F of the I.D. Act 1947, relief of reinstatement with full back wages should not be given automatically. Reliance is placed by the learned Counsel appearing for the State on a decision of the Apex Court in the case of Haryana State Electronics Development Corporation Ltd. Vs. Mamni, .

6. Shri Manoj Mishra, the learned Counsel appearing for the workmen-opposite parties submitted that there being no dispute that at the time of termination of service the opposite parties were serving as N.M.R. and, admittedly notices having not been served on seventeen out 30 workmen, the labour Court was justified in holding that the termination without compliance of Section 25-F of the I.D. Act 1947 was illegal. So far as nine other workmen, who were given notices are concerned, the labour Court further found that though the said nine workmen were served with notices, they had not been paid retrenchment compensation in terms of Section 25-F of the Act and, accordingly, their termination orders were

also held to be illegal. Even in respect of termination of three workmen, such as Trinath Jena, Bidyadhar Nayak and Mahendra Tripathy, the labour Court held that there has been violation of Section 25-F of the Act. It was contended by the learned Counsel for the workmen-opposite party that the labour Court having given the reasons in allowing the reference, this Court may not interfere with the award.

7. So far as Trinath Jena is concerned, as is evident from the record he was disengaged for two reasons, such as, surplus staff and failure to discharge his duties. So far as allegation regarding failure to discharge duties is concerned, no inquiry was conducted at all. He was simply disengaged from 1.1.84 without paying retrenchment compensation. There being no dispute that the said workman had been engaged from 1.5.1978 to 31.12.1983, he was entitled to retrenchment compensation and the same having not been paid prior to termination, the labour Court was justified in holding that his termination is not legal. So far as Bidyadhar Nayak and Mohendra Tripathy are concerned, it appears from Ext.B series that Shri Bidyadhar Nayak was engaged from 1.8.1978 to 30.4.1984 and Shri Mohendra Tripathy was engaged from 2.5.1984 to 31.3.1986. Since the record itself shows that they had worked even in the year 1984, the stand taken by the management is that these two workmen had been given retrenchment compensation on 28th January, 1983, cannot be accepted. If they had been given retrenchment benefit and their services were dispensed with, they could not have been engaged after 28th January, 1983. On this ground, I do not find any illegality in the order passed by the labour Court. Out of rest workmen, admittedly nine were served with notices and seventeen had not been served with notices. There is nothing on record to show that the retrenchment compensation either had been paid to those workmen, who had been served with notices or those workmen, who had not been served notices. Accordingly, the labour Court was justified in holding that 25-F of the I.D. Act having been violated, the termination of these workmen was illegal. The decision on which reliance is placed by the learned Counsel appearing for the Petitioner has no application to the facts of the present case.

8. In the reported case, the workman was appointed on ad hoc basis. Though she was qualified to hold the post of junior technician when the advertisement had been issued for filling up the said post, she did not apply therefore. The services of the workman were terminated in the year 1992 and she was again reemployed after a gap of one or two days. The question that was placed for consideration was if she had been reinstated in service on ad hoc basis whether her services can be regularized. In this case the question of regularization does not arise at all. The reference clearly shows as to whether the termination of these workmen was justified or not. Once reference is answered in favour of the workmen, they should be reinstated in the same post, which they were occupying on the date of termination. The question of regularization is neither raised nor adjudicated before the labour Court. I am, therefore of the view that the decision on facts, has no application to the present case. Apart from the

above, the present case is also covered by a decision of this Court in the case of State of Orissa v. Balabhadra Behera and Ors. vide O.J.C. No. 12763 of 1999 disposed of on 13.7.2004. The facts involved in the present case are more or less similar to the facts involved in the aforesaid disposed of case.

9. I, therefore do not find any merit in this writ application and accordingly, the same stands dismissed.