

(2010) 05 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 9203 of 2001

The Executive Engineer, Badanala Irrigation Division,
Kenduguda, Dist. Rayagada

APPELLANT

Vs

1st Workman, Sri Ratnakar Sahu and another

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2010) 05 OHC CK 0005

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Patel, J.—In this writ petition the employer has assailed the legality of the award dated 26.6.2000 passed by the learned Presiding Officer, Labour Court, Jeypore (for short "the Labour Court") in I.D. Case No. 74 of 1999 directing reinstatement of the opposite party No. 1-workman as N.M.R. Mate within three months from the date from which the award becomes enforceable failing which the workman has been held to be entitled to get full back wages from that date.

2. The impugned award was passed in adjudicating the following reference made u/s 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (for short "the Act"):

Whether the action of the Executive Engineer, Badanala Irrigation Vision, Kenduguda, Dist, Rayagada in terminating the services of Sri Ratnakar Sahu, Ex-N.M.R. Mate with effect from 11.2.87 is legal and/or justified ? if not, what relief Sri Ratnakar Sahu is entitled to ?

3. The workman's case, in brief, is that he was engaged as N.M.R. in different Sub-divisions under the petitioner during the period from July, 1982 to December, 1989. Though he worked on each day including all holidays, the

petitioner showed artificial breaks on records. Finally his service was terminated in December, 1989 without complying with the provision u/s 25-F of the Act. Though about 28 persons were engaged as N.M.Rs. after the workman's retrenchment, he was not offered any opportunity as required u/s 25-H of the Act. In the written statement it was pleaded by the employer that the workman had worked between 15.2.1983 to 11.2.1987. However, he used to remain absent frequently and finally abandoned his work from 11.2.1987. According to the employer, the workman had worked for 51 days in 1983, 256 days in 1984, 341 days in 1985, 155 days in 1986 and 38 days in 1987. It was further contended by the employer that the workman could not be given employment due to ban order issued by the State Government. On the basis of rival pleadings, learned Labour Court settled the following three issues for adjudication :

(i) Whether the workman abandoned his job or he was refused employment with effect from 11.2.87 ?

(ii) If it is a case of refusal of employment whether it is legal and/or justified ?

(iii) What relief ?

In order to substantiate his claim, workman examined himself as WW No. 1 and also relied upon documentary evidence. No evidence was adduced from the side of the employer. In answering issue Nos.(i) and (ii), it was held on the basis of materials on records by the Labour Court that the workman was refused employment w.e.f. 11.2.1987 and that such refusal was neither legal nor justified. Accordingly, the impugned order directing reinstatement was passed. But it was held that the workman would not be entitled to backwages.

4. In assailing the impugned award, the learned counsel for the employer reiterated the stand taken before the Labour Court. It was contended that not only the workman remained frequently absent during the period of his engagement between 1983 to 1987 but also he finally abandoned the engagement from 11.2.1987. It was further contended that the workman did not adduce any evidence to indicate that he was in continuous service for not less than one year prior to 1987.

5. Learned counsel appearing for the workman contended that the workman adduced cogent evidence on the basis of which the learned Labour Court has come to a categorical finding that the workman was refused employment. Despite his representations made till he took recourse to remedies under the Act, the workman's grievance was ignored by the employer. On the contrary, the employer provided engagement to 28 new NMRs. No attempt was made to substantiate the stand taken by the employer that the workman abandoned his employment. As the workman was retrenched without adhering to the conditions prescribed u/s 25-F of the Act, there is no infirmity in the impugned order.

6. Admittedly, no evidence was adduced on behalf of the employer to

substantiate the plea of abandonment of employment by the workman. On the contrary, workman examined himself as W.W. No. 1 and also produced series of representations marked as Ext. 2 to Ext. 2/e submitted to the employer between 20.12.1990 to 31.1.1987 for reinstatement. Learned Labour Court has rightly held on the basis of the representations that the workman has substantiated his plea that he was in need of a job which was ignored by the employer and that employers' plea of abandonment cannot be believed. In the written statement, it was admitted by the employer that the workman had been employed during the period between 15.2.83 to 11.2.1987. According to the employer, the workman was engaged for 41 days in 1983, 256 days in 1985, 341 days in 1985, 155 days in 1986 and 38 days in 1987. Though the employer took the plea that the workman remained absent frequently for which he cannot be held to be in continuous service, the employer failed to show that the workman was served with any notice to show cause or any disciplinary proceeding was initiated and action was taken against him for his frequent absence. Even for his so called abandonment, employer does not appear to have asked the workman to resume his duties. Documents indicating details of workman's engagement filed by the employer itself revealed that the workman's engagement from 21.5.1984 to 11.2.1987 was almost continuous between 1.2.1985 to 24.5.1986. The employer used to provide work for 10 days in a spell with one day break in between such spells. It has been rightly held by learned Labour Court that such artificial breaks were not due to absence of the workman, but was enforced by the employer to ensure that the workman could not claim continuity of service. In respect of two long breaks, one from 25.5.1986 to 23.9.1986 and the other from 23.10.1986 to 23.12.1986 also there was no specific explanation by the employer. No notice to show cause was found to have been issued for such absence. Though employer has taken the stand that the workman abandoned the service in the year 1987, in course of hearing, learned counsel for the workman produced copy of Muster Roll, obtained by the workman in response to his application under the Right to Information Act, which indicates that the workman rendered service for another spell of 10 days from 3.12.1989 to 12.1.1989. In such circumstances, there appears no infirmity in the finding of the learned Labour Court to the effect that the workman had worked continuously for more than one year before refusal of employment to him. Admittedly, employer has not resorted to the provision u/s 25-F of the Act for retrenchment of workman. Hence, refusal of the service to the workman certainly amounts to illegal retrenchment. The employer also did not dispute regarding engagement of 28 NMRs even after refusal of employment to the workman. Therefore, the employer's stand that ban order issued by the State Government came on the way of workman's reinstatement has rightly been ignored by the learned Tribunal.

7. While exercising supervisory jurisdiction, this Court is not to act as an appellate Court. This limitation necessarily means that finding of fact reached by the tribunal after appreciation of evidence cannot be reopened or questioned in the writ proceedings and only an error of law which is apparent on the face of the

record can be corrected by a writ Court, but not an error of fact, however grave it may appear to be. The finding of fact recorded by the Tribunal can be interfered with by a writ Court only if the High Court is satisfied that the Labour Court had erroneously not considered or refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which could be corrected by a writ of Certiorari as has been held by the Supreme Court in the Case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, . In this connection decisions in Sri Saroj Kumar Mohapatra v. Presiding Officer Labour Court, Jeypore and another: 2006 (Supp-II) OLR 740 and Mohammed Yusuf Vs. Faij Mohammad and Others, may also be referred to.

8. Upon scrutiny of the impugned order, there does not appear any infirmity in the impugned award warranting interference by this Court in exercise of its jurisdiction under Article 226 and 227 of the Constitution of India. The workman has rightly been directed to be reinstated in view of non-compliance of provisions u/s 25-F of the Act.

The writ application is dismissed.