
(2009) 07 OHC CK 0002

In the Orissa High Court

Case No : Writ Petition (C) No. 6222 of 2002

The Management of E.H.T. (C) Division

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(4), 12(5), 2, 25B

Citation : (2009) 108 CLT 601

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

Bench : Single Bench

Advocate : Banoj Kumar Patnaik, P. Sinha, P. Choudhury, M. Samantaray and S. Patnaik, for the Appellant; A.G.A. for O.Ps. 1 and 2, Somanath Mishra, G. Tripathy and S. Mishra for O.P. 3, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—The award dated 30.09.2003 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No. 2 of 1999, under Annexure-7 to the writ petition is challenged in the present writ application.

2. The facts in nutshell necessary for adjudication of this case as follows:

The opposite party No. 3-OSEB Workers Union, a registered Trade Union, raised industrial dispute alleging refusal of employment to Sri Kanhu Singh and 45 Ors. in their letter dated 21.03. 96 enclosing the list showing the dates of refusal of employment. Conciliation having failed, failure report was submitted to the Government upon which the Government of Orissa in its Labour and Employment Department in exercising powers conferred u/s 12(5) read with Section 10(1) of the Industrial Disputes Act, 1947 made a reference to the Presiding Officer, Labour Court, Bhubaneswar. The schedule of reference is as follows:

Whether the action of the management of M/s. Executive Engineer, E. H. T. (Construction) Division, Balasore in refusing employment to Sri Kanhu Singh and 45 Ors. from the date as mentioned against each in the Annexure-B is legal and/

or justified? If not, to what relief they are entitled to?

Annexure-B to the reference contains various dates of alleged refusal of employment, where it was stated that the workmen at serial Nos. 1 to 15, 23 to 26, 30 to 40 and 44 were refused employment on 30.06.1989 and workmen at serial Nos. 16 to 19 were refused employment on 31.03.1989. Refusal of employment in respect of workmen at serial No. 20 was 31.12.1988, in respect of serial Nos. 21, 22 and 27 was on 28.02.1993, in respect of serial No. 28 was on 02.02.1993, in respect of serial No. 29 was on 26.02.1993, in respect of serial Nos. 41 and 42 was on 28.02.1993, in respect of serial Nos. 43 and 44 was on 30.06.1987 and in respect of serial Nos. 45 and 46 was on 30.06.86. After filing of the statements of the respective parties, they led evidence, examined witnesses and exhibited documents in support of their respective cases. After conclusion of hearing, the Presiding Officer, Labour Court passed the impugned award holding that the action of the Management - Executive Engineer, EHT (Construction) Division, Balasore in refusing employment to Kanhu Singh and 45 Ors. , the list of which was communicated to the Labour Court vide Memo No. 10553/LE., dated 06.09.2002, is illegal and unjustified. The workmen are entitled to be reinstated in service in the same status as they were on the date of the alleged refusal of employment. The workmen will also be entitled to get 25% back-wages. In case, the Management finds it difficult to reinstate the workmen, each of the eligible candidate should be paid a lump sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) along with the back wages to the extent indicated above. The Petitioner being aggrieved by the said award has preferred the present writ application for appropriate relief.

3. Mr. Banoj Kumar Pattnaik, learned Counsel appearing for the Petitioner raised the following questions of fact and law for consideration of this Court:

(I) Is the Court empowered under law to go beyond questions referred for adjudication?

(II) Whether the workmen have proved their alleged refusal of employment on the respective dates as mentioned under Annexure-B?

(III) Whether the workmen have proved that any or all of them have completed the period of continuous service as defined u/s 25-B of the I.D. Act?

(IV) Whether as per the pleadings of the Management, the 15 names in the list of Annexure-B to the reference should go out of consideration?

(V) Whether all the workmen concerned in the reference have been identified on record or is identifiable?

4. Mr. Pattnaik, in support of the above questions drawing the attention of this Court to the provisions of Section 10(4) of the Industrial Disputes Act as well as Annexure-B to the reference submitted that the Labour Court u/s 10(4) of the I.D. Act cannot carve out a dispute nor can change the context of the order of reference and cannot go beyond the question specified therein. He further

contended that the onus lies on the workmen to prove their engagement and the dispute raised by them. According to him, the Management has produced the relevant documents such as the N. M. R. bills containing the names of workmen engaged and their period of engagement as well as the payments made to them, which clearly proved that some of the workmen were not engaged and Ors. were not in the roll on the date of refusal of employment. None of them also completed 240 days of continuous service within one calendar year.

5. With regard to the allegations that the retrenchment was in violation of principles of natural justice, it was his submission that none of the workmen having completed continuous service as defined u/s 25-B of the I.D. Act, they are not entitled to the protection provided in the said Act. The other contentions raised by Mr. Pattnaik were with regard to the factual disputes. In support of his submission Mr. Pattnaik also relied on various case laws.

However, considering the contentions raised by Mr. Pattnaik, which are basically disputed questions of fact, this Court is not inclined to examine the same.

6. Mr. Somanath Mishra, learned Counsel appearing on behalf Of the opposite parties, per contra, urged that the award passed by the Labour Court is based on appreciation of evidence adduced before him, both oral and documentary, by the respective parties and there being no error much less any error of law apparent on the face of the record and the findings arrived at by the Labour Court not being perverse, there is absolutely no scope for this Court to interfere with the said award. He relied upon the decision in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, in support of his above contention. He further submitted that the Management has challenged the award mainly on the ground that the workmen have not worked for 240 days in a calendar year and thus the management was not required to comply with the mandatory pre-conditions as provided u/s 25F of the I. D. Act and the workmen have not discharged the burden of proof by proving that they worked for 240 days in a calendar year so as to be entitled to the protection provided u/s 25F of the I.D. Act. According to Mr. Mishra, such ground of challenge is not available to the Management inasmuch as the Labour Court has not passed its award on the basis of the aforesaid grounds, rather, the Labour Court after going through the oral and documentary evidence adduced by the parties has come to the finding that the action of the Management in refusing employment to Kanhu Singh and 45 Ors. , as per the list communicated to it along with the reference, was illegal and unjustified as the Management did not follow the procedure as contemplated in Exts. 4 and 5, which are admittedly applicable to the workmen.

7. After the reference was made, the workmen and the Management were called upon to file their claims statement and the written statement respectively. A claim statement was filed on behalf of the workmen as at Annexure-4, inter alia, stating that the workmen were retrenched from their employment by the Management without any valid reason and the Management engaged junior workmen of the carder ignoring the claim of the workmen which is in clear

violation of the GRIDCO (OSEB) Guidelines and Circulars, which were in force. It was further pleaded that the workmen were not given any opportunity of hearing thereby violating the principles of natural justice, before they were retrenched.

8. In the written statement filed on behalf of the Management under Annexure-5, while denying the allegations of the workmen, it was pleaded that they left their respective services out of their own accord and, therefore, they are estopped to raise the dispute as against the Management. The other ground taken in the written statement was that the workmen before the Labour Court do not come within the definition of "workmen" as defined in Section 2(s) of the I.D. Act, 1947. No where in the written statement, question of violation of the provisions of Section 25F was raised nor such a plea was raised by the workmen. On that ground, therefore, no illegality can be found in the impugned award and the grounds stated in the writ petition are also out of contest.

9. A perusal of the impugned award shows that the Presiding Officer, Labour Court after recording the facts and the respective pleadings of the parties decided the dispute on analysis of materials available on record by discussing the oral and documentary evidences adduced before him. He has specifically taken into consideration Exts. 4 and 5, which are letter dated 26.05. 87 from the Secretary, OSEB, Bhubaneswar to the Superintending Engineer, Electrical Circle, Balasore intimating the rights of the NMR workers for re-engagement who abandoned the employment voluntarily and the letter dated 18.06. 96 addressed by the Company Secretary, GRIDCO to all the Chief Engineers, Superintending Engineers, Executive Engineers and the Sub-Divisional Officers and came to the conclusion that apparently the Management has not taken any action as contemplated under the said Exts. 4 and 5. Thus, he came to the conclusion that in the absence of any proof regarding following the procedure as laid down in Exts. 4 and 5 before refusing employment to the workmen under Annexure-2, the case of the Management, cannot be accepted. He accordingly concluded as follows:

Hence the action of the management, Executive Engineer, EHT (Construction) Division, Balasore in refusing employment to Kanhu Singh and 45 Ors. and the list of which was communicated vide Memo No. 10553/LE. dated 6.9.2002 to this Court is held to be illegal and unjustified. The workmen are entitled to be reinstated in service in the same status as they were proceeding the date of alleged refusal of employment. The workmen will also be entitled to get 25% (twenty-five per cent) back wages. In case the management finds it difficult to reinstate the workmen each of the eligible workmen should be paid a lump sum compensation of Rs. 25,000/- (Rupees twenty five thousand) along with the back wages to the extent indicated above.

The letters under Exts. 4 and 5 read as follows:

ORISSA STATE ELECTRICITY BOARD

BHUBANESWAR

No. AW-WCE-V-8/85(Pt) / / 219 /26. 5. 87 Dated

From

The Secretary,

O.S.E.B., Bhubaneswar

To

The Superintendent Engineer,

Electrical Circle, Balasore.

Sub: Rights of N.M.R. Workers for Re-engagement who abandoned the employment voluntarily,

Sir,

With reference to your letter No. 2676 dtd. 4. 4. 87 on the above subject, I am directed to say that, the absence of a N. M. R. Worker from duty without obtaining prior permission from the Competent Authority amounts to misconduct and as such, such N. M. R. Worker shall have no legal right for re-engagement with or without back wages. The draft Notice to N. M. R. personnel forwarded in this office letter No. 15438(sic) dtd. 21. 6. 86 is aimed to curb unauthorized absence of N. M. R. Personnel who are absconding from duty willfully and raising disputes afterwards claiming wages and other service benefits for the period of absence under the plea that, they were refused employment.

In view of the above, the question of re-engagement of a N. M. R. who once abandoned his job on his own accord has to be carefully examined and each case shall have to be decided on its own merit. Further, it may please be kept in view that, once a precedent is created in this regard this will put the Board to embarrassing position since many other similar cases may come-up. It may also be kept in view that, striking off the name of a N. M. R. from the Roll who committed misconduct by remaining absent from duty un-authorizedly amounts to termination of employment under Law and as such, all formalities as per Rules as confined. In the booklet on Guide Line for Enforcing Discipline and Conducting Enquiry are to be observed before deleting his name from the Roll.

Yours faithfully,

Sd/-

SECRETARY

Memo No. //220 /Date. 26.5.87

Copy to All Executive Engineers/All Superintending Engineers/ General Superintendent, T.T.P.S. / All Chief Engineers for information and guidance in continuation of this office circular No. 15438 (98) dt. 21.6.86/ Memo No. 15439 (30) dt. 21.6.86.

Sd/-

SECRETARY

GRID CORPORATION OF ORISSA LIMITED

BHUBANESWAR

No. LAW v. 8/96-9109(700)/ Dated 18/6/96

From

The Company Secretary,

GRIDCO

To

All Chief Engineers/Superintending Engineers/Executive Engineers/Sub-Divisional Officers.

Sub: Action against missing/absconding employees.

Sir,

We have come across cases of employees absconding or otherwise unauthorisedly staying away from duty without any intimation to the office. There are also instances of such employees reappearing after a gap of several years and claiming back wages stating that their jobs were illegally terminated. The possibility of absconding employees indulging in unlawful activities and in the process compromising GRIDCO is also to be kept in mind. To safeguard against these possibilities, the following procedure is to be followed invariably in such cases.

2. In all cases where an employee absconds from duty without permission and without notice, they should be served notices by Regd. Post with A/D to join duties. If the notice issued to him to join his post have been returned un-served, it will be fair to presume that he is avoiding to receive the notice. In such cases, a formal proceeding is required to be drawn up against him proposing the punishment to be imposed and the charge sheet thereon should also be framed immediately. A notice along with charge sheet should be sent to him by Regd. Post with A/D to his known address as on record calling upon him to show cause by a particular date. If a notice sent to him earlier to re-join his post has been returned un-served a public notice should be given through a prominent daily Oriya newspaper calling upon him to appear and submit the show cause to the charges framed against him within the specified time indicating therein that on his failure to do so it will be presumed that he has no cause to show and action will be taken as deemed proper. The public notice and the notice by Regd. Post may be done simultaneously. In case there is no response from his side even to

the public (newspaper) notice, the proceedings should be initiated and conducted ex-parte and the final order passed and communicated to him again in the form of Regd. Letter with A/D along with a newspaper publication. Please note that merely stating in the notice that "in case you do not join duty by the stipulated date, your appointment will be deemed to be terminated" is not sufficient. Such termination can take legal effect only on completion of the following formalities:

(i) A duly conducted enquiry, if need be an ex parte enquiry,

(ii) An order of the appointing authority to terminate

the employee's services as a result of the enquiry which has found him guilty,

(iii) Communication of the order of the Disciplinary

Authority to the employee through Registered Letter and Newspaper publication.

These steps should be followed promptly and diligently in all cases of missing/ absconding employees.

Yours faithfully

Sd/-

Company Secretary

Memo No. 9110/ Dated, the 18/6/96

Copy of the Superintending Engineering, Electrical Stores Circle, Bhubaneswar for information and necessary action with reference to his letter No. 2388 dated 21. 8. 96. He is advised to issue a press notice relating to case of Shri Rambudhi Rao in the line suggested by Sri C. Rath, Senior Advocate in his opinion dated 4. 6. 96 and in consultation with the Law Officer, GRIDCO, copy of which is enclosed.

End.: As above

Sd/-

Company Secretary

Memo No. 9111 (3)/ Dated,18/6/96

Copy to the Deputy Secretary-I/II/III, GRIDCO for information and necessary action.

Sd/-

Company Secretary

10. The above letters clearly disclose that the employee who absconds from duty without permission and without notice should be served with notices by Registered Post with A. D. to join in their duties. A formal proceeding is required to be drawn up against such employee proposing the punishment to be imposed and the charge-sheet thereon should also be framed against him. A notice along

with charge-sheet should be sent to him by Registered Post with A. D. and if such notice is returned un-served, a public notice is to be issued in any daily Oriya Newspaper to appear and file show cause to the charges framed against him.

11. The Presiding Officer upon analysis of the evidence adduced having rightly come to the conclusion that the procedure as laid down in the aforesaid exhibits has not been followed, no error can be found with such finding and, therefore, the conclusions arrived at by the Labour Court are immune from interference.

12. On consideration of the above, I find no reason to interfere with the matter and the writ application is dismissed being devoid of merit, but in the circumstances without cost.