
(2015) 03 OHC CK 0016
In the Orissa High Court
Case No : Writ Petition(C) No. 1386 of 2014

Zydus Alidac Fortiza

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(d), 12 (5), 2(k), 2(s), 25(F)

Citation : (2015) 03 OHC CK 0016

Hon'ble Judges : C.R. Dash, J.

Bench : Single Bench

Advocate : Jaminikanta Das and B. Mohanty, for the Appellant

Final Decision : Dismissed

Judgement

C.R. Dash, J.—The petitioner Management, in this writ petition, has challenged the legality and propriety of the order of Reference dated 28.10.2013, vide Annexure-6 to the writ petition, passed by opposite party No. 1, i.e. Government in Labour and ESI Department, in exercise of its power under Section 12 (5) read with Section 10(1)(d) of the Industrial Disputes Act, 1947 ("the Act" for short).

2. By the impugned order in Annexure-6, the appropriate Government made the following Reference:--

"Whether the action of the Management of M/s. Zydus Alidac Fortiza (a Division of Cadila Healthcare Limited) in terminating the Area Business Manager w.e.f. 03.06.2009 is legal and/or justified? If not, what reliefs Sri Tripathy is entitled to?" 3. The petitioner Management has prayed for quashing the Reference vide Annexure-6 on the following grounds:--

"(i) Opposite party No. 2 is not a workman, as defined under Section 2(s) of the Act;

(ii) The dispute raised by opposite party No. 2 does not come within the meaning of the I.D. Act, as contemplated under Section 2(k) of the Act;

(iii) Neither opposite party No. 1, who has made the Reference, nor the Industrial Tribunal, Bhubaneswar, to which the Reference has been made, have authority to entertain and arbitrate upon the matter, since the action under challenge happened outside their territorial jurisdiction."

4. Opposite party No. 2, the alleged workman filed counter affidavit highlighting the facts that the petitioner Management has suppressed material facts including the fact that the impugned order of termination was received by opposite party No. 2 on 11.06.2009 at Cuttack. It was specifically asserted by opposite party No. 2 that the order of termination dated 03.06.2009 was received by him at Cuttack on 11.06.2009 when he was staying at Cuttack without joining in his new place of posting, where he had been transferred. It was further asserted that the order of termination was contrary to the conditions of service, which was also passed in violation of the principle of natural justice and further in violation of Section 25(F) and Section 25(N) of the Act. It was further specifically asserted in the counter affidavit that, as the Area Business Manager the nature of work attached to the post was purely manual, technical, operational and clerical in nature and he (opp. Party No. 2) has been attending the customers directly and settling the accounts of the customers directly and in view of the duties discharged by him, he must be held to be a workman within the meaning of Section 2(s) of the I.D. Act.

5. The petitioner Management, after filing of the counter affidavit by opposite party No. 2, has filed a rejoinder affidavit. However, in the rejoinder the aforesaid factual aspects relating to receipt of termination order at Cuttack by opposite party No. 2, the termination order being violative of the conditions of service and violative of Sections 25(F) and 25(N) of the Act have not been specifically denied by the petitioner Management. Subsequently, an additional affidavit has been filed by the petitioner Management annexing therewith relevant extracts of the copy of the Area Business Manager Work Guideline formulated by the petitioner Company under the caption of "7 Hats of ABM" to substantiate the contention that the nature of work of the petitioner is supervisory in nature and he does not come within the meaning of "workman" under Section 2(s) of the Act.

6. This Court, in the case of Krishna Chandra Rout Vs. Steel Authority of India Ltd. and Others, , had the occasion to rule regarding distinction between "reference" and "adjudication". Referring to the case of M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, , this Court, in paragraph-2 of the judgment, held thus:--

".....As observed by the Apex Court, in the case of M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, , while conceding very limited jurisdiction to the State Government to examine patent frivolousness of the demand, it is to be understood as a rule that adjudication of demand by workman should be left to be decided by the Tribunal." 7. In the case of Krishna Chandra Rout v. Steel Authority of India Ltd. and others (supra) the State Government refused to refer the matter for adjudication by the Industrial Tribunal on the ground that the

action of the Management did not appear to be unjustified. Ruling about the difference between "reference" and "adjudication", this Court in the aforesaid case held that the attempt of the State Government should not be to make a detailed examination of the demand to come to a conclusion, whether ultimately the workman would succeed in the Reference or not. Only where the case falls to a category of perversity or frivolity, the Government should decline to make a reference.

8. Admittedly, the present case does not fall within the category of perversity or frivolity. The petitioner Management has impugned the reference on three grounds, as aforesaid. The first ground is that opposite party No. 2 does not come within the meaning of Section 2(s) of the Act and he is not a workman.

Hon"ble Supreme Court, in the case of Sharad Kumar Vs. Govt. of NCT of Delhi and Others, , has held that, State Government cannot arrogate on its power to adjudicate on the question whether the employee (i.e. the Area Sales Executive in that case) falls within the definition of "workman" or not.

Quashing the order of the Government of NCT, Delhi in refusing to refer the matter, Hon"ble Supreme Court was pleased to hold that the question as to whether Area Sales Executive falls within the definition of "workman" or not is to be decided by the Industrial Tribunal on consideration of the evidence adduced.

9. Taking into consideration the dictum in the case of Krishna Chandra Rout v. Steel Authority of India Ltd. and others (supra) and the dictum of Hon"ble Supreme Court in the case of Sharad Kumar v. Govt. of NCT of Delhi and others (supra), it is to be held that the State Government, before reference, could not have decided as to whether opposite party No. 2 is a workman, because for decisions on the point the parties may be required to adduce evidence, both oral and documentary, and taking into consideration such facts and evidence, the Industrial Tribunal can adjudicate the matter and not the State Government.

10. The first question raised by learned counsel for the petitioner having been answered in favour of opposite party No. 2, the second question regarding non-maintainability of the reference on the ground that the same does not come within the preview of Section 2(k), does not subsist. There being dispute between the parties, an industrial dispute is there to be adjudicated within the meaning of Section 2(k) of the Act.

11. It is well settled in law that the principle or test, which would determine the jurisdiction of the Industrial Tribunal, would be citus of employment, the area in which the order of termination would operate and the well known test of jurisdiction of civil court including the residence of the parties. Though the Civil Procedure Code has not been made specifically applicable to the Industrial Tribunal Act, still the general principle and value of the tests underlying the jurisdiction of the civil court would be relevant in absence of specific provisions in the statute.

12. The third point raised by the petitioner is that, the State Government and the Industrial Tribunal, Bhubaneswar have got no jurisdiction, as the action under challenge happened outside their territorial jurisdiction. Viewed in the light of law discussed supra, it is found that the termination letter dated 03.06.2009 issued by the petitioner Management was received by opposite party No. 2 at Cuttack on 11.06.2009. It is further found from record that though the petitioner had already been transferred to Baroda with effect from 01.11.2008, he had not yet joined at Baroda and he was still living in Cuttack. On the asking of G.M. (HR) Mr. M.S. Ojha, opposite party No. 2 had provided him a FAX number, i.e. 06712329686 located at Tulsipur, Cuttack for communication of the result about consideration of his grievance regarding his transfer to Baroda. But, in the said FAX Number the termination order dated 03.06.2009 was dispatched to Cuttack on 11.06.2009. Therefore, a part of cause of action or a fraction of part of cause of action having arisen in the State of Odisha, the appropriate Government, i.e. opposite party No. 1 and the Industrial Tribunal, Bhubaneswar have got jurisdiction over the matter. In this regard, decision of Hon"ble the Supreme Court in the case of Nawal Kishore Sharma Vs. Union of India (UOI), may also be seen.

13. In view of the aforesaid discussions, I do not find any merit in this writ petition, and the same is accordingly dismissed.