

ORISSA HIGH COURT : CUTTACK

W. P.(C) NOs. 1303 AND 2725 OF 2003

In the matter of applications under Articles 226 and 227 of the Constitution of India.

In WPC 1303/2003

The Sub-Divisional Officer,
Baliana Canal Sub-division, Baliana. Petitioner

-Versus-

Sibaram Jena Opp. Party

For Petitioner : Addl. Govt. Advocate.

For Opp. Party : M/s. B.K.Mohanty,
Miss. Rupashree Mohanty,
P.K.Bhuyan, P.K.Sahoo,
C.R.Mallick, D.Pratihari &
Mitrabhanu Mohanty.

In WPC No. 2725/2003

Sibaram Jena Petitioner__

-versus-

The Sub-Divisional Officer,
Baliana Canal Sub-division, Baliana
and others Opp. Parties

For petitioner: M/s. B.K.Mohanty,
R.Mohanty,P.K.Bhuyan,
S.K.Patnaik & P.K.Sahoo.

For opp. Parties: Addl. Govt. Advocate.

Decided on 31.03. 2009.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J.

These two writ petitions arise out of the same industrial dispute case being I.D. Case No. 58 of 1995 and in both

the writ petitions, the award passed in the aforesaid I.D. Case by the Labour Court, Bhubaneswar has been called in question.

W.P. (C) No. 2725 of 2003 has been filed by the workman, whereas W.P. (C) No. 1303 of 2003 has been filed by the Management.

2. A reference under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”) was made to the Labour Court on failure of conciliation of the dispute between the workman and the Management. The question referred to the Labour Court was as follows:-

“Whether the termination of services of Sri Sibaram Jena, daily rated watchman, by the Sub-Divisional Officer, Baliana Canal Sub-division, Baliana by way of refusal of employment with effect from 31.5.1992 is legal and/or justified ? If not what relief Sri Jena is entitled to ?

3. The case of the workman is that he was appointed as a Watchman under the Management on 1.11.1990 and continued as such up to 30.5.1992. On 31.5.1992, he was refused employment by the Management in violation of the provisions of section 25-F of the Act. According to the workman, refusal of employment is otherwise bad in law and he is entitled to be reinstated in service with full back wages.

4. The Management filed a written statement before the Labour Court, inter alia, pleading that the workman was

engaged from 1.10.1990 till 30.5.1992 at the rate of Rs. 10/- per day for watching the construction materials belonging to the Baliana Canal Sub-division, Section – I . He was getting his part time wages at the rate of Rs. 10/- per day from the S.D.O. Baliana and when the work was over, there being no requirement to engage the workman and as he was engaged solely on part time daily wage basis during the period when the work was continuing, there was no scope for further engagement of the workman. On the above ground, the Management prayed that the workman being not entitled to any relief, no order of reinstatement or payment of back wages should be passed.

5. The Labour Court framed as many as two issues, which are as follows:

- (i) Whether the termination of services of the workman by the management by way of refusal of employment with effect from 31.5.1992 is legal and/or justified ?
- (ii) If not what relief the workman is entitled to ?

The Labour Court answered both the issues framed by it and came to the conclusion that admittedly the workman was engaged from 1.10.1990 to 30.5.1992 , i.e., for a period more than 240 days in 12 calendar month preceding the date of refusal of employment and no evidence having been adduced by the Management to the contrary, the workman is found entitled to the protection under section 25-F of the Act before refusing employment to him and, as

such, the action of the Management, is illegal and unjustified and the workman is entitled to be reinstated in service.

6. The Labour Court while coming to the above conclusion directed in the award that the workman should be reinstated in service with 40% back wages. However, the Labour Court further held and directed that in case the Management finds it difficult to reinstate the workman, then the workman will be entitled to a sum of Rs. 50,000/- in lieu of reinstatement and back wages. The award was directed to be implemented within a period of 30 days from the date of its publication in the Official Gazette and the said award has been published in the month of March, 2002. As already narrated herein above, the Management as well as the workman being aggrieved by the award have preferred the aforesaid two writ petitions though, of course, with different prayers. The Management has prayed to set aside the award directing reinstatement and payment of back wages or in lieu thereof payment of compensation to the workman and the workman has called in question the portion of the award by which the Labour Court observed that in the event, it is not possible to reinstate the work, he shall be paid a lump sum of Rs. 50,000/- towards the reinstatement and back wages.

7. Though Mr. B. Dash, learned Additional Government Advocate forcefully argued that the workman being

engaged as a part time watchman on daily wages basis at the rate of Rs. 10/- per day , for a particular work which was under execution and after completion of the said work, there was no occasion to engage the workman any further, but strangely, the Management though has admitted that the workman was engaged from 1.10.1990 to 30.5.1992 thereby admitting that the workman was employed for more than 240 days within 12 calendar months preceding his retrenchment, no materials have been produced by the Management in support of its stand taken in the written statement. It is also seen from the award that the Junior Engineer, who was examined as the only witness on behalf of the Management, stated before the Labour Court that the workman was engaged from 1.10.1990 to 31.5.1992 as a Watchman.

8.. Mr. Dash has relied upon the decisions in the case of ***Haryana State Electronics Development Corporation Ltd. V. Mamni***, AIR 2006 SC 2427 and ***Chief Engineer, Ranjit Sagar Dam & another v. Sham Lal***, AIR 2006 SC 2682 in support of his contention that the burden of proof lay on the workman to show that he has worked for 240 days in the preceding 12 calendar months from the date of his alleged dis-engagement and that, even if, the court came to the conclusion that there is a retrenchment violating section 25-F of the Act, relief of reinstatement with 40% back wages was not to be given automatically when there is long

gap between the date of alleged dis-engagement and the date of raising the dispute as it is wholly unlikely that the workman was not gainfully employed during the interregnum. In the case of *Chief Engineer, Ranjit Sagar Dam & another (supra)*, , the Apex Court after referring to various decisions of the said Court, laid down a ratio that there is no limitation prescribed for reference of the disputes to an Industrial Tribunal, but, nevertheless, that does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. In the facts of the said case, the Apex Court held that the delay in the case under consideration of the Apex Court was not that culpable so as to disentitle the appellants from any relief. In the present case, however, it is seen that the dis-engagement/refusal of employment was on 31.5.1992 and the dispute was raised by the workman immediately thereafter, which, on being referred, was registered as I.D. Case No. 58 of 1995. In the backdrop of the above materials found on record, I do not find any ground to have been made out by the Management calling for interference by this Court when the finding of fact is based on admission of the parties that the workman worked for 240 days within the 12 proceeding calendar months from the date of his disengagement. Therefore, such dis-engagement in violation of the provisions of section 25-F of the Act has been rightly held to be illegal and unjustified.

9. The other question that remains to be answered is as to whether the Labour Court has acted contrary to law in directing reinstatement of the workman with 40% back wages and after issuing such direction, in further directing that in the event, it is not possible on the part of the Management to reinstate the workman, he should be paid a lump sum compensation of Rs. 50,000/- in lieu of reinstatement and back wages.

10. Mr. B. Dash, learned Addl. Government advocate in support of his contention that the Labour Court should not have directed reinstatement and payment of back wages or compensation in lieu thereof, submitted that the work for which the workman was employed as a part time Watchman having been completed, there is no scope to reinstate him. Further, the workman having also claimed for payment of the differential amount of Rs. 5/- per day (Rs. 25/- instead of Rs. 10/-) for the period for which he was working as a part time Watchman in a proceeding before the learned S.D.J.M., Bhubaneswar and the said amount upon being calculated to be Rs. 8670/- having already been paid to him, nothing more is payable to the workman. For the above contention, he relied upon the decision in the case of *Haryana State Electronics Development Corporation Ltd* (supra), wherein the Apex Court referring to several decisions of the said Court in paragraphs-13, 14 and 15 held as follows:-

“13. We, therefore, are of the view that in the peculiar facts and circumstances of this case, interests of justice would be sub-served if in the place of reinstatement with back wages, a lump sum amount is directed to be paid by way of compensation. This order is being passed keeping in view the fact that the respondent has not worked since 1992. The post on which she may have been working must have also been filled up.

14. It is wholly unlikely that respondent in the meantime had not been working anywhere else, since the respondent had not placed any materials on record to show that she had not been working.

15. This Court in a number of decisions has categorically held that the relief of reinstatement with full back wages is not to be given automatically. Each case must be considered on its own merit”.

In the said case, the facts revealed that the respondent-workman before the Apex Court was appointed initially for a period of 89 days in the post of Junior Technician (Electronics) on ad hoc basis on or about 31.10.1990. In the offer of appointment, a term was fixed that the post was purely temporary and her services were liable to be terminated without assigning any reason or notice and it was categorically stated that the respondent shall have no claim for regular appointment having worked with the appellant-Corporation on ad hoc basis. Her services were extended from time to time and in each of the offer of appointment, undisputedly, similar terms and conditions were laid down. The respondent – workman remained absent from 20.1.1992 to 7.2.1992 and again for 11 days from 17.3.1992 to 27.3.1992. Her services were terminated on 7.8.1992. She raised an industrial dispute, which was referred to the Labour Court. In

the meanwhile, the Corporation issued an advertisement for filling up the posts on regular basis including the post of the respondent. But the respondent, however, did not apply pursuant to the said advertisement. The Apex Court, while observing that it is clear that the intention of the Management was not to engage the respondent-workman for a specified period, as alleged, but was to defeat the rights available to her under section 25-F of the Act, which amounted to unfair labour practice, further observed and laid down that it is wholly unlikely that the respondent in the meantime, had not been working anywhere else as the respondent has not placed any material on record to show that she has not been working in the meantime.

11. The facts of the said case are distinguishable from the facts of the present case and, therefore, the attempt of Mr. Dash to apply the ratio of the aforesaid decision to the facts of the present case is misconceived in view of the well known observation of Lord Halsbury in **Quinn v. Leathem** that a case is only an authority for what it actually decides and cannot be quoted for a proposition that may seem to follow logically from it. ((1901) App. Cas. 495).

12. Learned counsel for the workman, on the contrary, relied upon the case of **Union of India etc. etc. v. K.V. Jankiraman etc. etc.**, AIR 1991 SC 2010 in support of his

contention that the Labour Court could not have directed payment of lump sum of Rs. 50,000/- in lieu of reinstatement and back wages when it has specifically directed to reinstate the workman with 40% back wages.

13. In the case of Union of India (supra), the Apex Court disposed of a batch of Civil Appeals and SLPs observing that the common questions that arose in the said cases are :

- (i) What is the date from which it can be said that the disciplinary/criminal proceedings are pending against an employee ?
- (ii) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal ?
- (iii) To what benefits an employee, who is completely or partially exonerated, is entitled to and from which date ?

Considering the facts from which the said case arose, it is clear that the ratio laid down in the said decision cannot be made applicable to the facts of the present case.

14. The impugned award was passed on 13.2.2002 reinstating the workman from the date of his disengagement, i.e., 31.5.1992, and paying him back wages from the said date at the rate of Rs. 25/- per day would definitely be more than Rs. 50,000/-. It is well settled principle of law that on considering the facts of the case, the Labour Court has jurisdiction to either

direct reinstatement with payment of back wages in full or in part or direct payment of compensation in lieu thereof. This Court, therefore, does not find any error in the directions given in the impugned award that in the event the workman cannot be reinstated, he should be paid a lump sum amount. But, however, the lump sum amount as fixed by the Labour Court to be Rs. 50,000/- appears to be in the lower side, inasmuch as, the workman has claimed that he is aged about 47 years in the year 2003 and, therefore, having a long period to go before being superannuated . This Court, therefore, modifies the impugned award to the extent that instead of the workman being reinstated with 40% back wages, he should be paid a lump sum compensation of Rs. 1,00,000/- (Rupees one lakh). The above amount shall be paid to the workman Sibaram Jena, who is the opp. Party no. in W.P. (C) No. 1303 of 2003 and the petitioner in W.P. (C) No. 2725 of 2003 , within a period of two months from today.

15. In the result, therefore, both the writ petitions are disposed with the above modification in the impugned award, but, in the circumstances, without cost.

.....
M.M. Das, J.

*Orissa High Court, Cuttack.
 March 31st , 2009/Biswal.*
