

ORISSA HIGH COURT : CUTTACK

O.J.C. NO. 597 OF 1993

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

The Aska Central Multipurpose
Co-operative Society Ltd.

..... Petitioner

-Versus-

Their Workmen represented by the
Secretary, the Aska Regional Employees
and Workers Federation and another.

..... Opp. Parties

For Petitioner : M/s. Y.S.N. Murty,
P. Mishra and M.K. Mohanty.

For Opp. Parties: M/s. P.C.Kar, J.Gupta,
S.C.Mekap &
R.K. Patnaik
(For O.P. No. 1)

Date of order: 26.08.2010

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. DAS, J.

The petitioner-management, which is a cooperative society registered under the Orissa Cooperative Societies Act, has preferred the present writ application challenging the award dated 07.04.1992 passed by the Presiding Officer, Labour Court, Bhubaneswar in Industrial Dispute Case No.10 of 1981 on the ground that the award is perverse and contrary to the provisions of law.

2. The opposite party no.1 representing 43 workmen raised the Industrial Dispute with regard to their retrenchment on the grounds that the principle of “Last Come First Go” has not been followed, no notice of retrenchment was given to the workmen and no retrenchment compensation was paid. After failure of conciliation, the Government of Orissa in exercise of its power under Section 12(5) read with Section 10(1)(d) of the Industrial Dispute Act, 1947 (hereinafter referred to as the ‘Act’) made a reference on 17.02.1981 to the Labour Court, Bhubaneswar to adjudicate the dispute. The terms of reference are as follows:-

“Whether the retrenchment of following forty three workmen made by the Secretary, the Aska Central Multipurpose Co-operative Society Limited, Aska is legal and/or justified ? If not, to what relief the workmen are entitled ?”

3. On the basis of the said reference, I.D. Case No.10 of 1981 was registered. The workmen filed their statement of claim and the management filed its written statement denying the allegations made by the workmen. Each of the parties examined two witnesses in support of their respective cases and various documents were exhibited. By the impugned award dated 07.04.1992, the learned Presiding Officer, Labour Court holding that the retrenchment of the 43 workmen made by the Secretary, Aska Central Multipurpose Co-

operative Society Limited, Aska is neither legal nor justified, directed that the workmen, who are not gainfully reemployed, should be paid full back-wages at the rate at which they were drawing their wages at the time of retrenchment and looking to the vacancy, the unemployed workmen be reinstated in service.

4. Learned counsel for the petitioner submitted that it is neither the case of the workmen nor the case of the management that the units of the management have been closed. At paragraph-7 of the statement of facts, the workmen have stated that all branches of the society are running and no part of the business has been closed except stating in paragraph-10 of the statement of cases that the Solvent Extraction Plant at Berhampur was closed since 1979 but the management have retained the services of some employees in that branch. The management in its written statement has stated that the Solvent Extraction Plant was closed in the beginning of the year 1979 and admittedly, the employees are retained to manage the essential and indispensable work and that has no connection with the retrenchment at all. None of the 43 workmen were working in the said Solvent Extraction Plant and they were working in other units of the society. Further, the workmen numbers 22 to 36 and 43 were retrenched from service on 01.11.1980 and workmen numbers 37, 38 and 42 were retrenched on 20.11.1980.

Learned counsel further submitted that as the retrenchment of the workmen are not connected with the closure of the Solvent Extraction Plant at Berhampur in the year 1979 and none of the workmen of the said unit have been retrenched, the provision of section 25FFA was not at all applicable in the present case as none of the unit has been closed down in the year 1980 in which the 43 workmen were working and only the surplus staff were retrenched as per the advice of the Registrar of the Co-Operative Societies, Orissa. So the findings of the learned Labour Court at Paragraphs-6 and 7 of the award that without complying the provisions of Section 25FFA of the Act, closure became illegal, is quite arbitrary and contrary to the provisions of law. Therefore, the award is liable to be set aside. He further submitted that the learned Tribunal has acted contrary to law in holding that the provision of section 25F of the Act has not been followed at the time of retrenchment even though under Ext.3 one month notices to 43 workmen were given. Particularly, Exts.3/21 to Ext.3/36 are the notices in respect of second party workmen nos. 22 to 36 and 43. Retrenchment compensation was also paid to all the workmen and the statement of the compensation paid as well as the date has been provided in Ext.2. According to him, in view of the above, provision of Section-25F of the Act has been complied with and

the finding of the learned labour court is perverse and contrary to law.

6. Learned counsel for the management further submitted that only in respect of the workmen Khageswar Panda and Purna Chandra Rath, the retrenchment compensation was adjusted towards the amount recoverable from them. Workman Nos.1, 3, 5, 9, 13, 16, 17, 23, 30, 36, 38 and 42 have been engaged in service as per the requirement of the Society and out of them 7 have retired from service after attaining the age of superannuation. Out of seven, four have already died. Further, two workmen, after their re-engagement, left the service voluntarily and joined in Government Service. One workman did not join his service after re-engagement. The rest of the workmen are continuing in service and out of them three have sworn affidavits before this court that they have no grievance against the management and they do not want to challenge the retrenchment made in the year 1980. With regard to the finding of the Labour Court that the gradation list has not been filed, it is submitted by the management that the gradation list before the Labour Court, which was not exhibited, has been annexed to this writ petition as Annexure-3. According to the management, as the employees are related to different disciplines, a common gradation list was not

required for determining their number of surplus workmen in different disciplines.

7. Mr. Kar, learned counsel for the workmen submitted that the management was unable to produce the gradation list at the time of hearing of the case before the Labour Court. Reinstatement of the 11 numbers of workmen has not been done by adopting principles of “Last Come First Go” as has been held by the Labour Court. M.W.2- Sri Sarat Chandra Panda, Legal Assistant of the management admitted in cross-examination that there is no document showing offer of retrenchment compensation to Sri Ram Chandra Rath and Sri Khageswar Panda. M.W. 2 also admitted that at the time of retrenchment, no compensation was offered to Sri Dhanu Badtia. Mr. Kar further submitted that as observed by the Labour Court in Paragraph-7 of the judgment, the management t has not complied with the requirement of section 25FFA of the Act. In this backdrop, on examining the impugned award, it is seen that two issues on the dispute were raised, i.e., (1) whether the retrenchment of the 43 second party - workmen by the fist party - management is required and/or justified ? And, (2) To what relief the second party - workmen are entitled ?

8. Answering the issue no.1, the learned Labour Court on thread-bare analysis of oral and documentary evidence produced before it, came to the conclusion relying upon various case laws that payment of retrenchment benefits as required under section 25F of the Act is mandatory and a precondition to the order of retrenchment. In the absence of such compliance, it is to be held that the workmen continued in service though the order of appointment was for a specific period. Relying upon the decision in the case of ***The State Bank of India V. Sri N. Sundara Money***, A.I.R. 1976 S.C. 1111, learned Labour Court held that it might be a fact that some workmen by their own action made it impossible for the employer to comply with the mandatory provision of Section 25F of the Act. They may do so with a view to invalidate the retrenchment. In such a case, when the workman avoids accepting the payment, the employer may take possible step to send it by post in shape of Money Order or Bank Draft. In view of such finding, it held that the management has not taken such step to fulfill the requirement of Section 25F of the Act since, some workmen may be under gainful employment in other factories or establishment at present and some are dead, but still it is open to the management to fulfill the mandatory requirement.

9. Coming to such conclusion, the Labour Court answered issue No.1 by holding that the management may take steps to give the workmen appointment as per Section 25H of the Act and to pay necessary retrenchment compensation for the irregularities committed by closing down some units of the industrial organization. The decision of the Board should have been communicated to the Government, but without following the said requirement, the management retrenched 43 workmen. Such retrenchment is neither legal nor justified.

10. Answering to issue no.2, the learned Labour Court held that the workmen are entitled to be reinstated in service, but the management is not bound to give them reemployment if sufficient work is not available. Due to closure or abolition of the units, the court cannot compel to offer reemployment to those workmen but adequate compensation should be offered to those workmen who are not yet employed anywhere. The workmen, who became idle after retrenchment up-to the date of reemployment, are also entitled for the retrenchment compensation.

11. The learned Labour Court directed that the workmen, who are not under gainful reemployment, should be paid full back-wages at the rate which they were drawing their pay at the time of retrenchment and looking to the vacancy, the unemployed workmen

may be reinstated in service. In case of workmen who are already dead, the back-wages and the retrenchment compensation be paid to their surviving legal heirs.

11. Learned counsel for the petitioner submitted the status of the said 43 workmen at present from which it appears that some of the workmen have been reengaged, some, out of them after reengagement, have retired, some have already expired, some are employed elsewhere and some are unemployed.

12. This Court finds no error or perversity in the award passed by the learned Labour Court. Thus, while confirming the said award, this Court directs the management to implement the directions issued in the award by taking into consideration the present status of the workmen and comply with the same within a period of 60 days from today.

13. The writ petition is accordingly disposed of, but in the circumstances without cost.

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M.M. Das, J.

Orissa High Court, Cuttack.
 August 26th, 2010/Himansu

