

**HIGH COURT OF ORISSA : CUTTACK**

**W.P.(C) NO.4238 OF 2003**

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

Sudarshan Rout ..... Petitioner.

Versus.

Commissioner-cum-Secretary to Govt.  
of Orissa and Others ..... Opp.parties

For petitioner : M/s. Manoj Mishra, P.K.Das,  
D.K.Patnaik, B.B. Mohanty,  
P.K. Nanda

For opp. parties : Additional Standing Counsel

**PRESENT**

**THE HON'BLE SHRI JUSTICE L. MOHAPATRA  
A N D  
THE HON'BLE SHRI JUSTICE B.K.NAYAK**

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***Date of hearing :13.08.2010 : Date of judgment: 27.10.2010***

**B.K.NAYAK, J.** In this writ application, the petitioner has prayed to quash his retrenchment order under Annexure-6 and direct the opposite parties to treat him as continuing in service and grant all consequential and financial benefits.

2. The case of the petitioner is that on 26.09.1978 he was appointed as Work-Charged Helper under the Executive Engineer, F.M. Division, Rengali Dam Project and on 21.5.1981 he was promoted to the post of Wireman Grade-III. While working as such, he was transferred

and posted as such in the year 1989 under the Executive Engineer, Rehabilitation Division, S.I. Project, Laxmiposi. On 25.09.1990, he was given adhoc promotion to the post of Electrician Grade-II which was extended from time to time and finally on 02.12.1993 he was promoted as Electrician Grade-II under the Work Charged establishment. It is further stated by the petitioner that in the year 1965 the State Government in the Finance Department passed a resolution as per Annexure-2 deciding to absorb Work-Charged employees in corresponding posts created in the regular establishment of different Departments of the Government, subject to certain conditions. Again on 30.04.1983, the Government issued letter (Annexure-3) to the Engineer-in-chief, Irrigation reiterating the general principles of conversion of posts in the Work-Charged establishment to regular establishment where the posts in the Work-Charged establishment continued for five years from the date of creation and were likely to continue in future for works of permanent nature. Pursuant to directives of the Supreme Court, the High Court and the Administrative Tribunal, the Government also passed a resolution on 15.05.1997 (Annexure-5) formulating certain norms and conditions to absorb workers like the petitioner under regular establishment. In spite of such resolutions passed from time to time, the opposite parties have not acted upon the same. It is the further case of the petitioner that while working as Electrician Grade-II in the Work-Charged establishment, he was retrenched with effect from 31.03.2003 as a surplus worker vide order dated 28.3.2003 under Annexure-6. It is alleged by him that the

retrenchment order has not yet been communicated to him, nor has he received the same, and that he has not been paid one month's pay and retrenchment compensation or gratuity as required under Section 25-F of the Industrial Disputes Act (in short, 'the Act'), though in the retrenchment order he has been asked to receive one month's pay in lieu of one month notice. It is also stated that the mandatory provision of Section 25-N of the Act has also not been complied with by the opposite parties while retrenching the petitioner. It is further stated that provision of 25-G of the Act which lays down the principle of 'last come first go' has not been followed while retrenching the petitioner, inasmuch as Work-Charged employees, namely, Basanta Ku. Swain and Budhia Samal, who are junior to the petitioner have been retained in service. It is also stated that some N.M.R. employees have been retained whereas the petitioner has been illegally retrenched, though the N.M.R. employees should have been retrenched first.

3. The opposite parties have filed a counter affidavit wherein it is admitted that the petitioner was appointed as Helper on 26.09.1978. It is, however, stated that the post of Wireman is not a promotional post of Helper. While the former involves a different nature of job for which technical knowledge and experience is necessary, post of Helper does not require any such thing. It is stated that though the initial appointment of Basanta Kumar Swain as Helper was subsequent to petitioner's appointment as helper, while considering both of them for appointment as Wireman, Basanta Kumar Swain was found suitable and accordingly

appointed as Wireman Grade-III with effect from 29.01.1981, whereas the petitioner was appointed as Wireman Grade-III on 21.5.1981 and, therefore, Basanta Kumar Swain became senior to the petitioner in the gradation of Wireman Grade-III and was accordingly shown in the common seniority list. Subsequently, though both of them were promoted from Wireman Grade-III to Electrician Grade-II on the same day, i.e., on 02.12.1993, their seniority was maintained in accordance with the position they were occupying in the gradation list of Wireman Grade-III. Though the petitioner was initially given adhoc promotion to Electrician Grade-II with effect from 25.09.1990, which was extended up to 08.06.1991, he had been degraded to the post of Wireman Grade-III. Thereafter, he was again promoted to the post of Electrician Grade-II on 02.12.1993 along with Basanta Kumar Swain, who has accordingly been placed above the petitioner in the gradation lists as per Annexures-D/3 and A/3. Similarly, Budhia Samal, who was appointed along with the petitioner on the same day as Helper and also as Wireman Grade-III has all along been shown as senior to the petitioner from the beginning and he having also been promoted to the post of Electrician Grade-II along with the petitioner on the same day, the previous seniority is accordingly maintained. It is stated that the seniority lists have never been challenged by the petitioner. With respect to the retrenchment of the petitioner, it is stated in the counter affidavit that the retrenchment order was issued to the petitioner asking him to receive one month's notice pay and the retrenchment benefits on 31.03.2003, from which date he was

retrenched. He was offered a Banker's cheque dated 31.03.2003 for Rs.1,57,976/- (Annexure-C/3) towards his retrenchment dues including one month notice pay but the petitioner refused to accept the retrenchment and other benefits offered in the shape of the Banker's cheque. Therefore, it is contended that there was no violation of requirement of Section 25-F of the Act. It is also stated that the Government Resolutions referred to by the petitioner were never implemented because of the financial stringency of the State Government, for which no post in the regular establishment was sanctioned and created for absorption of Work-Charged employees. It is stated that because of the financial stringency, the Government adopted austerity measure (communicated vide letter no.10954/F dated 14.03.2001) and decided to retrench the surplus N.M.R. and Work-Charged personnel, who were junior in their respective category. Accordingly, opposite party no.2 sent a list of junior surplus workers as per common seniority list of Work-Charged employees of Major Irrigation Projects maintained by him with instruction to retrench the surplus workmen with effect from 31.03.2003 on the basis of principle of 'last come first go'. It is also stated that N.M.R. workers and Work-Charged employees belong to completely separate and distinct establishments. Seniority of employees in one establishment cannot be counted or compared with the other establishment. The petitioner being the junior-most surplus worker in his category in the Work-Charged establishment, he has been retrenched.

Therefore, there is no violation of the principle of 'last come first go' and the provision of Section 25-G of the Act.

4. Having regarded to the assertions made in the writ petition, rejoinder affidavit of the petitioner and the relief sought for, the only question that arises for consideration is whether the retrenchment of the petitioner is illegal and invalid for non-compliance of the provisions of Sections 25-F, 25-G and 25-N of the Industrial Disputes Act, 1947.

5. The petitioner has asserted that he has not been given one month notice for his retrenchment or paid wages for one month in lieu of such notice, as required under Clause-(a) of Section 25-F of the Act, and he has not been paid retrenchment compensation, as required under Clause-(b) of the said Section. It is evident from the retrenchment order (Annexure-6) that the said order was passed on 28.3.2003 retrenching the petitioner with effect from 31.3.2003 A.N. In the said order, the petitioner was requested to attend the office of the S.D.O on 31.3.2003 to receive one month pay, in lieu of one month notice, and other retrenchment dues, as admissible under Clauses-(a) and (b) of Section 25-F of the Act. Specific assertion has been made in the counter affidavit of the opposite parties that the retrenchment order was issued to the petitioner and he was offered a Banker's cheque dated 31.3.2003 for Rs.1,57,976/-, but the petitioner refused to accept the same. Copy of the Banker's cheque has been filed vide Annexure-C/3. It is clear that the petitioner deliberately avoided to receive the Banker's cheque which had been drawn in his favour towards one month notice pay and retrenchment

compensation for which no fault can be attributed to the opposite parties for petitioner's refusal to receive the Banker's cheque. Therefore, it cannot be said that the provisions of Clauses-(a) & (b) of Section 25-F of the Act have been violated.

6. Section 25-G of the Act, which is said to have been violated by the opposite parties in retrenching the petitioner, reads as under :

**“25-G. Procedure for retrenchment-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workman in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.”

The petitioner also asserts that as per policy decision of the Government dated 10.07.2006 (Annexure-7) N.M.R. workers of a particular category should be retrenched first before retrenchment of the Work-Charged employee of the same category and that no worker under Work-Charged establishment promoted to the higher grade should be retrenched from service being a junior-most person of that grade and in the event of necessity of such retrenchment, he shall be reverted to the lower grade and the junior-most person in the lower grade should be retrenched. Basing on such decision of the Government, it is contended that Basanta Ku. Swain, who was initially junior to the petitioner when appointed as Helper, and Budhia Samal, who was appointed on the same

day when the petitioner was appointed, have been retained, while the petitioner has been retrenched. As has been seen from the counter affidavit of the opposite parties and the common seniority list of the Work-Charged employees, though Basanta Kumar Swain was junior to the petitioner in the Helper grade, he was appointed as Wireman Grade-III in January, 1981 whereas the petitioner was appointed as Wireman Grade-III in May, 1981 and, therefore, in the Wireman Grade the petitioner became junior to Basanta Swain. Similarly, Budhia Samal was appointed along with the petitioner on the same day but he has been shown senior to the petitioner and accordingly the seniority list was maintained. All three of them were promoted from Wireman Grade-III to Electrician Grade-II on 2.12.1993 and, therefore, their seniority position, as maintained in the Grade of Wireman continued in the grade of Electrician Grade-II. That seniority list has never been challenged by the petitioner at any point of time and, therefore, the petitioner has been rightly treated as the junior most in the grade of Electrician Grade-II as well as in the lower grade of Wireman Grade-III. Therefore, it cannot be said that there is any violation of the provision of Section 25-G of the Act or the decision of the Government as per Annexure-7. Similarly, there is no acceptable material that any N.M.R. employee of category of the Electrician Grade-II junior to the petitioner has been retained while retrenching the petitioner. Besides, the Work-Charged establishment and N.M.R. establishment being separate and distinct, seniority in one establishment cannot be counted vis-à-vis the seniority of employees in the other establishment. It can not,



therefore, be said that there has been any violation of the principle of 'last come first go' in the matter of retrenchment of the petitioner.

7. Besides the plea that provisions of Section 25-F of the Act have not been complied with, it is also contended on behalf of the petitioner that the provisions of Section 25-N of the Act have been violated in retrenching the petitioner. It is trite that the provisions of both the Sections 25-F and 25-N of the Act do not apply simultaneously to an 'industrial establishment'. The parliament has intended that where Section 25-N applies, the application of Section 25-F should be excluded (*See 1981 LAB. I.C. 942; T. Gattaiiah and others v. The Commissioner of Labour and another*). Section 25-N occurs in Chapter-V-B of the Act, which was added by way of amendment with effect from 05.03.1976. Section 25-K of the Act makes provision for applicability of the said Chapter-V-B. It provides that the Chapter shall apply to an 'industrial establishment' (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression, 'Industrial Establishment', as referred to in Section 25-K, has been defined in Clause (a) of Section 25-L of the Act to mean, (i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948; (ii) a mine as defined in the Mines Act, 1952, or (iii) a plantation as defined in the Plantation Labour Act, 1951.

For the applicability of Section 25-N, it must be shown that the organization where the workmen are employed is an 'industrial establishment' within the meaning of Section 25-L and further that such 'industrial establishment' must not be one of a seasonal character or in which work is performed only intermittently and that not less than one hundred workmen were employed on an average per working day for the preceding twelve months, as required under Section 25-K of the Act.

There is no averment in the writ petition, nor any material has been produced by the petitioner to show that the organization in which the petitioner was working is an 'industrial establishment' within the meaning of Section 25-L of the Act and that the establishment is not one of seasonal character and that work therein is not performed intermittently and further that at least hundred workmen were employed on an average per working day for the preceding twelve months. In the absence of any such pleading or material, it cannot be said that the establishment where the petitioner was employed is one to which Chapter V-B of the Act would be applicable. In such circumstances, non-compliance, if any, of the provisions of Section 25-N of the Act does not vitiate the retrenchment of the petitioner, since on consideration of the contention of the petitioner we have already held that provisions of Section 25-F of the Act have been complied with.

8. In the light of the aforesaid discussions, we find no infirmity in the order of retrenchment of the petitioner and, therefore, the writ

petition is devoid of any merit and accordingly dismissed. There shall be no order as to costs.

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***B.K.Nayak,J.***

***L. Mohapatra, J.*** I agree.

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***L. Mohapatra,J.***

*Orissa High Court, Cuttack*  
*The     October,2010/ G.Samal*