M.M.DAS, J.

O.J.C. NO. 1244 OF 1995 (Decided on 22.09.2011)

CHIEF ENGINEER, ROURKELA
SITE OFFICE ……Petitioner.

.Vrs.

STATE OF ORISSA & ORS. …….Opp.Parties.

INDUSTRIAL DISPUTES ACT, 1947-(ACT NO.14 OF 1947) – S.25-FFF.

For Petitioner - M/s. B.B.Ratho, Sr. Advocate
B.N.Rath, R.P.Mohapatra, S.N.Mohapatra,
J.Rath, K.R.Mohapatra, B.Senapati,
M.R.Panda, S.Ghosh, B.N.Mishra,
S.K.Jethy & N.Ratho.
For Opp.Parties - M/s. J.Pattnaik, Sr.Counsel,
H.M.Dhal & A.A.Das (for O.P.2)

M.M. DAS, J. The petitioner is the Chief Engineer at Rourkela Site Office of Metallurgical and Engineering Consultants (India) Limited, who is the employer. The opposite party no.3 in the writ application is the workman. The petitioner has challenged the award dated 15.12.1994 under Annexure – 1 to the writ application passed in Industrial Disputes Case No.31/85 by the Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar. The petitioner hereinafter referred to as (MECON) was earlier known as Central Engineering and Designs Bureau, which is a Central Government undertaking. It has a Site Office at Rourkela having its Head Office (registered office) at Ranchi. It is stated by the petitioner that in the Rourkela Site Office, the petitioner – company apart from rendering consultancy services to the Rourkela Steel Plant also, at times, undertakes engineering construction/erection works of the Steel Plant on contract basis. The opposite party no.3 admittedly was under the employment of the petitioner and raised an industrial dispute. On failure of conciliation and submission of failure report, a reference was made to the Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar as under:-

> "Whether the retrenchment of Sri Ajay Kumar Sahu, Chaukidar by the Management of Metallurgical and Engineering Consultants (India) Limited, Rourkela with effect from 31.12.1983 is legal and/or justified ? If not what relief Sri Sahu is entitled to ?"

2. The said reference on being registered as I.D. Case No.31/95 and notices being issued, the opposite party no.3 – workman filed his claim/statement and an additional written statement and the management – petitioner filed its written statement. The Presiding Officer by his award dated 15.12.1994, after hearing the case on the reference, on framing the issues came to the findings that the reference is maintainable,

the case of the management is not protected by the provisions under Section 25 – FFF of the Industrial Disputes Act and the provisions of Section 25 – F of the Act has not been complied with, while terminating the services of the workman with effect from 31.12.1983. Concluding thus, he held that the retrenchment of the workman is illegal and unjustified. Thus holding, the Presiding Officer coming to the finding that there was regular vacancies available in the office of the Management at Rourkela in 1978 and the case of the workman was not considered to be appointed to such post for regularization in service or even as a temporary or casual employee, the management has also violated the provisions of Section 25 – G of the Act. Ultimately it was directed in the award for reinstatement of the workman in service with full back wages.

3. Mr. Ratho, learned counsel for the petitioner raised the solitary question of law that the facts of the present case is squarely covered under the provisions of Section 25 – FFF of the I.D. Act, 1947 and not those contained in Section 25 – F of the Act governing the case of retrenchment. In support of this submission, he relied upon the decision in the case of ***Hindustan Steel Limited v. Their Workmen and others*** Vol. 43 FJR 192. To substantiate his argument, he referred to various exhibits as well as oral evidence adduced before the Tribunal and submitted that the workman was not terminated on 31.12.1983, as it is the admitted case of both the parties that during conciliation proceeding as per the contention of the management, the DLO advised him to continue in service and to grant retrenchment compensation until he is retrenched. According to him, the workman being allowed to continue after 31.12.1983 and retrenchment compensation having been paid to him, the case cannot come under the provisions of Section 25 – F of the Act. Alternative contention advanced by Mr. Ratho was that even for the sake of argument, if it is accepted that the workman was terminated on 31.12.1983, his appointment being purely temporary and for a specific period, there was automatic cessation of service, which did not need compliance of any provision of the I.D. Act. Other contentions raised by Mr. Ratho, being questions of fact, this Court is not inclined to enter into the same in this writ application for issuance of a writ of certiorari, as this Court cannot act as an appellate authority over the impugned award and re-appreciate the evidence adduced before the Presiding Officer.

4. In reply to the above contention, Mr. J. Pattnaik, learned senior counsel appearing for the workman, on the other hand, contended that there is no iota of material available on record to show that the workman was allowed to continue after 31.12.1983. He drew the attention of this Court to the findings of fact by the Industrial Tribunal in the impugned award, where the Tribunal has found that the sole witness examined on behalf of the management, namely, M.W. 2 did not state anything in his evidence that at the stage of conciliation, the workman was communicated an order extending his service. He further submitted that on the date of termination of the workman, i.e., 31.12.1983, Section 2 (oo) (bb) was not in the Statute, which were brought by way of amendment with effect from 18.08.1984 by Act 49 of 1984 and, hence, this provision can be of no assistance to the management, which contention was also repelled by the learned Tribunal. Mr. Pattnaik further submitted that no material was produced by the management to show compliance of the provisions of Section 25 – F of the Act, before the Tribunal and thus, the Tribunal has rightly come to the conclusion that the said provision of the Act was violated by the management.

5. In the case of Hindustan Steel Limited (supra) no doubt, the Supreme Court on the facts of the said case quoting Section 25 – F as well as Section 25 – FFF in the said judgment held as follows :-

> "The word undertaking as used in section 25 – FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has indeed to be decided on the facts of each case……..."

6. Even applying the above ratio to the facts of the present case, it would be seen that there is absence of material to show that the Site Office of the petitioner – company at Rourkela was a distinct venture undertaken by the petitioner – company and it had a distinct beginning and an end. Such Site Office was apparently not set up for a particular venture for being closed down after completion of the project or enterprise. Thus, the above ratio in the aforesaid decision laid down by the Supreme Court, cannot be made applicable to the facts of the present case.

7. I have found that the Presiding Officer in the impugned award, has meticulously analyzed the materials and evidence produced before him as well as various case laws cited before him and has rightly come to the conclusion that the termination of the opposite party no.3 – workman with effect from 31.12.1983 was illegal and unjustified. I also do not find any error in the direction issued by the learned Tribunal in the impugned award to reinstate the workman – opposite party no.3 in service with full back wages.

8. In the result, therefore, the writ application, being devoid of merit, is dismissed, but in the circumstances without cost.

Writ petition dismissed.