S. K. MISHRA, J.

O.J.C. NO. 13426 OF 1999 (Dt.27.04.2012)

MANAGEMENT OF PRAJATANTRA PRACHAR SAMITY ……. Petitioner

.Vrs.

CUTTACK PRESS WORKERS' UNION, CTC. & ANR. ….. ….Opp.Parties

For Petitioner - M/s. R.K.Rath & N.R.Rout.
For Opp.Parties - M/s. S.K.Mishra, P.K.Mishra, D.P.Nanda, U.N.Nayaj, P.K.Mohapatra & M.K.Pati.

S.K.MISHRA, J. In this writ application, the Management of Prajatantra Prachar Samity, Cuttack has assailed the award passed by the Industrial Tribunal, Bhubaneswar on 31.08.1999 in Industrial Dispute case no.4 of 1993 directing regularization of the services of the workmen with immediate effect. The State Government referred the dispute to the Industrial Tribunal under sub-section (5) of Section 12 read with Clause D of sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, hereinafter referred to as the 'Act', for brevity, to determine the following questions:

> "Whether the action of M/s. Prajantra Pracar Samity, Cuttack in not regularizing the services of Shri Jugal Kishore Baral and 19 others as permanent workmen is legal and/or justified ?
>
> If not, what direction in this regard is necessary ?"

The case of the workmen represented by the General Secretary of Cuttack Press Workers Union is that Jugal Kishore Baral and 19 others are workmen working with the first party Management being engaged in jobs of perennial nature ever since 1984. The first party Management is a Newspaper establishment operating under the Working Journalists and Other Newspaper Employees' (Conditions of Service) and Miscellaneous Provisions Act, herein after referred to as the "Working Journals Act" for brevity, engaged in publication of daily 'Prajatantra' and several other periodicals besides publishing newspapers and magazines. It has also undertaken the Job of printing of books and forms etc. The employees, namely, working journalists and non-journalists are getting wages as per the recommendations of the Wage Board constituted by the Government as per the provisions of the Working Journals Act. The wages paid to the workmen include the basic pay, D.A., linked with consumer price index, house rent allowance and other allowances. The minimum wage paid to workman is Rs.1377/- per month. There has been no work study in the establishment of the first party for determination of number of permanent workmen required in the regular jobs in the press. It is further pleaded that 102 workmen are engaged in the establishment of the first party permanently while 20 work temporarily apart from a large number of casual workmen who are engaged regularly.

While the permanent employees in the scale of pay with allowances as admissible, the temporary and casual workmen are paid much less, the lowest wage

being paid to a Compositor in 1993 was 2420/- while a helper was being paid Rs.185 only. There has been persistent industrial unrest in the press on the issue of regularization of the workmen as per the guidelines laid down. The Union of workmen for years have been demanding the abolition of the system of two sets of workmen and for regularization of the temporary workmen but without any success. In August, 1987 the workers staged a strike for fulfillment of their demands and a bipartite settlement was arrived at on 16.08.1987. The terms of the said settlement stipulated that six Compositors and mechanical helpers be treated as permanent employees we.f. 01.08.1987 and the issue of regularisation of other workmen shall be mutually discussed and settled between the Management and the Union. Despite such agreement, the Management refused to regularize the 20 workmen concerned in the dispute and, as such, they continue to get much less wage as compared to the permanent employees thereby being discriminated.

2. The Management filed its written statement, *inter alia,* pleading that it has to do away with the obsolete manual composing and switched over to Web Off set printing, HMT colour off-set press, computerized D.T.P. composing system replacing the manual composing to cater to the demands of the readers. For undertaking such modernization it had to raise a loan of Rs.55 lakhs from different financial institutions. It is indicated that all newspapers in Orissa have since switched over to the new process of computerized composing and with a view to meet the challenges, the updated technology was adopted by the Management for a bare survival.

It is further pleaded that in the aforesaid circumstance, it is neither financially possible nor commercially viable to retain the old system of hand composing in which the members of the second party were engaged. It is further pleaded that out of 20 workmen involved in the dispute, Kunja Behera and Bighneswar Singh are temporarily employed as Helpers in the The Foundary, which is a part of the hand composing section. As hand composing has been done away with the above named two employees employed in the type foundary cannot claim permanent status. Sri J.K.Baal and Ajit Rout are admittedly working as Helpers in the hand composing section and therefore, their claim for permanent engagement is also not workable. Saroj Sahoo engaged as a Tradleman is also faced with similar difficulty as it is a part of the hand composing process. The remaining 15 are engaged in hand composing on temporary basis which is on the brink of being closed down in favour of computerized composing through D.T.P. After a complete switch over the continuance of the workmen concerned is not feasible and as such, their claim for regularisation according to the Management is liable to be rejected.

3 The Management emphasized that the interest of the industry has privacy in the face of keen competition and improved technology and no choice is left with the Management to retain old system of the composing and continue to employ the temporary workmen on permanent basis. The Management has already changed over to the D.T.P. process as may be evident in pages 4 nd 5 of the news daily ‘Prajatantra’ and it is about to replace computerized composing of all the pages where manual composing was being adopted. In view of the re-structured plant and Machinery with the advent of new technology, the members of the second party cannot claim to be regularized.

The Management further pleaded that it represents a Trust established to develop arts, culture and literature in the State and it has its humble contributions for the development of the State. It has no oblique intention of making profit but with a view to thriving in the market and surviving in the competition, updating of the printing technology has become inevitable together with readjustment and re-structuring of the work force. On these premises, the Management has contended that the claim of the workman is misconceived and has no bearing on the requirement of the establishment. Denying the averments made in the claim statement, it is pleaded that the reference made by the Government must be answered in negative.

4.. The Management examined its General Manager as the solitary witness in the case. The workman, on the other hand, examined its General Secretary of Cuttack press Karmachari Sangaha as W.W.No.1. W.W.No.2 is one of the Compositors involved in the dispute, who got appointment as such in the year 1987 with the first party-Management and after a decade of employment during the pendency of the dispute was designated as an apprentice. W.W. No.3 is a Proof Reader of a sister concern, 'The Samaj' which is a bigger organization than the establishment represented by the first party namely, Prajatantra Prachar Samity. He stated about the fact of re-deployment of the manual compositors after the manual composing was replaced by the Mono Machine manual.

5 Learned Presiding Officer, Industrial Tribunal, after having taken into consideration the evidence led in this behalf came to the conclusion that the action of the Management in not regularizing the services of Jugal Kishore Baral and others as permanent workmen is not legal and justified. Accordingly, the issues were for their regularisation with immediate effect. Such award is challenged in this writ application.

6. In course of hearing of the writ application, the learned counsel for the petitioner argued that the Management has no other option but to lay off the workman as there was change in technology and the services of eh workman was no longer needed by the Management. It is further argued that as per the Standing order of the undertaking, the Management can lay off any of the temporary workman or apprentice at any time without any hindrance and as all these 20 workmen were designated as apprentice, their removal is no way violated of any provisions of law and, therefore, the Industrial Tribunal has no jurisdiction to direct their regularisation.

7. The scope of interfering with the findings recorded by the Industrial Tribunal in an industrial Dispute case by a Court exercising writ jurisdiction is limited. It has been held recently by the Hon'ble Supreme Court in ***Devinder Singh Vs. Municipal Council, Sanaur,*** AIR 2011 SC 2532, that :-

> Xxx "A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court.

This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points can not be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

8. Keeping in view the aforesaid limitation, this Court has to examine the correctness of the award passed by the Learned Presiding Officer, Industrial Tribunal. The Industrial Tribunal has taken into consideration the fact that the plea of the workmen gains support in the preponderance of evidence adduced by the workmen that their services were utilized in hand composing so also other jobs and that they were transferred from one place to other to work as helpers, dispatchers and the like. It is in the evidence that in the midst of the tenure of engagement of the second party, the management designated the members of the second party who has put in fairly long length of service as apprentice as per the communication dated 27.01.1997.The Industrial Tribunal weighed the fact that the management has not given any convincing evidence for the change in the status of the workmen. The Industrial Tribunal also came to the conclusion that the standing order does not authorize the management to bring out a reduction in the status of the workman from temporary to apprentice to learn work of any unskilled nature.

9. Keeping this factor in view, the Industrial Tribunal came to the conclusion that the workmen have worked for a considerable number of years as employees of the management and the process they have lost any attendance of any other engagement, and therefore, they should be regularized as worker of the said management. As regards the financial viability of the establishment, the Tribunal concerned the fact that the management has not proved balance sheet profit and profit and loss account and any such other financial statement, which would indicate that it is going through any short of financial crunch, so that it is not in a position to regularize services of the workmen. On such findings, the Tribunal has come to the conclusion that the workmen should be regularized in service.

10. While agreeing with the findings recorded by the learned Presiding Officer, Industrial Tribunal, this Court takes note of the ratio decided in ***State of Haryana and others Vs. Piara Singh and others,*** AIR 1992 SC 2130, wherein the Hon'ble Supreme

Court has held that the State must be a model employer. It is for this reason, it is held that equal, pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary and ad hoc status for long. Where a temporary or ad hoc appointee is continued for long, the court presumes that there is need and warrant for a regular post, and accordingly, directs regularization. In this case, the workmen have been continuing in service for more than one decade. Therefore, this Court comes to the conclusion that there is need for regular post and they should be regularized in their respective post they are holding.The learned counsel for the petitioner also does not argue that the order impugned suffers from any jurisdictional error not there is any allegation that the findings recorded are perverse, The only contention raised by the petitioner is that of financial crunch and lack of requirement of the services of the workmen. In view of the ratio decided by the Hon'ble Supreme Court in ***Devinder Sing's*** case (supra), there is no scope for reappreciating the evidence and come to a different conclusion.

Keeping in view the aforesaid discussion, this Court comes to the conclusion that there is no merit in the writ petition and the same is being.

Writ petition dismissed.