

HIGH COURT OF ORISSA ; CUTTACK

W.P.(C) No.13212 of 2008

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

Trilochan Mohanta & others ... Petitioners

Versus

Executive Engineer, ... Opposite Party
Baripada Electrical Division.

For Petitioner : M/s. Somanath Mishra,
G.Tripathy & S.K.Swain

For opposite party : M/s. Basudeb Barik.

P R E S E N T :

THE HONOURABLE MR. JUSTICE S.K.MISHRA

Date of hearing:02.01.2012 : Date of judgment:31.01.2012

S.K.Mishra,J. In this writ petition the workmen being the second party members in Industrial Dispute Case No.17/1998 of the Labour Court, Bhubaneswar, has assailed the award passed on 31st January, 2006.

2. The Industrial Dispute was referred to the Industrial Court by the State Government to determine whether the action taken by the Executive Engineer, Baripada Electrical Division, Baripada, the opposite party, in terminating the services of

Trilochan Mohanta and others on 30.6.1995 is legal and or justified ? If not, to what relief they are entitled to. The workmen were represented by the Working President, O.S.E.B. Workers Association. They alleged that the workmen were working under the management of N.M.R. since 1988 and continued in their employment till the date of their termination on 30.6.1995 in respect of all the workmen except one workman, Saroj Kumar Mohanta, whose services were terminated on 30.5.1995. The workmen alleged that the management without any rhyme or reason terminated their services without following the mandate of Section 25-F of the Industrial Disputes Act, 1947(hereinafter referred to as "the Act"). The workmen further alleged that after such termination the management have regularized the services of fifteen numbers of junior N.M.R. workers in the year 1995, but their cases were not considered by the management despite their approach. After such termination, the workman approached the Labour Machinery, but the conciliation proceeding initiated by the District Labour Officer, Mayurbhanj, Baripada ended in failure and the matter was ultimately referred to the Labour Court by the Government. On such factual pleadings the workmen have claimed for their reinstatement in service with back wages along with the service benefits.

3. The management, on other hand, filed its written statement, inter alia, pleading that the concerned workmen had not completed 240 days of service in terms of the statutory provisions of the Act in the last preceding year. According to the Management, the workmen were paid their wages for the days they have worked. It is further averred in the written statement that the N.M.R. workers, those who have fulfilled the criteria for engagement in service, their services were regularized during 1995, but the present workmen are concerned, they have not

fulfilled the criteria for engagement in service. Hence, they were not considered for reinstatement in service.

4. In course of hearing the workmen examined Trilochan Mohanta, W.W.1, and relied upon a certificate indicating his engagement under the management, which was marked as Ext.1. On the other hand, the management has neither examined any witness nor relied upon any document in support of its case.

5. After considering the materials available on record, the learned Presiding Officer, Labour Court, Bhubaneswar came to the conclusion that the workmen have failed to prove that they have worked 240 days of continuous service under the management in the year preceding their termination. The Labour Court, therefore, answered the reference in favour of the management and upheld the termination as legal and valid.

6. In course of hearing learned counsel for the workmen submitted that there are sufficient materials to come to the conclusion that the workmen have completed the statutory period of 240 days of work in the preceding year of their disengagement and, therefore, the order passed by the Labour Court should be set aside.

7. Learned counsel for the opposite party, on the other hand, relied upon the reported cases of ***Shakuntala Pravidbhai Saraiya (Smt.) Vs. Union Carbide India Ltd.(Now known as Eveready Industries Ltd) and others***; 2007-I-LLJ and ***M.Madhu Vs. Management, Tamil Nadu Water Supply and Drainage Board, Chennai and another***; 2011-II-LLJ-117 (Mad). In the former case, a division Bench of the Bombay High Court has come to the conclusion that the burden lies on the workmen to prove that she worked for 240 days continuous in the preceding year. This point is not no more res integra. Where the

workman has failed to establish that she had worked for 240 days in the preceding year, then there is no need of complying Section 25-F of the Act. In the latter case cited above, the Madras High Court has held that if no evidence was produced to show 240 days service in one year, the workman cannot get relief under Section 25-F of the Act.

8. In applying this principle to the case in hand, it is seen that except the evidence of W.W.1, no other material is coming forth to establish that the workmen were working with the opposite party-Management for the statutory period. W.W.1 has stated that he has been working under the management from 1987 to 1995 as N.M.R. in Morada Electrical Section under Baripada Electrical Division. The certificate exhibited by the Management shows the Junior Engineer, Morada Electrical Section certified that the workman was working as N.M.R. under the Electrical Section, Morada during 1987 to 1990. Learned Presiding Officer, Labour Court did not accept the same to be sufficient to establish that the workman has actually been engaged for 240 days or more for the relevant period.

9. The opposite party has specifically mentioned that the workmen have never completed 240 days of work as N.M.R. employees and in fact in their counter affidavit, they have indicated that the workman-petitioner no.1, Trilochan Mohanta, has worked for 1991 to 1995 for 83 days and he has been paid wages for the said period. Similarly, petitioner no.2, Rama Chandra Dehury, has worked for 93 days, petitioner no.3, Kuna Mohanta has worked for 91 days, petitioner no.4, Lasa Tudu, has worked for 90 days and petitioner no.7, Surendranath Si, has worked for 161 days. Thus, it is clear that the workmen have not completed 240 days of work in the preceding year when the disengagement took place and, therefore, there is no need for complying the provision of Section 25-F of the Act.

This Court finds no illegality in the order passed by the learned Presiding Officer, Labour Court, Bhubaneswar and, therefore, the writ petition is devoid of any merit and the same is dismissed.

**Sd/-
S.K.Mishra, J**

Orissa High Court, Cuttack
Dated 31st January, 2012/A.K.Behera.

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