

ORISSA HIGH COURT: CUTTACK

W.P.(C) No.3637 of 2002

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

M/s Orissa Air Products Ltd. Petitioner

-versus-

Government of Orissa, Department
of Labour and Employment
and others

Opp.Parties

For petitioners : M/s. J.K.Tripathy, B.P.Tripathy,
P.K.Chand & D.Satpathy.

For opp. parties : (Opp.Party.3 in person)
Additional Government Advocate

Date of Judgment : 28.06.2013

P R E S E N T:

THE HONOURABLE KUMARI JUSTICE SANJU PANDA

Sanju Panda,J. In this writ petition, the petitioner-management challenges the award dated 4th May, 2002 passed by the learned Presiding Officer, Labour Court, Bhubaneswar in I.D.Case No.92 of 1996 awarding the benefit of revision of wages flown from Tripartite Agreement dated 11.12.1989 and 5.6.1999 to the workman of the petitioner industry.

2. The reference made to the Labour Court is as follows:

“Whether the action of the management of Orissa Air Products Ltd, Gundichapada, Dhenkanal in not extending the benefits, arising out of wage revision vide tripartite settlements dated 11.12.1989 and 5.6.1993 to Sri Manoj Kumar Panda, Ex-Asst. Depot Superintendent, is justified or not? If not, what relief he is entitled to?”

3. The opposite party no.3-workman joined the petitioner-organisation on 30th December, 1985 as Clerk-cum-Typist on a consolidated pay of

Rs.450/- per month. While continuing as such, he was a Member of the Trade Union, namely, Orissa Air Products Employees Union. On 26th March, 1989, the management offered promotion to him subject to acceptance of terms and conditions as stipulated therein, but the same was not been accepted by the workman. As such, he forgone the promotion. Accordingly, the management deducted the allowance and paid the basic pay to him with effect from March, 1989. The Union submitted a charter of demand on 28th June, 1989. Thereafter, the management issued a letter on 5th December, 1989 disengaging the opposite party no.3 from the post of Assistant Depot Superintendent and only authorized him to sign all letters and correspondences etc. Thereafter on 11th December, 1989 a settlement was made between the workman and the management and the workman was transferred to Balasore with the aforesaid designation i.e Assistant Depot Superintendent. Again he was transferred to Rourkela on 21st January, 1993. In the year 1993-1994 the opposite party no.3 was elected as the Vice President of the Union to which the management raised a dispute that since he was working as Assistant Depot Superintendent, he did not come within the definition of workman. Therefore, he could not have been elected as the Vice President of the Union. The Labour Officer, Dhenkanal considered the objection and held that the opposite party o.3 is a workman as he was only carrying out the instructions of the superiors and neither he had power to take decision on policy matter nor his function was of managerial nature. However, the management disputed the same. Accordingly, the matter was referred to the Labour Court. Taking into consideration the nature of work and the materials available on record, the Labour Court came to the finding that there was no record to show that the workman was promoted or placed in any higher grade after his appointment as Clerk-cum-Typist. Simple change of designation or shouldering higher responsibility without any pecuniary benefit or having real control over subordinates, cannot be treated as promotion. Although the management designated the workman as Assistant Depot

Superintendent, that by itself cannot treat the workman a supervisory staff or to hold a promotional post. In the absence of acceptance of any such offer by the workman it cannot be said to be acceptable. In view of above finding the learned Labour Court has passed the award holding that the workman is entitled to get benefit of those two settlements and directed the management to implement the award within 30 days.

4. Earlier the petitioner-management filed W.P.(C). No.6179 of 2007 and this Court disposed of the said writ petition on 26th March, 2013 with an observation that the workman was not holding any supervisory post and as such he was a workman as per the definition of the Industrial Disputes Act.

5. In view of the finding of the Labour Court that the opposite party no.3 is only a workman and not holding any managerial post, there is no error of law apparent on the face of record. Accordingly, this Court is not inclined to interfere with the said finding so also the findings arrived at by this Court in W.P.(C) No.6179 of 2007 disposed of on 26th March, 2013 in which it was held that the opposite party no.3 is a workman.

In the result, the writ petition stands dismissed. No costs.

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S. Panda,J.

Orissa High Court, Cuttack.
The 28th June,2013/sks