

HIGH COURT OF ORISSA: CUTTACK

Applications under Articles 226 and 227 of the Constitution of India.

W.P.(C) No.4616 of 2010

Managing Director,
Orissa Forest Development Corporation Ltd.,
Bhubaneswar Petitioner

-Versus-

Sri Arun Kumar Swain & two others Opp. Parties

For Petitioner : Sri Santosh Ku. Pattnaik,
U.C.Mohanty, P.K.Pattnaik,
D.Pattnaik & S.P.Dash

For Opp. Parties : Rabi Narayan Behera, P.K.Chand,
& Gajendra Nath Rout
(For O.Ps. 1)

W.P.(C) No.20652 of 2011

Sri Prakash Samal Petitioner

-Versus-

Managing Director,
Orissa Forest Development Corporation Ltd.,
Bhubaneswar Opp. Party

For Petitioner : Rabi Narayan Behera, P.K.Chand,
& Gajendra Nath Rout

For Opposite Party : Sri Santosh Ku. Pattnaik,
U.C.Mohanty, P.K.Pattnaik,
D.Pattnaik & S.P.Dash

W.P.(C) No.20653 of 2011

Sri Arun Kumar Swain Petitioner

-Versus-

Managing Director,
Orissa Forest Development Corporation Ltd.,
Bhubaneswar Opp. Party

For Petitioner : Rabi Narayan Behera, P.K.Chand,
& Gajendra Nath Rout
For Opposite Party : Sri Santosh Ku. Pattnaik,
U.C.Mohanty, P.K.Pattnaik,
D.Pattnaik & S.P.Dash

Date of Judgment 22.12.2017

P R E S E N T:

**THE HONOURABLE KUMARI JUSTICE S. PANDA
A N D
THE HONOURABLE SHRI JUSTICE K.R. MOHAPATRA**

K.R. Mohapatra, J. These Writ Petitions have been filed assailing the award dated 02.12.2009 passed by learned Presiding Officer, Industrial Tribunal, Bhubaneswar in ID Case No.297 of 2008 directing reinstatement of the Workmen in service and grant them benefit of service continuity and to pay a lump sum of Rs.10,000/- in lieu of back wages. Since all the three writ petitions have been filed assailing the self-same award, the same are taken up together for convenience and disposal.

2. Writ Petition bearing W.P.(C) No.4616 of 2010 has been filed by the Managing Director, Orissa Forest Development Corporation, Bhubaneswar (for short, 'the Corporation') assailing the direction to reinstate the Workmen in service. W.P.(C) No.20652 and 20653 of 2011 have been filed by Sri Prakash Samal and Sri Arun Kumar Swain (for short, 'the Workmen') respectively claiming full back wages.

3. In order to appreciate the point of controversy brief narration of relevant fact is necessary. The Corporation is a

Government of Orissa Undertaking and has several Divisions under it. The Workmen, namely, Sri Prakash Samal and Sri Arun Kumar Swain, were engaged in Berhampur Plantation (A) Division and Cuttack Plantation Division respectively as temporary LD Assistant on *ad hoc* basis with effect from 28.01.1991. As the Corporation sustained continuous loss, Tata Consultancy Services (for short, 'TCS') was assigned with the job of examining the cause of loss, which advised for reduction of surplus manpower. Taking into consideration such report, the Board of Directors of the Corporation resolved to effect retrenchment of surplus manpower by following due process of law provided under the Industrial Disputes Act, 1947 (for short, 'the Act'). In due course, the Cuttack Plantation Division was transferred to the control of the State Government in the year 1997 and Berhampur Plantation (A) Division was abolished during the last part of 1996, for which the Workmen became surplus. Apprehending their retrenchment, the Workmen had filed OJC Nos.2267 of 1998 and 2259 of 1998 with a prayer for direction to regularize their services.

This Court, while issuing notice in the matters, granted protection to the Workmen on the basis of which, they continued in service. However, vide order dated 20.07.2007, both the Writ Petitions were disposed of directing the Workmen (petitioners therein) to make fresh representations before the Managing Director of the Corporation highlighting their grievances and in that event, the Managing Director

was directed to consider their representations. Till disposal of such representation, *status quo* was directed to be maintained in respect of continuance of Workmen in service. Pursuant to direction of this Court, the Workmen filed their respective representations before the Managing Director of the Corporation, which came to be disposed of on 25.09.2007 rejecting the same. Consequently, the Workmen were retrenched from service complying with Section 25-F of the Act on 27.09.2007. Being aggrieved, the Workmen moved the labour machinery and on failure of conciliation, the matter was referred to the Industrial Tribunal, Bhubaneswar and was registered as ID Case No.279 of 2008 to adjudicate the following reference.

“Whether the retrenchment of Sri Prakash Samal and Sri Arun Kumar Swain from their services with effect from 28.9.07 by the Management of Orissa Forest Development Ltd. is legal and/or justified? If not to what relief the workmen are entitled?”

4. Both the Workmen filed their statements of claim contending that the Corporation is an industrial establishment under Section 25-L of the Act. As such, provisions under Section 25-N of the Act should have been complied with while effecting termination of such workmen. Further, there is gross violation of provisions of Section 25-G of the Act as subsequent to their retrenchment, the Corporation had appointed LD Assistant, without considering their case, in complete violation of the direction of this Court in OJC Nos.2259 of 1998 and

2267 of 1998, wherein it was specifically directed that in the event the Management goes for fresh recruitment to any of the category of the posts in which the Workmen were working and if the Workmen apply for the same, their cases should be considered on priority basis looking at their experience, length of service and performance. The Management also, while effecting subsequent appointment, has given a complete go bye to the provisions of Section 25-G of the Act by not considering the case of the Workmen. The Corporation filed its written statement contending that although the Corporation is an 'Industry' as defined under Section 2(k) of the Act, it is not an 'Industrial Establishment' as defined under Section 25-L of the Act. Being an 'Industry' as defined under Section 2(k) of the Act, the Corporation has rightly complied with the provisions of Section 25-F of the Act, while effecting retrenchment of the Workmen. The Workmen were entitled and were paid compensation in terms of Section 25-F of the Act.

5. Learned Industrial Tribunal holding that the Corporation is an 'Industrial Establishment' under Section 25-L of the Act, came to a conclusion that compensation in terms of Section 25-N of the Act should have been paid to the Workmen, while effecting their retrenchment. That being not complied with, the retrenchment of the workmen was held to be not justified and illegal. Hence, the Workmen were directed to be reinstated in service with payment of Rs.10,000/- in lieu of back wages.

6. Mr.Pattnaik, learned Senior Advocate reiterated the arguments advanced before the learned Tribunal. He further argued that as the Corporation suffered continuous loss, TCS, which is an expert in the field, was engaged to give a report to find out the cause and suggest recourse to overcome from such a situation. TCS, in its report amongst other, advised for reducing the surplus manpower. Accordingly, the Board of Directors of the Corporation resolved to give effect to such suggestion. Further, Odisha Plantation Development Corporation, which was looking after the work of afforestation in the State, was decided to be taken back to the control of the State Government. Accordingly, steps for reorganization of the Corporation were taken by the Government. In that course, the Cuttack Plantation Division was transferred to the control of Government in the year 1997 and Berhampur Plantation (A) Division was abolished during last part of 1996. Accordingly, both the Workmen were found surplus. Before the retrenchment could be effected, the Workmen along with others filed OJC No.1897 of 1996 and obtained interim order not to be retrenched in the process of retrenchment of surplus manpower, which was being undertaken by the Corporation. The aforesaid writ petition was disposed of on 09.02.1998. Before the order passed in OJC No.1897 of 1996 could be carried out, the Workmen filed OJC Nos.2267 of 1998 and 2259 of 1998 and interim order was passed protecting their continuance in service. By virtue of the interim order, they continued

till disposal of the writ petitions. Writ petitions were disposed of vide order dated 20.07.2007. Pursuant to the direction of this Court, the Workmen filed fresh representations before the Managing Director of the Corporation, which was disposed of on 25.09.2007, and on 27.09.2007, they were retrenched from service following the provisions of Section 25-F of the Act. The Workmen also received the same without raising any objection. The Corporation is reeling under serious financial crises and is not in a position to withstand extra burden like that of the Workmen. Learned Tribunal, while exercising power under Section 11A of the Act, did not at all take into consideration the Policy decision of the Corporation to do away with the surplus manpower as well as the financial condition of the Corporation to withstand the burden of surplus manpower, which has resulted in gross miscarriage of justice. Hence, he prayed to set aside the impugned award.

Mr. Pattnaik, in support of his case, also relied upon the case of ***Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and another***, reported in AIR 1987 SC 1478, ***Jagbir Singh Vs. Haryana State Agriculture Marketing Board and another***, reported in AIR 2009 SC 3004, ***Assistant Engineer Rajasthan Development Corporation Vs. Gitam Singh***, reported in (2013) 5 SCC 136 and the case of ***Dayanidhi Sahoo Vs. Presiding Officer, Labour Court, Sambalpur***, reported in 2013 (II) OLR 235.

7. Mr.Chand, learned counsel for the Workmen, on the other hand, supported the impugned award and vehemently argued that learned Tribunal taking into consideration the evidence available on record, relevant provisions of law as well as the ratio decided in ***Uttaranchal Forest Development Corporation Vs. Jabar Singh***, reported in (2007) (113) FLR-1 (SC), rightly held that while effecting retrenchment of the Workmen, compensation under Section 25-N ought to have been paid to them. The same having not been complied with, retrenchment of the Workmen was rightly held to be unjustified and illegal. However, the Workmen have filed separate writ petitions claiming full back wages, which would ordinarily follow the direction for reinstatement of the Workmen. Although the Corporation is complying with the provisions of Section 17-B of the Act, the Workmen have not been reinstated yet, in spite of the fact that several posts in the cadre of LD Assistants are still lying vacant. He also relied upon the decision in the case of ***Tapash Kumar Paul Vs. BSNL***, reported in [2014] 4 S.C.R. 875, ***Gouri Sankar Vs. State of Rajasthan***, reported in 2015 (145) FLR 671, ***Harjinder Singh Vs. Punjab State Warehousing Corporation***, reported in AIR 2015 SC 6111 as well as ***Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd.***, reported in AIR 2014 SC 2258 and submitted that the High Court in exercise of supervisory jurisdiction should not modify the award directing payment of compensation in lieu of reinstatement. Payment of full back wages is a

necessary consequence of reinstatement and payment of compensation in lieu of back wages is an exception and learned Tribunal must assign reason to that effect, while deviating from such rule. Since no reason has been assigned by learned Tribunal for awarding a sum of Rs.10,000/- in lieu of back wages, the same is bad in law and liable to be set aside and the Workmen are entitled to be reinstated in service with full back wages.

8. On perusal of record, it appears that the Management Witness No.1 in paragraph-34 of his cross-examination has categorically deposed that "The work of the Forest Corporation is to cut trees from Forest & sell them by cutting it in sizes." The aforesaid statement of MW-1 is a very vital piece of evidence to come to a conclusion that the Corporation is a 'Factory' within the meaning of Section 2(m) of the Factories Act, which finds support from the case law laid down in ***Uttaranchal Forest Development Corporation (supra)***. Thus, we have no hesitation to confirm the finding of learned Tribunal to that effect and hold that the Corporation is an 'industrial establishment' under Section 25-L (a)(i) of the Act. Accordingly, learned Tribunal has committed no error in holding that the compensation in terms of Section 25-N of the Act should have been paid to the Workmen while effecting their retrenchment. That not being done, the retrenchment becomes invalid in the eyes of law.

9. The next question that arises for consideration as to whether the learned Tribunal has rightly exercised its discretion conferred under Section 11A of the Act, while directing for reinstatement of the Workmen along with the payment of lump sum of Rs.10,000/- in lieu of back wages. There is no quarrel over the fact that the Workmen were engaged as LD Assistants on *ad hoc* basis. They continued as such till 1996 and thereafter with intervention of the Court they were allowed to continue in service till 27.09.2007, when they were retrenched from service on payment of compensation in terms of the provisions under Section 25-F of the Act. The said retrenchment was held to be not justified and illegal as compensation under Section 25-N of the Act was not paid. It appears that although the Management had followed the procedure provided under Section 25-F of the Act treating the Corporation to be an 'industry' as defined under Section 2(k) of the Act, learned Tribunal holding it to be an 'industrial establishment' under Section 25-L of the Act, opined that the provisions of Section 25-N of the Act should have been followed while effecting termination of the Workmen. There is no dispute to the fact that several persons like that of the Workmen had to face retrenchment being declared surplus. The workmen were engaged in the year 1991 as LD Assistants on *ad hoc* basis without facing any selection process. They continued as such till 1996, when a decision was taken to terminate their services along with others, being declared surplus. Although they had moved this Court for

their regularization in service, they were directed to ventilate their grievance before the Corporation. Accordingly, as per the decision of the Managing Director of the Corporation, they were retrenched from service. The Workmen also do not dispute the fact that the Corporation is reeling under financial crises. In that view of the matter, while passing the impugned award, learned Tribunal ought to have exercised discretion under Section 11-A of the Act taking into consideration the aforesaid relevant fact. The case laws cited by learned counsel for the parties have been well taken care of in the case of ***Divisional Manager, Orissa Forest Development Corporation Ltd., Dhenkanal (Commercial) Division, Dhenkanal Vs. Sri Ranjit Kumar Mohanty***, report in 2016 (I) ILR1121-CUT, wherein, this Court taking into consideration the aforesaid case laws cited by the respective counsels so also other case laws in the field, came to the conclusion that a lump sum compensation in lieu of reinstatement for back wages would meet the ends of justice, as reinstatement of the Workmen would enure to the benefit of none. Reinstatement of the Workmen in such case will certainly create additional burden on the Corporation and it would lead to further complicacies. Multiplicity of litigation cannot also to be ruled out.

Mr.Chand, learned counsel for the Workmen referring to his counter affidavit vehemently argued that at present the sanctioned strength of LD Assistant in the Corporation is 109 and at least 10 posts are lying vacant as on date. As such, there would be no difficulty or

impediment on the part of the Corporation in reinstating the Workmen with full back wages. To this, Mr.Pattnaik, learned Senior Advocate made his submissions with reference to paragraph 6 of the rejoinder affidavit to the effect that it is not correct to state that the strength of LD Assistant is 109. The Board of Directors of the Corporation in their 217th meeting held on 26.06.2008 has revised the organizational structure with manpower with effect from 01.08.2009 fixing the cadre strength of Assistant Grade-III at 109. Referring to the cadre of Assistant Grade-III, Senior Typist, Junior Typist, Diarists as well as LD Assistant as at Annexure-17 to the rejoinder in W.P.(C) No.4616 of 2010, he submitted that on 31.12.2014, the total number of persons in Assistant Grade-III was 121. Thus, there are at least 12 persons in excess in Assistant Grade-III cadre. This submission of Mr.Pattnaik was strongly refuted by Mr.Chand, learned counsel for the Workmen.

Admittedly, this fact was not placed before learned Tribunal, while adjudicating reference. Thus, while exercising jurisdiction under Article-227 of the Constitution of India, we are not inclined to delve into such submission of learned counsel for the parties. Be that as it may, the Workmen were retrenched from service on 27.09.2007 and are being paid the last wage drawn by them under Section 17-B of the Act. Mr.Pattnaik submits that more than Rs.12,00,000/- have been paid to the Workmen towards compensation under Section 17-B of the Act.

10. Taking into consideration the facts and circumstances stated above, we are of the considered view that interest of justice would be best served if a lump sum compensation is paid to each of the Workmen in lieu of their reinstatement and back wages. We, accordingly, direct that a lump sum compensation of Rs.1,00,000/- (rupees one lakh) shall be paid to each of the Workmen, namely Sri Arun Kumar Swain and Sri Prakash Samal, in lieu of their reinstatement and back wages, within a period of six weeks from today.

11. With the aforesaid modification in the impugned award, the writ petitions are disposed of.

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S. Panda, J.

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K.R. Mohapatra, J.