

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7178 of 2019
(Through hybrid mode)

Sri Dillip Kumar Swain *Petitioner*

-versus-

Presiding Officer, Central *Opposite Parties*
Government Industrial Tribunal
-cum- Labour Court, Orissa,
Bhubaneswar and another

Advocates appeared in the case:

For petitioner - Mr. Satyabrata Mohanty

For Opp. Parties - None

CORAM:

JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA

Date of hearing and judgment: 06.04.2023

ARINDAM SINHA, J.

1. Mr. Mohanty, learned advocate appears on behalf of petitioner (workman) but none appears on behalf of the management (bank). In this connection, we reproduce below our order dated 14th March, 2023.

“1. Mr. Mohanty, learned advocate appears on behalf of petitioner (workman) and presses for hearing and order.

2. This is an after-notice matter. Counter has been filed but the management goes unrepresented. We request Mr. Mohanty to communicate this order to learned advocate, who had earlier appeared on behalf of the management. We make it clear that on adjourned date or thereafter, the writ petition will be taken up for hearing and disposal irrespective of the management being represented.

3. List on 21st March, 2023.”

On query from Court Mr. Mohanty submits, he informed recorded learned advocate of the management, who said that his brief has been taken away. We do not find vakalatnama with ‘no objection’ filed by any other learned advocate. There is vakalatnama in the file, of recorded learned advocate, executed by the management. In the circumstances we conclude that the management has chosen to stay away.

2. Mr. Mohanty submits, impugned is award dated 5th July, 2018 of the Central Industrial Tribunal-cum-Labour Court. Though it was found that his client had worked continuously for 11 years, during which he had worked for 240 days in each of those years and that he had been paid, inter alia, bonus, thereafter to disallow his client’s prayer for reinstatement on award of paltry compensation of Rs.1.50 lakhs, was a decision perverse in the facts and circumstances. He

submits, his client was working as sweeper-cum-messenger and the function is essential to any bank office premises. He submits further, his client and others had claimed regularization. An industrial dispute was raised through the union. The union also approached the Regional Provident Fund Commissioner, for coverage in respect of their members, to have provident fund. Regarding the industrial dispute there was conciliation proceeding initiated, during pendency of which his client was disengaged. His client made complaint under section 33-A in Industrial Disputes Act, 1947. The complaint was not dealt with by the Conciliation Officer in accordance with law. Instead, failure of conciliation report was filed resulting in the reference and impugned award.

3. On perusal of impugned award it appears there was finding that the workman was paid wages at the end of the month. He was paid bonus. There was non-production of documents by the bank in support of its contention that petitioner was a daily wager as had been paid wages at the end of the day. It emerged from examination of the management witness that he was not posted in the bank, when the workman was engaged. Keeping in view totality of the evidence the Tribunal said, it can be safely held that the workman worked for the management in the period 19th April, 1999 to 25th April, 2011, for more

than 11 years, he worked 240 days in each year, his engagement was continuous and uninterrupted preceding is disengagement.

4. The Tribunal said that the bank had relied on Ext.10. The exhibit is circular dated 15th April, 2011 regarding engagement of casual labourer. Two paragraphs from the exhibit are reproduced below.

*“In the above backdrop, the Branch Managers are once again advised **not to engage Casual Labourers as an additional hand.** Casual Labourers can only be engaged in the leave vacancy of the regular Office Attendant (MCS) and under no other circumstances the Casual Labourer can be engaged without prior permission from the competent authority.*

At the cost of repetition it is reiterated that casual labourer can only be engaged at the time of exigencies on account of leave or absence of the regular Office Attendant in office and branches should seek confirmation to that effect duly enclosing the particulars of leave record of the regular Office Attendant (MCS) at the end of the month.”

(emphasis supplied)

5. We are clear in our mind that Ext.10 does not cover petitioner’s engagement. There is no evidence referred in impugned award pointing to there being a post of sweeper-cum-messenger. It follows that there cannot arise an exigency, wherein petitioner could

have been appointed as casual labourer on the regular sweeper-cum-messenger being unwell, on leave or otherwise not attending duty. In the circumstances, engagement of petitioner workman appears to have been borne out of necessity in running the bank office. This give rise to adverse presumption that petitioner's services were thereafter obtained by replacement and engagement of some other. All this amounts to unfair labour practice.

6. On query from Court Mr. Mohanty submits, presently his client is 48 years old. Considering conduct of the management at the material time, in having disengaged petitioner obviously as a counter blast, we think it is a fit case to set aside the relief direction in impugned award and substitute it with direction for reinstatement. That petitioner can claim reinstatement and back wages is the law declared in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala**, reported in (2013) 10 SCC 324. Paragraph 22 is reproduced below.

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be

measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

(emphasis supplied)

However, it would be better to enhance the compensation.

7. Considering petitioner had served for 11 years in the bank, in a position necessary for functioning of the office and his services were summarily terminated without gratuity or any benefit pertaining to the service rendered and in violation of the provisions in the Act, we direct opposite party no.2 (management) to pay compensation of Rs.10 lakhs, to petitioner within four weeks of communication, failing which the sum will carry interest @ 5% simple per annum from 2nd April, 2019 (date of presentation of the writ petition) till date of payment. Accordingly, we set aside the relief direction in impugned award as incompatible with the facts, circumstances and evidence on record before the Tribunal.

8. The writ petition is allowed to the extent above and disposed of.

(Arindam Sinha)
Judge

(S.K. Mishra)
Judge

Sks