

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10986 of 2008

M/s. Ashok Talkies, Rayagada

..... Petitioner
Mr. S.S. Rao, Advocate

-Versus-

***The Presiding Officer, Labour
Court, Jeypore, Koraput and
another***

..... Opposite Parties

Mr. D.K. Mohanty, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

DATE OF JUDGMENT :20.05.2022

R.K. Pattanaik, J

1. Instant writ petition is filed by the Petitioner invoking Article(s) 226 and 227 of the Constitution of India, 1950 assailing the legality and judicial propriety of the impugned award dated 29th February, 2008 passed in I.D. Case No.14 of 2007 by the learned Presiding Officer, Labour Court, Jeypore, Koraput (hereinafter referred to as 'the Labour Court') for having directed reinstatement of O.P.No.2 on the grounds *inter alia* that it is not tenable in law and therefore, liable to be interfered with and set aside.

2. In fact, O.P.No.2 was an employee working in the establishment of the Petitioner. According to the Petitioner, O.P.No.2, while being so engaged, remained absent from duty between 22nd May, 2004 and 14th June, 2004 and again on 19th

December, 2004, where after, by intimation dated 12th January, 2005 sent by post, was directed to join immediately but, neither he reported on duty nor responded, as a result of which, on 27th January, 2005, a charge sheet was issued for his unauthorized absence dated 19th December, 2004 calling upon him to show cause within 48 hours to which reply was submitted stating the cause of default to be on account of illness. However, the Petitioner not being satisfied with the explanation offered by O.P.No.2 initiated an enquiry, which was informed to him and at the same time, he was placed under suspension. The enquiry proceeded *ex parte* and finally, a report was submitted with a finding that the charge against O.P.No.2 was established. On receipt of such a report, the Petitioner called for a show cause from O.P.No.2 which was again not responded and consequently, he was dismissed from service. Thereafter, the dispute was raised before the District Labour Officer (DLO) but after conciliation having failed, the Government referred it to the Labour Court for adjudication. In the proceeding before the Labour Court, the Petitioner pleaded that due to unauthorized absence from duty, after a disciplinary proceeding, O.P.No.2 was dismissed from service. However, the Labour Court directed reinstatement of O.P.No.2 on the ground that the enquiry was not properly conducted.

3. Heard Mr. S.S. Rao, learned counsel for the Petitioner and Mr. D. Mohanty, learned AGA appearing for O.P.No.1.

4. Mr. Rao submitted that the Petitioner, due to unauthorized absence of O.P.No.2 from duty, proceeded against him and

finally dismissed him from service, when the charge was proved and established after an enquiry which was conducted as per and in accordance with the established procedure and therefore, the Labour Court erred in interfering with the order of dismissal. It is further contended that the Labour Court erroneously placed the burden on the Petitioner and concluded that the enquiry since not properly conducted stood entirely vitiated. According to Mr. Rao, while dismissing O.P.No.2 from service, due process was followed by holding an enquiry, wherein, the charge of his unauthorized absence was established but the Labour Court still held that no fairness was observed by the disciplinary authority as well as in the enquiry and finally, passed the impugned award 29th February, 2008 which is not tenable in law.

5. On the contrary, Mr. D. Mohanty justified the decision of the Labour Court as against the contention of Mr. Rao.

6. Admittedly, there was an enquiry held for the unauthorized absence of O.P.No.2. The contention of the Petitioner is that O.P.No.2 remained absent for a period between 25th February, 2004 and 14th June, 2004, for which, he had simply been warned and let off accepting an undertaking dated 15th June, 2004 from him. As further contended, the Petitioner was not inclined to accept the explanation of O.P.No.2, when he again absented himself from duty on 19th December, 2004 and in that regard, a charge sheet was issued followed by an enquiry. The Petitioner referred to a copy of charge sheet dated 27th January, 2005 (Annexure-4). In fact, in response to the charge sheet, O.P.No.2 submitted a reply under Annexure-5 which was not accepted by

the Petitioner and thereafter, enquiry was initiated with intimation to him under Annexure-6/A and he was placed under suspension vide Annexure-6 with a direction to report daily at the main gate of the establishment. As earlier mentioned, the enquiry was held in absence of O.P.No.2 and according to the Petitioner, despite intimation, he failed to turn up. Lastly, the enquiry report under Annexure-9 was submitted which was followed by dismissal of O.P.No.2 from service which is stated to have been communicated to him under Annexure-10 and sent to the DLO vide Annexure-11.

7. The Petitioner's contention is that the Labour Court was unnecessarily carried away by the fact that it had failed to inform as to who was the Marshalling Officer and for the fact that no notice by paper publication was made and that apart, during inquiry, the Enquiry Officer did not examine the claim of O.P.No.2 regarding his illness and above all, the principles of natural justice was not adhered to which is totally misconceived. It is contended that the disciplinary authority had issued charge sheet to which O.P.No.2 had submitted a reply but thereafter, in spite of intimation about the enquiry, he did not participate and remained absent. From Annexure-5, it is suggested that O.P.No.2 submitted a reply stating about the reason of absence from duty and requested to drop the proposed action and to allow him to join in duty. As already stated, O.P.No.2's request was turned down and thereafter, the disciplinary action was initiated.

8. The question is, whether, the enquiry was properly conducted before dismissing O.P.No.2 from service which was the principal ground for the Labour Court to interfere with the punishment. There is no denial to the fact that after the charge sheet was issued vide Annexure-4, O.P. No.2 offered his explanation under Annexure-5 which was not accepted. The letter of suspension (Annexure-6) sent to O.P.No.2 was claimed to have been received by him with an endorsement thereon. According to the Labour Court, the disciplinary authority should have examined the plea of O.P.No.2 with all fairness and sincerity. The Labour Court required the Enquiry Officer to consider the plea of O.P.No.2 regarding his illness by examining the veracity of such claim. No doubt, O.P.No.2 replied to the charge sheet under Annexure-4 after having received a letter from the establishment. It is claimed by the Petitioner that in the same address intimation under Annexure-6/A was sent to O.P.No.2 regarding the initiation enquiry. The Enquiry Officer sent an intimation dated 6th February, 2005 (Annexure-7) to O.P.No.2 to attend the enquiry on 9th February, 2005. The Labour Court did not find any such material to indicate that during the enquiry intimation by post to have been sent to O.P.No.2 for his appearance on 9th February, 2005 and 16th February, 2005. In other words, the Petitioner was unable to show and satisfy the Labour Court that O.P.No.2 was duly intimated about the enquiry by service of process on him. As it appears, there was evidence of issuance of summons submitted before the Labour Court but it was admitted that the same had returned unserved due to the absence of O.P.No.2. Even, the disciplinary authority which had sent notice

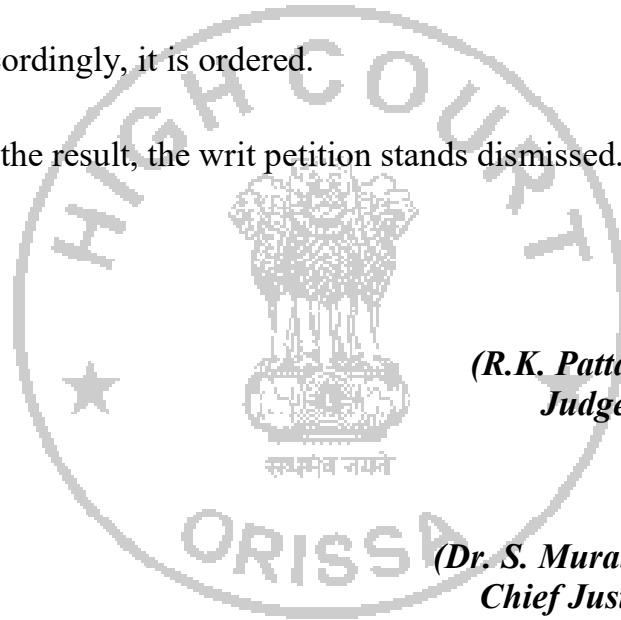
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to O.P.No.2 after the enquiry was concluded to show cause on the proposed punishment had returned without being served. It was pointed out by the Labour Court that there was no proper service of summons on O.P.No.2. If the summons could not be served upon O.P.No.2 and returned undelivered, it was further held by the Labour Court that a notice for appearance in a local news paper should have been published. Though, the notices were sent to the Petitioner in the address on earlier occasions which was received by O.P.No.2 till the time he submitted explanation to the charge sheet but when, at subsequent stages, the summons could not be served, rather, received back unserved, for the purpose of enquiry as well as taking action on the report by the disciplinary authority, it has rightly been pointed out that public notice in the news paper should have been issued. The Labour Court, in the considered view of the Court, justifiably held that the enquiry was conducted *exparte* without proper representation of O.P.No.2, who was not duly served with notice, when the postal process was received back without being delivered. There was also no proof submitted before the Labour Court to show that O.P.No.2 was served with a copy of the enquiry report to show cause against the proposed punishment. It cannot be gainsaid that the disciplinary authority was fully justified to initiate the enquiry on the charge sheet but in the process, again failed to provide opportunity with due service of notice to O.P.No.2 to show cause on the punishment likely to be inflicted upon him. Furthermore, the Labour Court held that there was no plea from the side of the Petitioner to lead evidence to justify the order of dismissal, for which, it was inclined to direct

reinstatement of O.P.No.2. Regard being had to the facts and circumstances of the case, although the Enquiry Officer during enquiry was not really obliged to ascertain the veracity in the claim of OP No.2 regarding his illness, nevertheless, the Court is of the considered view that the enquiry was conducted not being alive to the principles of natural justice. Hence, the inescapable conclusion is that the Labour Court did not seriously err in directing reinstatement of OP No.2 and therefore, the Court finds no compelling reasons to interfere with the decision.

9. Accordingly, it is ordered.

10. In the result, the writ petition stands dismissed.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

TUDU