

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14644 of 2010

***Chief Executive officer, Southern
Electricity Supply Company of
Orissa Ltd. and another***

Petitioners

Mr. R. Acharya, Advocate

-versus-

***Commissioner-cum-Secretary,
Labour & Employment
Department and another***

Opp. Parties

Mr. S.K. Mishra, Advocate

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

ORDER

14.02.2022

Order No.

09.

1. At the oral prayer of learned counsel for the Petitioners, the name of the Petitioners is substituted as Tata Power Southern Odisha Distribution Company Ltd.

2. The challenge in the present petition is to an Award dated 3rd April, 2010 passed by the Labour Court, Jeypore in Industrial Dispute Misc. Case No.33 of 2009 which had been filed by Opposite Party No.2, a former retired Clerk of the Petitioner management company under Section 33-C (2) of the Industrial Disputes Act, 1947 (ID Act) claiming commutation of pay, gratuity, unutilised leave salary and arrears of pay from April 2005 to June 2005. The total amount claimed was Rs.5,03,359/-.

3. The admitted case is that Opposite Party No.2 joined the service of the Petitioner company on 13th September, 1965 and retired as Clerk-A on 3rd June, 2005, i.e. after serving nearly 40 years. Incidentally, today the workman is 74 years old.

4. It appears that in the Labour Court while Opposite Party No.2 examined himself as PW1 and filed documents, the management, as noted in the impugned order Award of the Labour Court, declined “to adduce any oral evidence to establish case and files a memo.” A copy of the reply filed by the management has been placed on record. In paragraph 7, there is an admission by the management that the workman is “entitled to Rs.9,270/- towards arrear pay, Rs.1,05,810/- towards pension, Rs.1,11,977/- towards gratuity and Rs.2,24,932/- towards commuted value of pension if eligible, as sanctioned by the authority.” There was a “detailed statement of due and drawn and the balance to be paid” which was enclosed at Annexure-A to the said reply. It is pointed out by Mr. Mishra, learned counsel for Opposite Party No.2 that in this Annexure-A, the total amount shown by the management itself as payable to Opposite Party No.2 worked out to Rs.4,52,073/-. This was what was asked to be paid to Opposite Party No.2 by the Labour Court. In other words, it was on such “concession” by the management that the impugned Award came to be passed.

5. Mr. Acharya, learned counsel for the Petitioner management, placed reliance on the resolution issued by the Finance Department, Government of Odisha on 8th September, 2009 and Notification dated 20th March, 2010. The resolution dated 8th September, 2010 states that it applies to those who retired between 1st January, 2006 and 30th November 2008, whereas the Petitioner, as noted hereinabove, retired on 3rd June, 2005. Therefore, the said resolution does not apply to him. As far as the Notification dated 20th March 2010 is concerned, not only it was not placed before the Labour Court, but the management conceded before the Labour Court that Opposite Party No.2 is entitled to the amount as noted hereinbefore. Consequently, at this stage, this Court does not permit the management to come up with the new document in the form of the said Notification to deny the Opposite Party No.2 relief. It must be noted here that by an order dated 27th October, 2010 while staying the Award, the Petitioners was asked to pay Opposite Party No.2 Rs.1,10,000/-.

6. In paragraph G of the petition, it has been stated by the Petitioner as under:

“For that in pursuant to the award dtd.03.04.2010 the petitioners calculated the amount. The workman had been informed about the amount to be received by them on tentative calculation. The same was submitted before the Court below in I.D. Case No.33/2009. On actual calculation it is found that the O.P. No.2 is

entitled to get Rs.9,270/- towards arrear pay, Rs.1,11,977/- towards differential gratuity, Rs.1,02,510/- instead of Rs.1,05,810/- towards differential pension and the same has already been paid vide Cheque No.939732 dtd. 09.07.2010, Cheque No.000612, dtd.17.07.10, Cheque No.105417, dtd.06.08.10 respectively to the Opp. Party No.2.”

7. Consequently, what remains to be paid, is only differential pensionary benefit, gratuity and commuted leave pay. Considering that the Award of the Labour Court was passed on concession by the Petitioner- management, the Court finds no reason to interfere. The writ petition is accordingly dismissed.

8. The interim order passed earlier stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge