

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6440 of 2013

OSTRC, Cuttack

....

Petitioner

Mr. Braja K. Sahoo, Advocate

-versus-

Kangali Ch. Mohanty and Others

...

Opposite Parties

Mr. Bamadev Baral, Advocate

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

Order No.

**ORDER
13.07.2022**

08. 1. On 5th October, 2021 the following order was passed by this Court:

“1. This petition was filed way back in 2013 seeking to challenge an Award dated 6th January 2012 of the Labour Court, Bhubaneswar in I.D. Case No.109 of 2002 whereby the action of the Petitioner-Management in compulsorily retiring the workman with effect from 31st May 2001 was held to be illegal and he was held entitled to get 40% of the back wages from the date of his compulsory retirement till the date of his actual retirement on superannuation.

2. Till date, although there has been no stay of the impugned Award, it has not been complied with by the Petitioner Management.

3. Learned counsel appearing for the Petitioner undertakes to deposit the entire awarded amount together with interest @ 10% per annum, as directed in the impugned Award, till the date of

deposit before this Court which shall be not later than 15th November, 2021. The amount when deposited will be kept by the Registry in a fixed deposit with a nationalised Bank initially for a period of three months.

4. List on 24th November, 2021 for compliance.”

2. Pursuant thereto, the Petitioner (Management) has deposited a sum of Rs.1,93,224/- in this Court. It may be mentioned at the outset that according to the Workman, the amount due is much more and he has submitted a calculation sheet in that regard. In other words, according to the Workman, even subsistence allowance was not paid during the time when enquiry was proceeding against him.

3. In that regard, the Workman had filed Industrial Dispute Misc. Case No.97 of 2002 under Section 33-C (2) of the Industrial Disputes Act, 1947 (ID Act), for computation of arrears wages from 1st March, 1998 to 31st May, 2001 including the subsistence allowance amounting to Rs.90,855/-. His counsel has placed before the Court an order dated 17th August, 2012 passed by the Labour Court in the aforementioned Industrial Dispute Misc. Case No.97 of 2002 directing the Management to pay him Rs.80,864/- within a period of two months failing which interest @ 10% thereon per annum would be paid till realization. After accounting for all of the aforementioned sums according to the Workman, a total of Rs.6,11,326/- is owing to him by the Management.

4. The background facts are that the Workman was working as a driver with the OSRTC since 4th April, 1976. An accident took

place involving the bus which he was driving on 28th August, 1999 which resulted in loss of lives and damage to the bus. The Workman was placed under suspension from 31st August, 1999. At the end of the enquiry, the workman was compulsorily retired with effect from 31st May, 2001. The following dispute was referred to the Labour Court for adjudication:

“Whether the termination of services of Sri Kangali Charan Mohanty by way of compulsory retirement by the management of District Transport Manager (Adm.) OSRTC, Cuttack with effect from 31.5.2001 is legal and/or justified? If not what relief he is entitled to?”

5. The workman examined himself as WW 1 and filed 30 documents. The Management examined two witnesses, Ramesh Kumar Chhotray, D.T.M.(A), OSRTC, Bhubaneswar as MW 1 and Dillip Kumar Das, Junior Clerk as MW 2. Exts A to R and R/1 were exhibited and proved by the Management.

6. On the issue of fairness of the domestic enquiry, the Labour Court came to the conclusion that the procedure adopted by the enquiry officer is not fair and proper and that the enquiry was in violation of principles of natural justice.

7. On this aspect, learned counsel for the Management sought to contend that the Rule referred to in the impugned Award pertains to inquiries in the case of Government servants and was not applicable to the OSRTC. The Court finds that no such plea has been raised in the present petition anywhere. In any event, on perusal of the Award what appears to have weighed with the Labour Court was not the aforementioned CCS (CCA) Rules as

contended by the counsel for the Management but what emerged on a perusal of the case record and the enquiry report. The specific findings of the Labour Court in this regard read as under:

“On perusal of the case records and enquiry report submitted by the Enquiry Officer and after going through the evidence of both the parties, the procedure as adopted by the Enquiry Officer appears to be not fair and proper and the Enquiry Officer has not adopted the principles of natural justice while conducting the enquiry So on careful consideration of all the materials available in the case record as discussed above, in my opinion the termination of service of the workman by way of compulsory retirement by the management with effect from 31.5.2001 is neither legal nor justified”

8. In fact the Labour Court noted that “except filing of the statement of witness and workman, the enquiry report remained silent about the date of posting of the enquiry by the Enquiry Officer and there is no material on record to suggest that the documents were furnished to the workman during the proceeding in presence of the Enquiry Officer. There is also no material to suggest that the charges were read over and explained to the workman nor any liberty was given to the workman for filing of any additional explanation.”

9. With the above findings being factual, and based on the record, the Court finds no error having been committed by the Labour Court.

10. Learned counsel for the Management then relied on the decision of the Supreme Court in **Krusukshetra University v. Prithvi Singh (2018) 4 SCC 483** to urge that once the question

whether a domestic enquiry was fair was decided as a preliminary issue, the Management ought to have been given an opportunity to lead evidence on the question of the legality of the order of termination by way of compulsory retirement.

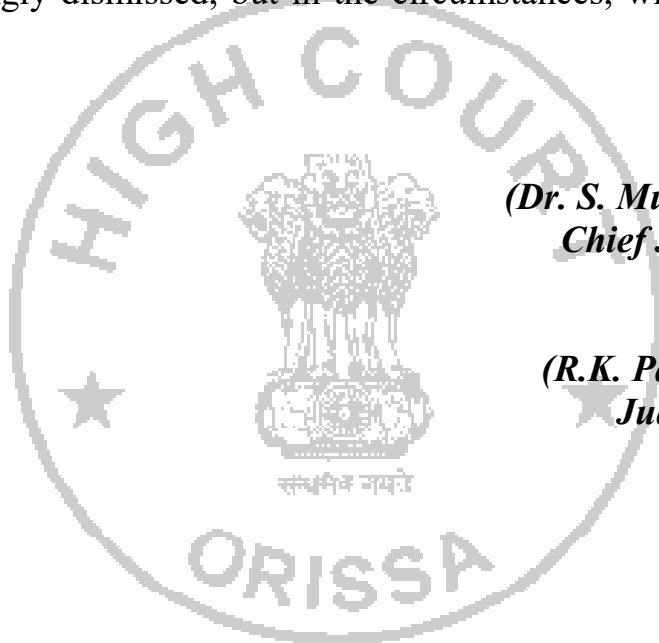
11. It appears that the Management even in the present petition has not referred to any such documentary evidence it would have liked to place before the Labour Court in order to show that the termination by way of compulsory retirement was justified. What has been filed before this Court is just a petition without any reference to any documents or record available with the Management. The demand for leading additional evidence on the merits of the termination order is not expected to be a routine one. It is not an empty formality. The Management has to show what evidence it has, which if it is prevented from placing before the Labour Court would cause it prejudice. There is no such averment in the petition and none of the documents or evidence that the Management would like to rely on, are even referred to the petition.

12. That apart the Court finds that the workman today is over 73 years old having superannuated way back in 2009. It would not be fair or justified to remand the matter to the Labour Court at this stage for another round of litigation. As already noticed, despite a stay order, the Management did not care to implement the impugned award during the long pendency of nearly 9 years of the present petition. It is only after this Court passed the order on the previous occasion that the amount has been deposited in the Court. Even this according to the workman, is not the entire amount. In

all probability, he will have to go back to the Labour Court to claim the balance amount. For him it is an endless struggle.

13. Consequently, this Court is not persuaded by the submission of learned counsel for the Management that the impugned award should be interfered with. The amount deposited by the Management in the Court will be released forthwith to the workman upon proper identification by the Registry of this Court within a period of two weeks from today. The petition is accordingly dismissed, but in the circumstances, with no order as to costs.

S.K. Jena/Secy.



(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge