

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6772 of 2010 & W.P.(C) No.11332 of 2010

Kalinga Packers Pvt.Ltd.

....

Petitioner

Mrs. Sarita Moharana, Advocate

-versus-

***P.O., Industrial Tribunal &
Another***

....

Opp.Parties

Mr. A.P.Das, ASC

Kabindra Ghadei

....

Petitioner

-versus-

***P.O., Industrial Tribunal &
Another***

....

Opp.Parties

Mr. A.P.Das, ASC

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

**ORDER
24.02.2022**

Order No.

9.

1. These are the two petitions: one by the Management and another by the workman challenging an Award dated 25th February, 2009 passed by the Industrial Tribunal, Bhubaneswar (Tribunal) in Industrial Dispute Case No. 118 of 2008.

2. The following dispute was referred to be Tribunal for adjudication:

“Whether the termination of services of Sri Kabindra Ghadei, Helper with effect from 21.06.1994 by the management of M/s. Kalinga Packers Pvt. Ltd., New Industrial Estate, Jagatpur, Cuttack is legal and/or justified? If not, to what relief he is entitled?”

3. While the case the workman was that he had been engaged by the Management from 1990 onwards and that he was arbitrarily refused employment from 21st June, 1994, the case is the Management was that he joined the organization only on 1st February, 1994 and resigned on 22nd June, 1994; since the workman had worked only around five months, he was is not covered by the Industrial Disputes Act, 1947 (I.D. Act).

4. It transpires from the impugned Award, that the Management did not appear before the Tribunal and was accordingly set ex-parte on 10th August, 2004. That order was not challenged by the Management.

5. The workman examined himself. Although he deposed that he has been working since 1990 onwards he could not produce any evidence in support of such claim. The attendance cards produced by him and exhibited in the Tribunal showed that he had been continuously working since March, 1993. The Tribunal accordingly came to the conclusion that he had worked for more than 240 days continuously in a calendar year and that the termination of his service was without complying with the statutory requirements of the I.D. Act.

6. In para 7 of the Award it was held by the Tribunal as under:

“7. In the result it is held that the termination of service of the workman w.e.f. 21.6.1994 by the management is neither legal nor justified and consequently the workman is held entitled to

reinstatement. As regards back wages, since there is nothing on record that during the period of termination of his service the workman was not gainfully employed elsewhere, he is not entitled to the same.”

7. With the Management not having participated in the proceedings before the Tribunal, this Court is not inclined to accept the plea of the management that the workman failed to demonstrate that he had worked continuously for 240 days in a calendar year. The workman’s evidence proved that he had so worked since March, 1993. This finding is based on evidence and the Court is unable to find anything erroneous in the conclusion reached by the Tribunal on this aspect.

8. Further with the workman failing to produce the evidence before the Tribunal about being employed since 1990, and failing to show that he was not gainfully employed elsewhere, the Tribunal cannot be faulted for denial of back wages. Consequently, this Court finds there is no legal or factual error committed by the Tribunal in the impugned Award.

9. Both the writ petitions are accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge