

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23593 of 2013

*Management of Orissa Forest
Development Corporation Ltd.,
Bhubaneswar*

....

Petitioner

Mr. S.K. Patnaik, Advocate

-versus-

Sri Dharmasoka Parida

....

Opp. Party

Dr. J.K. Lenka, Advocate

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

ORDER

01.08.2022

Order No.

05.

1. The Management is before the Court challenging an award dated 14th February, 2013 in I.D. Case No.9 of 2011 whereby the Labour Court, Sambalpur held that the termination of the services of the Opposite Party workman to be bad in law and directed reinstatement with full back wages.

2. While directing notice to issue in the present petition on 3rd January, 2014 the impugned award was stayed subject to compliance of Section 17-B of the Industrial Disputes Act, 1947 (ID Act).

3. At the outset, Dr. Lenka, learned counsel appearing for the Opposite Party Workman confirms that he has received the Section 17-B wages.

4. This Court heard the submissions of learned counsel for the parties.

5. The dispute referred to the Labour Court for adjudication reads as under:

“Whether the action of Divisional Manager, Bolangir Division, OFDC, Bolangir in terminating the services of Sri Dharmasoka Parida daily wage worker by way of retrenchment w.e.f. 11.08.2001 is legal and/or justified? If not, what relief is he entitled to ?”

6. The case of the workman was that he had been engaged on daily wage basis by the Orissa Forest Development Corporation (OFDC) (Management) between 1st December 1985 and 11th August, 2001 when without assigning any reasons, he was refused to be taken on for duty.

7. His case was that his juniors had been retained in service and therefore his retrenchment was in violation of Section 25-G of the I.D. Act.

8. In its written statement, the Management maintained that at the time of merger of forest-based corporations with effect from 1st October, 1990 the Bolangir Plantation Division of the erstwhile OFC Ltd. was merged with the Bolangir Afforestation Division of OFDC Ltd. It is pointed out that there was one exercise of regularization undertaken in 1990 but the requirement was completion of 5 years service whereas the Workman here did not fulfill that requirement.

9. At the 188th meeting of the OFDC it was decided to retrench all daily waged employees since the OFDC was incurring continuous losses. The Opposite Party Workman was issued a show cause notice on 8th July, 2001 and thereafter was retrenched from 10th July, 2001.

10. In analysing the evidence on record, the Labour Court discussed extensively the issue of regularization of the daily wage workers and the fact that the Workman had made a representation praying for such regularization. In paragraph-8 of the Award, the Labour Court returned the definite finding that since his junior had been regularized the Petitioner was entitled to be regularized in service and was “illegally deprived of his right”.

11. It further transpires that on the basis of this finding, the Labour Court proceeded to hold that the view of the Management not to regularize the Workman and terminating his services while allowing his junior to continue was bad in law.

12. The legal position on the Labour Court not having to travel beyond the terms of reference well settled.

13. In the present case, the reference was entirely about the legality of the termination of the services of the Workman. No issue concerning regularization of the Workman was referred to the Labour Court and yet the Labour Court, as already noted, extensively discussed this issue and concluded that the Workman ought to have been regularized in service. Further this formed the basis of the Labour Court determining whether the termination of the Workman's service was legal. This was despite the procedural requirement in terms of Section 25-F of the ID Act having been followed by the Management prior to such termination of services.

14. For the aforementioned reasons, the Court is unable to sustain the impugned Award of the Labour Court since it has

travelled beyond the terms of reference. Further, its conclusion about the termination of the Workman's service being bad in law is also not based on the evidence placed on record.

15. The writ petition is allowed in the above terms. No order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi

