

A.F.R

ORISSA HIGH COURT : C U T T A C K

O.J.C. No.7427 of 2000

*An application under Articles 226 & 227 of
the Constitution of India, 1950*

Lingaraj Bhukta

: Petitioner

-Versus-

General Manager, NTPC & Ors.

: Opposite Parties

For Petitioner

: M/s. S.K. Mishra,
P.K. Mishra,
D.P. Nanda,
P.K. Mohapatra

For Opposite Party Nos.1, 2 & 3

: M/s. A.N. Das,
A.N. Pattnaik,
N. Sarkar,
R.K. Mohapatra

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of hearing: 22.02.2022

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Date of Judgment : 09.03.2022

1. In filing the writ petition the Petitioner in the guise of imposition of illegal and arbitrary terms and conditions of service against him by the employer, further also claiming such action to be in clear contravention with the provision of Talcher Thermal Power Station

(Acquisition and Transfer) Act, 1994 hereinafter in short be reflected as “the Act, 1994”, has sought for the following relief:

“ **PRAYER**

In the circumstances, Your humble petitioner most fervently prays that this writ petition may kindly be admitted/accepted for hearing and after notice to the opp.parties and after hearing the parties before the Hon’ble Court the writ petition may be allowed and the impugned superannuation order dt.1.3.2000 as at Annexure-10 and the relieve order as at Annexure-11 may be quashed.

And the opp.parties be directed to allow the petitioner to work till 60 years of age as applicable to his co-workmen in the same establishment.

And any other and further order(s) that the circumstances of the case, may kindly be passed.”

2. Brief fact involving the case appears to be; the Petitioner initially was appointed as driver on 20.02.1964 on trial basis in the scale of pay of Rs.80-3-110-EB-116-4-120 in the Plant Stores, Transport and Workshop Division, Chainpal in the Talcher Thermal Station an unit under the control of the Govt. of Odisha. Subsequently, by order dated 8.02.1965 he was appointed as driver under the work-charged establishment. The Talcher Thermal Power Station (hereinafter in short be reflected as “T.T.P.S”) establishment owned and managed by the State of Odisha was initially known as Talcher Thermal Station, but however, is renamed as Talcher Thermal Power Station “T.T.P.S.” in the year 1970 and transferred to the O.S.E.B. It is pursuant to such transfer, services of the Petitioner alongwith other work-charged staff of the whole division were transferred to the O.S.E.B as appearing at Annexure-1. Since the O.S.E.B could not be able to run the establishment for the financial and technical constraints, there were extremely less generation of electricity

and thereafter, in the process of reorganization of the Division the Government of Odisha brought Orissa Act 7 of 1995. The the Act, 1994 was notified on 17.05.1995 vide Annexure-3 and came into force w.e.f. 3.06.1995 by the notification dated 1.06.1995 as appearing at Annexure-4. On 1st June, 1995 by an act of the Government the T.T.P.S. was further vested in the N.T.P.C. Ltd. w.e.f. 3.06.1995 vide Annexure-5.

It is, in the above circumstance and for the provision in the Act, 1994, the employees of the O.S.E.B. working in the Establishment of the T.T.P.S became the employees of the N.T.P.C. Ltd. Petitioner claimed that despite such transfer and merger of rights, service condition of the employees including that of Petitioner were not altered. On the contrary through Section 10(2) (a) and Section 11(1) of the Act, 1994, there is benefits being enjoyed by the Petitioner and other persons like that of the Petitioner while remaining to continue till such person is duly terminated, but however with a rider to continue until his remuneration and other conditions of service as a package is duly altered by the Corporation to such persons' advantage. Petitioner here claimed that for the Rule following 24.5 of the N.T.P.C service Rules, age of retirement of the employees of the N.T.P.C was 58 years, while the matter stood thus, following a memo dated 19.05.1998 of the Department of Public Enterprises the age of retirement of the employees below Board level was raised from 58 years to 60 years; which was also confirmed by the N.T.P.C. Circular No.382/98 dated 29.05.1995 also being circulated through News Flash in June, 1998 as appearing at Annexure-6. Petitioner here claims that while the matter stood thus, the Asst. Labour Commissioner, Angul vide letter dated 10.08.1998 circulated among all the Unions a comparable statement of the benefits enjoyed by the employees of the erstwhile T.T.P.S and proposed benefits to be extended

by the N.T.P.C vide Annexure-7. It is claimed that the Management on 20.09.1998 entered into a settlement with N.T.P.C. Men's Congress, Talcher Thermal the recognized Union in Form-K i.e. under the Orissa Industrial Disputes Rule, 1959 in the involvement of the conciliation of the Officer-cum-Asst. Labour Commissioner. It is claimed that as per the terms of the said settlement, the same was kept secret and on the other hand while issuing Annexure-9 a correspondence dated 21/22.08.1998 the Management intimated very important changes in many important service conditions of the employees came from T.T.P.S. The Petitioner claimed that Annexure-9 is an outcome of the settlement at Annexure-8 and through paragraph no.10 the Petitioner describes the changes made. In reference to the condition at clause 2.13 therein the Petitioner while admitting that he had less than 10 years of service left for retirement on 3.06.1995, on the other hand contended that in the event of Petitioner's acceptance of offer under clause 2.13, the Petitioner would have lost more than Rs.2,000/- per month and would have been landed in great financial loss. Petitioner thus contended that by using the condition at clause 2.3 there has been an attempt by the employer to act contrary to the protection granted to the Petitioner and such employees U/s.11(1) of the Act, 1994.

3. It is, in the above background of the matter and on reiteration of the above facts Mr. Mishra, learned counsel for the Petitioner keeping in view the prayer involved in the writ petition contended that once there is protection of the benefits on introduction of benefits to the advantage of the Petitioner, the settlement should not have contained the restricted clause like clause 2.13. Mr. Mishra, learned counsel for Petitioner also contended that once the N.T.P.C Rule 24.5 prescribed age of superannuation of the N.T.P.C. employees being at 60 years of age and

since such a benefit was to the advantage of the persons like that of the Petitioner came over from the T.T.P.S, such benefit would have automatically fallen to the credit of the Petitioner. Mr. Mishra, learned counsel for Petitioner claimed that in view of the clear protection on benefits the Management as well as the Union involved in the tripartite settlement had no business to attempt to restrict the conditions advantageous to the Petitioner on introduction of the clause 2.13. It is, taking this Court to the settlement at Annexure-8 and the Office order at Annexure-9 the Petitioner alleged that both these documents nowhere indicates restriction of benefits to the Petitioner and similarly situated employees, those who would not opt for the N.T.P.C. pay scale benefit structure. At the same time the Petitioner also challenged the validity of the settlement and office order at Annexures-8 & 9, which is claimed to be remaining contrary to the provision at the Act, 1994. Mr. Mishra, learned counsel for Petitioner at the same time also admitted that the Petitioner has also filed O.J.C. Nos.13930/12760/13298 of 1998 challenging the legality of the said settlement and office order respectively, which are all claimed to be not in accordance with the Act, 1994. It is, in the above background of the matter, Mr. Mishra, learned counsel for Petitioner requested this Court to allow the writ petition in interfering in the order of superannuation as well as the relieve order at Annexures-10 & 11 respectively and thereby granting appropriate relief.

4. Drawing the attention of this Court to the interlocutory order passed by this Court and also in reference to order dated 6.09.2000 Mr. Mishra, learned counsel for Petitioner contended that for the protection granted therein in the event of success of the Petitioner following the direction dated 6.09.2000, he is to be entitled to all benefits, which he would have got, had he not retired from service. Mr. Mishra,

learned counsel for Petitioner again in reference to the rejoinder affidavit at the instance of the Petitioner attempted to raise further grounds through paragraph nos.4 & 5 particularly in his attempt to challenge both the orders at Annexure-8 & 9. It is needless to indicate here that for the own submission of the Petitioner, in paragraph 19 of the writ petition both Annexures-8 & 9 herein are already in challenge in O.J.C. No.13930 of 1998, O.J.C. No.12760 of 1998 and O.J.C. No.13298 of 1998. Though these writ petitions are claimed to be pending, but this Court from the records finds, in disposal of the O.J.C. No.12760 of 1998 through paragraph nos.10 & 11, this Court has declined to entertain the writ petition involving these two developments and leaving it open for the parties to find-out other forum, if any, available and to have its exercise accordingly.

5. To the contrary Mr. A. Das, learned counsel for the Opposite Party-Management while not disputing the development in bringing the employment of the Petitioner to the O.S.E.B. then to the N.T.P.C in view of the introduction of the Act, 1994 at Annexure-3, submitted that there is also no denial to the existence of the Settlement vide Annexure-8 governing the parties. For the nature of a tripartite settlement Mr. Das, learned counsel for the Opposite Parties while not disputing the protection granted to the Petitioner through Section 10(2) (a) and Section 11(1) of the Act, 1994, however giving reference to the clause 2.13 of the tripartite settlement involved contended that for the clear provision through clause 2.13 the Petitioner had a right either to continue with the package of service condition including retirement as under O.S.E.B/GRIDCO Rule or to opt for package of service condition under the NTPC Act and Rules. It is alleged that in spite of a provision being

made in the tripartite settlement requiring an option by the employees to switchover to the N.T.P.C service condition, in the event the N.T.P.C package as a whole was not to the advantage of the Petitioner, nothing prevented the Petitioner to exercise his option while remaining in service. It is, at this stage of the matter, Mr. Das, learned counsel for the Opposite Parties taking this Court to the pleadings of the Petitioner in paragraph no.11 contended that on his own submission of the Petitioner; had the Petitioner opted for N.T.P.C pay scale and benefits structure, he would have lost more than Rs.2,000/- per month resulting a great level of financial loss all throughout his service career. Mr. Das, learned counsel for the Opposite Party here contended that the Petitioner cannot choose to continue in the erstwhile service condition in service aspect and certain other aspect through the N.T.P.C. service conditions. For the requirement he had the only option and on the own submission of the Petitioner in paragraph 11 he is estopped to claim otherwise. Taking this Court to the counter averments in paragraph nos.6.1 to 6.20 Mr. Das, learned counsel for the Opposite Party in reference to the plea of the Opposite Parties therein also contended that the Petitioner went wrong in claiming that the tripartite settlement was kept secret as the tripartite settlement brought under the I.D. Act not only as good as an award but also binds all the parties involved at the time of settlement, further also binds those who are joining the establishment subsequently. Settlement is of a binding nature. On reading both the orders under Annexures-8 & 9 Mr. Das, learned counsel for the Opposite Parties contended that there cannot be isolated reading of both. It is, in the aforesaid premises Mr. Das, learned counsel for the Opposite Parties attempted to justify the orders at Annexures-10 & 11 and thus requests this Court for dismissal of the writ petition.

6. Undisputedly for the provision in the Act, 1994 the services of the Petitioner was ultimately brought over to the N.T.P.C. and on the own submission of the Petitioner categorically made in paragraph no.6 in spite of such transfer and acquisition, the rights and service conditions of the employee were not altered. It is also further claimed that through Section 10(2) (a) and Section 11(1) of the Act, 1994 the service conditions of the Petitioner and similarly situated persons were well taken care of. This Court here takes into account the provisions at Section 10(2) (a) and Section 11(1) of the 1994 Act, which reads as follows:

“10. (1) Every person who has been immediately before the appointed day, a regular employee of the Power Station, shall, on and from the appointed day, be deemed to be on deputation with the State-Government on the same terms and conditions, subject to the provision a.....(*sic.*) in sub-section(2).

(a) Subject to the provisions of clauses (b) and (c) of this sub-section and sub-sections (3) and (4), all the employees on the regular rolls of the Power Station shall be absorbed in the services of the Corporation who may, with a view to achieving better productivity and efficiency, redeploy them in Talcher Super Thermal Power Project or in any other Project or Power Station belonging to them and such employees absorbed in the Services of the Corporation shall be governed by the Rules and Regulations of the Corporation in force from time to time.

11. (1) Every employee of the Power Station abolished in the Corporation shall hold office or render service under the Corporation on the same terms and conditions and with the same rights and privileges as to pension, gratuity,

leave and other matters, as would have been applicable to him immediately before such vesting, till his employment under the Corporation is duly terminated or until his remuneration and other conditions of service as a package are duly altered by the Corporation to his advantage.

7. On reading the aforesaid provisions it becomes clear that while protecting the service conditions of the persons came over from the erstwhile employer intact, the only departure made through the provision at Section 11(I) of the Act, 1994 referred to hereinabove and there shall be protection of all such rights privilege as to pension, gratuity, leave and other matters as would have been applicable to him immediately before such vesting till his employment under the new employer is terminated, or until his remuneration and other conditions of service as a package is duly attended by the Corporation to his advantage. It is, at this stage of the matter, this Court finds, Petitioner in clear tone made in paragraph no.19 of the writ petition that he has already challenged the legality of the settlement and Office order at Annexures-8 & 9 by filing O.J.C. Nos.13938/12760/13298 of 1998. In course of hearing on production of a copy of the judgment in O.J.C. No.12760 of 1998 decided by this particular Bench in its judgment dated 19.01.2016, this Court finds, in paragraph nos.10 & 11 therein on the aspect of challenge to the settlement involved this Court has come to observe as follows:

“10. Per contra, by filing a preliminary counter affidavit as well as notes of submissions supported with affidavit, the opposite parties contended that a settlement on the core issue is already arrived at in course of a conciliation proceeding under the provisions of Industrial Dispute Act, 1947 hereinafter called as the Act, 1947, the disputes raised herein is for an Industrial Adjudication and as such the

petitioners are estopped from raising the present disputes by way of a writ petition under Article 226 of the Constitution of India, the writ petition as a whole is not maintainable.

The opposite parties further submitted that the settlement being a tripartite settlement, it not only bind the Union participated in the settlement but also binds all the workmen and it is in this circumstance, requested for not entertaining the writ petition and directing the petitioners to take recourse to the Dispute Redressal Mechanism provided under the I.D. Act, 1947.

11. In answering to the submission of the petitioners that in view of the provisions contained in Section 18 of the Act, 1994 taking away the effect of the settlement under Section 18 of the I.D. Act, the opposite parties through their Senior Counsel contended that the stipulation therein clearly mandates that the provisions under the T.T.P.S. Act or the Act, 1994, they have effect notwithstanding anything inconsistent therewith contained in The Code of Civil Procedure, 1908, The Transfer of Properties Act, 1882 or The Registration Act, 1908 or in any other State Laws for the time being in force and any instrument have effect by virtue of any of the said laws other than this Act and consequently, the provision of the Act 1994 do not over ride any Central law or in any instrument having effect by virtue of the said laws and therefore the tripartite settlement dated 20.08.1998 arrived in course of conciliation is binding on all including the petitioners.”

8. It is, in the circumstance, this Court taking into account the Petitioner’s challenge in paragraph no.19 to the particular settlements also involved herein and the consequential Office letter at Annexures-8 & 9, finds, the same are not open to be considered until unless the judgment of this Court in W.P.(C) No.12760 of 1998 is interfered with and/or altered by higher forum.

9. It is here taking into consideration the requirement of option to switchover to N.T.P.C. structure, this Court reading through the clause 2.13 of the tripartite settlement at Annexure-8 also taken note

hereinabove, finds, the Petitioner has clear admission through paragraph no.11, reasoning not to go for such option. For the background involved herein, this Court is of the view that once the Petitioner comes to admit that he had less than 10 years of service before superannuation as on 3.06.1995 and if he opts, he would have lost more than Rs.2000/- per month from salary, it gives a clear indication that the Petitioner chose not to give his option to switchover his service condition to the N.T.P.C. service conditions. This Court, therefore, observes, while the Petitioner chooses to remain in certain set of condition available under the erstwhile employer, at the same time claimed to be governed by the N.T.P.C. Rules only so far it relates to age of superannuation, whole option must go as one package either under the benefits of the erstwhile employer or the whole benefits under the new employer and not otherwise.

10. As discussed hereinabove, while the Petitioner was aware of the provision at Section 10(2) (a) and Section 11(1) of the Act, 1994, he has also come to know regarding existence of the conditions through tripartite settlement. This Court here observes, once the Petitioner choose not to come otherwise with his option under the requirement of tripartite settlement to switchover to the N.T.P.C. condition, there is voluntary abandonment of the compulsory requirement. This Court, therefore, holds that the Petitioner has made his case fail by his own conduct.

11. The writ petition thus stands dismissed. In the circumstance there is no order as to cost.

(.....)
Biswanath Rath
Judge

Orissa High Court, Cuttack.
 The 9th day of March, 2022//
 Ayaskanta Jena,
 Senior Stenographer