

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14994 of 2006

State of Orissa and another

.... Petitioners

Mr. P.K. Muduli, AGA

-Versus-

Udaya Nath Mallick

.... Opposite Party

Mr. S. B. Mohanty, Advocate

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

**ORDER
16.02.2022**

Order No.

R.K. Pattanaik, J

22. 1. Legality and judicial propriety of the award dated 18th September, 2003 (Annexure-3) passed in I.D. Case No.327 of 1995 by the learned Presiding Officer, Labour Court (in short 'the Labour Court') is under question at the behest of the Petitioners ('Management') on the grounds inter alia that the findings and direction for reinstatement of the Opposite Party (shortly 'Workman') with 30% back wages to be unjustified and therefore, it is liable to be interfered with.
2. Heard Mr. P.K. Muduli, learned Additional Government Advocate for the Management and Mr. S.B. Mohanty, learned counsel for the Workman.
3. Briefly stated, the case of the Workman is that he was engaged as an Amin-cum-Work Sarkar @ Rs. 35/- per day in

Aul Irrigation Sub-Division with effect from 1st November, 1991 but was refused employment from 15th October, 1992 and retrenched without notice and payment of compensation in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1967 (here-in-after referred to as 'the Act'), where after, dispute was raised with a reference made as to whether such termination or refusal of employment with effect from 15th October, 1992 was legal or justified and if not, to what relief, the Workman was entitled.

4. The Labour Court answered the reference against the Management with a conclusion that the termination was without any prior notice or notice pay and retrenchment compensation which is illegal and against the mandate of Section 25-F of the Act and therefore, directed reinstatement of the Workman in service with 30% back wages. The aforesaid decision of the Labour Court and direction for reinstatement has been challenged by the Management as not being sustainable in law.

5. Before the Labour Court, the Management led evidence. In fact, evidence was adduced from the side of Petitioner No.1, whereas, Petitioner No.2 abstained. Considering the materials on record, the learned Labour Court reached at a decision that the Workman was engaged under Jajpur Irrigation Division with effect from 1st November, 1991 till 15th October, 1992. The stand of the Management was that the Workman was employed on a daily wage basis as and

when required and the wages thereof had been paid to him. However, as against such a claim, the Labour Court concluded that in any case, the Workman proved to have been engaged and employed for more than 240 days and at the time of termination, the Management was obliged to comply Section 25-F of the Act and for having not done so, such disengagement was unjustified.

6. No rebuttal evidence could be produced by the Management in order to contradict the claim of such continuous service of more than 240 days rendered by the Workman which led the Labour Court to reach at a conclusion that reinstatement should be directed. The conclusion so arrived at by the Labour Court with regard to employment of Workman for more than 240 days with effect from 1st November, 1991 till 15th October, 1992 is, therefore, to be accepted in absence of materials to the contrary.

7. Question would be, whether, the reinstatement of the Workman with 30% back wages as has been directed by the Labour Court should be sustained? Mr. P.K. Muduli, learned Additional Government Advocate contended that the impugned award under Annexure-3 is to be disturbed in view of the decisions of the Supreme Court in ***Madhya Bharat Gramin Bank Vs. Panchamlal Yadav*** (Civil Appeal No.9792 of 2010) and ***Ranbir Singh Vs. Executive Eng. P.W.D*** (Civil Appeal No.4483 of 2010) decided on 13th July, 2021 and 2nd September, 2021 respectively. In the above cases, the Supreme

Court directed payment of compensation instead of reinstatement on the ground that it would serve the purpose and meet the ends of justice. Referring to the above judgments, it is contended for the Management that the Workman is entitled to monetary compensation only.

8. The Supreme Court in **Ranbir Singh** (supra) was of the view that in case of daily wage worker, reinstatement with back wages should not be automatic and monetary compensation would rather serve the purpose by demonstrating the rationality. In the instant case, the Workman was terminated by the Management without notice and retrenchment compensation, for which, it was held by the Labour Court to be in violation of Section 25-F of the Act. In the above decision, a view was expressed that approach for reinstatement should be in favour of daily wage worker under certain situations or else, retrenchment in disregard to Section 25-F of the Act should be saddled with monetary compensation.

9. By order dated 7th March, 2011, this Court directed the Management to pay the Workman wages @ Rs.90/- per day on monthly basis forthwith until further orders and also back wages at the same rate from 1st November, 2006 till the end of February, 2011, where after, the Management proceeded to pay the arrear dues in terms of Section 17-B of the Act as revealed from the Court's order dated 17th May, 2011 and at last, in compliance thereof, disbursed an amount of

Rs.48,405/-. Under Annexure-3, no full but payment of 30% back wages has been allowed by the Labour Court. As earlier mentioned, on the direction of this Court, the arrear dues for the period from 1st December, 2006 to 30th April, 2011 was drawn and disbursed to the Workman receipt of which stands duly acknowledged as is further evident from the Court's order dated 25th August, 2011. Under the above peculiar facts and circumstances, the Court is of the considered view that it should not interfere with the impugned award under Annexure-3 which nevertheless directs reinstatement but allows only 30% of the back wages payable to the Workman which does not appear to be in any way excess or grossly disproportionate. In other words, the Court is not inclined to disturb the findings of the Labour Court in the backdrop of the special facts narrated above and accordingly, it is ordered.

10. In the result, the writ petition stands dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice