

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14306 of 2010

Kapilendra Mohanta

....

Petitioner

Mr. S.C. Samantaray, Advocate

-Versus-

***Senior Divisional Manager,
Sukinda***

....

Opp. Party

Mr. S. Pattanaik, Advocate

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

**ORDER
23.03.2022**

Order No

31.

R.K. Pattanaik, J

1. Instant writ petition under Article(s) 226 and 227 of the Constitution of India, 1950 is filed by the Petitioner assailing the impugned award dated 28th May, 2008 (Annexure-6) passed in Tr. Industrial Dispute Case No.145 of 2001 by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar (shortly as 'the Tribunal') on the ground that it is not tenable in law and therefore, liable to be quashed seeking a further direction to reinstate him with full back wages and all consequential service benefits.

2. Heard learned counsel for the parties.

3. As revealed from the record, the Petitioner pleaded that he was appointed as a temporary helper with effect from 16th March, 1993 in Sukinda Chromite Mines of TISCO in the district of Jajpur and continued as such till 8th February, 1995 and thereafter, was terminated and upon such removal, he made

representations to the Management and later moved the Assistant Labour Commissioner for conciliation which yielded no result but failed, where after, the dispute was referred to the Tribunal for adjudication with the term of reference, whether, the demand for his reinstatement with full back wages due to illegal termination to be justified.

4. Before the Tribunal, the Petitioner filed statement of claim stating that he worked in the company till 8th February, 1995 and thereafter, illegally terminated and as such, the action of the Management was arbitrary and therefore, he should be reinstated with full back wages. The Management filed written statement and denied the above claim of the Petitioner by contending that such engagement was a purely temporary. It was further pleaded that the letter of appointment clearly indicated that the Petitioner shall not claim for regularization in service and that being the nature of employment, no notice was necessary for terminating his service. In response to the above, the Petitioner filed a rejoinder stating that he was appointed against a regular post of Helper and continued till 8th February, 1995 without any break and was even paid bonus for the year 1993-1994. The fact of absorption of some workmen against permanent posts by the Management was also mentioned by the Petitioner in the rejoinder filed by him before the Tribunal. The Tribunal received evidence and finally decided and determined all the issues against the Petitioner and accordingly, answered the reference.

5. It has been reiterated that the termination of the Petitioner from service is per se illegal and in gross violation of natural

justice and also in contravention of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the I.D. Act').

6. Mr. S.C. Samantaray, learned counsel for the Petitioner would contend that the action of the Management is grossly unfair and illegal and therefore, the impugned award under Annexure-6 deserves to be interfered with. It is further contended that the Management deliberately introduced artificial breaks in the service of the Petitioner so as to deny him regular employment, inasmuch as, he worked continuously for more than 240 days and was paid bonus for 309 days and therefore, at the time of termination, the Management was required to comply Section 25-F of the I.D. Act. As per the contention of Mr. S.C. Samantaray, the Tribunal erred to hold that the Petitioner was not in continuous employment for a period of 240 days in a year and the engagement to be contractual in nature and also for a conclusion to the extent that the reference to be bad in law. While advancing the above argument, a decision of the Supreme Court in ***Bhuvnesh Kumar Dwivedi Vrs. Hindalco Industries Limited (2014) 11 SCC 85*** is relied upon by Mr. S.C. Samantaray, learned counsel for the Petitioner.

7. Considering the rival contentions of the parties, the Tribunal reached at a decision that the documents produced by the Management proved and established temporary engagement of the Petitioner with breaks and at one point of time, the appointment was against a training vacancy of a regular employee of the company and each time, the letter of appointment indicated his services to be terminable without

notice on expiry of the tenure and the employment was not to be continuous for a period of 240 days in a year. The Tribunal also accepted the contention of the Management that the engagement of the Petitioner to be contractual in nature for fixed periods.

8. In fact, Section 2(oo) of the I.D. Act defines 'retrenchment' which means termination by the employer of the service of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but not to include termination of the service of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. In the instant case, the Tribunal held that the Petitioner was not in continuous employment for a period of 240 days and the term of service was terminable without notice being contractual in nature. A copy of the bonus payment produced by the Petitioner, on perusal, indicates payment to have been made for 309 days but it runs contrary to the evidence of fixed tenure of appointments between 16th March, 1993 and 8th February, 1995 with breaks in service ranging from some days to about four months. As alleged by the Petitioner, the Management deliberately issued the letters of appointment by having artificial breaks as against the defence that the service was never continuous but with clear interruptions. Considering the terms and conditions of appointment vis-à-vis the Petitioner, it would not be incorrect to hold that his engagement was temporary and only for fixed periods which finally expired in 1995.

9. A temporary engagement is at times offered on *ad hoc* basis for as long as the employer needs the help and there may be no set date for the assignment to end but it is also not contemplated to be permanent, whereas, a contractual job has a specifically defined scope and/or duration and is the subject of an explicit contract. In the case on hand, the Petitioner was engaged for fixed periods which is *prima facie* revealed from the letter of appointment, a copy of which is at Annexure-5 indicating therein that he was temporarily appointed as a Helper for a period of 12 days only. The Petitioner appears to have been engaged initially for 85 days each from 15th March, 1993 to 10th June, 1993 and then from 14th June, 1993 to 6th September, 1993; for 60 days from 11th October, 1993 to 11th December, 1993 with intermittent engagements till 8th February, 1995. It is made to suggest from the record that such engagement of the Petitioner with the company was subject to the terms and conditions of employment which has always been for temporary and fixed periods and finally on expiry of the last period for 12 days, it stood automatically terminated in the year 1995. As earlier mentioned, a termination cannot be held as retrenchment as per Section 2(oo) of the I.D. Act, if it was as a result of expiry of contractual employment. In the considered view of the Court, the convincing defence of the Management in juxtaposition to the claim of bonus payment by the Petitioner covering a period of 309 days without any corroborative evidence to prove it otherwise pointedly suggest that the employment was essentially for fixed periods and temporary.

10. In ***Bhuvnesh Kumar Dwivedi*** (supra), the Supreme Court considering termination with artificial breaks with reference to

Section 6-N of the U.P. Industrial Disputes Act, 1947 (in short ‘the U.P. I.D. Act’) concluded that if the above Act covered the case of the workman, then the termination of his services would result in retrenchment, while it is not so under the Central Act, in view of the exceptional clause in Section 2(oo) read with (bb) of the I.D. Act which is in relation to termination of the contract of employment in terms of the conditions of service. Having held so, the Supreme Court in the aforesaid case referring to Section 6-N of the U.P. I.D. Act rendered a categorical finding that the termination of workman amounted to retrenchment which would have been otherwise had it been governed by the I.D. Act. In the present case, the Petitioner was temporarily engaged with fixed tenures and such engagement finally ended in 1995 and applying Section 2(oo) of the I.D. Act, it has to be held as termination of a contractual service and not a retrenchment. Therefore, the aforesaid decision of the Supreme Court lends no assistance rather it diminishes the prospect of the Petitioner. Having reached at such a decision, the Court finds no legal infirmity in the impugned award under Annexure-6 and accordingly, it is ordered.

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

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice