

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4191 of 2012

Orissa Bridge and Construction Corporation Ltd., Bhubaneswar and another ***Petitioners***

Mr. Milan Kanungo, Senior Advocate
-versus-

Brundaban Mohapatra ***Opposite Party***
M/s. S. Dash and Associates, Advocates

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

ORDER
27.06.2022

Order No.

11. 1. The Orissa Bridge and Construction Corporation Limited (Petitioners) has filed the present petition questioning the award dated 23rd August, 2011 passed by the Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No.67 of 2010.
2. The following dispute was referred to the Tribunal for adjudication:

“Whether the action of the management of M/s. Orissa Bridge and Construction Corporation Ltd., Setu Bhawan, Nayapalli, Bhubaneswar in terminating the services of Sri Brundaban Mohapatra, Driver w.e.f. 01.03.2000 is legal and/or justified? If not, what relief he is entitled to?”

3. The background facts are that the Opposite Party-Workman was engaged by the Petitioner-Management to work as an

Office Attendant from February, 1986 onwards. Thereafter, he was engaged as a Truck Helper and ultimately as a Driver. He was placed under the Senior Project Manager (Mechanical), Bhubaneswar and his services were terminated with effect from 31st December, 1995.

4. The Workman then filed OJC No.140 of 1996 in this Court. In terms of the order of this Court, the Workman made a representation to the Management to reconsider the issue and express his willingness to work as a Helper on DLR basis. This representation was allowed and on 20th March 1997, the Workman resumed the duties in the office of the Project Manager as Truck Helper. He was transferred frequently and lastly worked at the Bahuda Bridge Toll Gate on 11th February, 2000 till 31st July, 2003.

5. On 31st July 2003, the Workman submitted a leave application to the In-charge of the Toll Gate for leave from 1st to 11th August, 2003. According to the Workman, on proceeding to his native place, he suddenly fell ill. While he was on leave, he received a letter dated 11th August, 2003 wherein the Management showed him to be unauthorisedly absent and asked him to resume duties immediately. According to the Workman, due to continued ill-health, he could not report for duties till 8th September, 2003. On 9th September 2003, he submitted his jointing report along with medical certificate, but this is refused by the Management. On 9th September 2003, the Management issued him a show-cause notice seeking his explanation why his services should not be terminated. The Workman stated that he

could not file his reply within three days as stipulated. Ultimately, by a letter dated 3rd November 2003, the Management terminated his services with retrospective effect from 1st March, 2000.

6. It was noted by the Tribunal in the impugned order that the Management had sent a letter dated 6th September, 2003 to the Workman by registered post with A.D. stating that the Workman had remained absent from duties from 1st March, 2000 till the date of his joining i.e. on 9th September, 2003. The Workman furnished medical certificates to show that he was on medical treatment from 1st August to 31st August, 2003 and again from 2nd September, 2003 till he reported for duty on 9th September, 2003.

7. It appears that when the Workman did not report for duty in response to the letter dated 7th August 2003, the Management issued another letter dated 6th September, 2003 asking him to resume duties “within 7 days.” Within 3 days thereafter, on 9th September 2003, the Workman did report for duty but his joining report was not accepted and instead he was issued a show-cause notice as to why his services should not be terminated.

8. Immediate action was not taken on the failure of the Workman to submit the reply to the show-cause. It was only on 3rd November, 2003 that the termination order was finally passed.

9. The Tribunal found that having given him 7 days time from 6th September, 2003 to join and that he having reported for duty on 9th September 2003, the Management ought to have accepted the joining report, particularly since by that date his services were not terminated. If at all the Management wished to take action against the Workman for his unauthorized absence, it could have initiated such action even after accepting the joining report. In the circumstances, the termination of the Workman's services was held to be illegal by the Tribunal and the award as noted hereinbefore was passed.

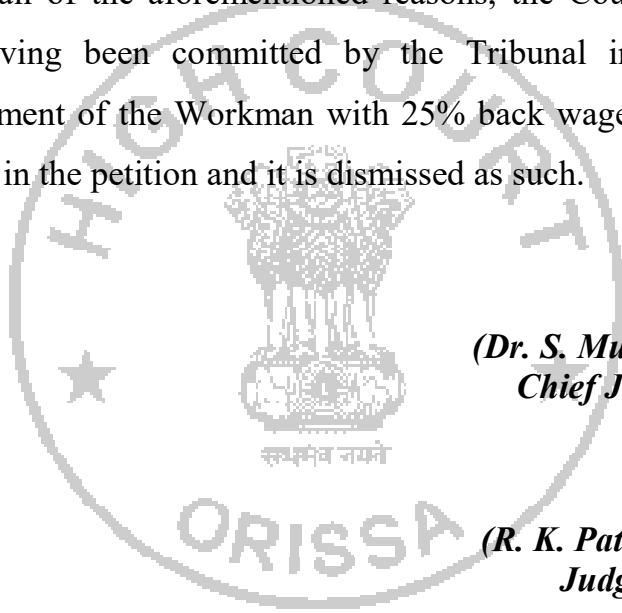
10. This Court has heard the submissions of Mr. Milan Kanungo, learned Senior Counsel appearing for the Petitioners-Management and learned counsel for the Opposite Party-Workman.

11. A perusal of the letter dated 6th September, 2003 issued by the Management to the Workman reveals that indeed, the Management had given him 7 days time from the date of the letter to join failing which it would be presumed that the Workman was not interested in continuing. In other words, the above letter dated 6th September, 2003 appears to condone the earlier absence from duty and call upon the Workman to report for duty within 7 days thereafter.

12. Strangely, although time had been given till 13th September, 2003 to the Workman to join duty by the Management, when he reported for duty on 9th September, 2003 i.e. within 3 days thereafter, the Management refused to accept the joining report.

There is no valid explanation or justification for this. Whatever may have been the reasons for the unauthorized absence earlier thereto, once the Management itself gave the Workman 7 days time to report for duty from 6th September, 2003 onwards, there was no justification in declining the joining report of the Workman on 9th September, 2003. This action certainly not lawful and the consequential action of terminating the services of the Workman was also therefore vitiated.

13. For all of the aforementioned reasons, the Court finds no error having been committed by the Tribunal in directing reinstatement of the Workman with 25% back wages. There is no merit in the petition and it is dismissed as such.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, with the motto 'Satyameva Jayate' in Devanagari script below it. The words 'HIGHER COURT' are written in an arc at the top, and 'ORISSA' is written in an arc at the bottom. A five-pointed star is positioned to the left of the central emblem.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge