

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5906 of 2008

Indian Overseas Bank

....

Petitioner

Mr. N.K. Mishra, Advocate

-versus-

***The Presiding Officer, Central
Government Industrial Tribunal-cum-
Labour Court, Bhubaneswar and
another***

....

Opposite Parties

Mr. M.K. Pati, C.G.C. for Union of India

Mr. R.K. Bose, Advocate for O.P. No.2

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

**ORDER
09.03.2022**

Order No.

01. 1. The present writ petition by the Management-Indian Overseas Bank challenges an award dated 31st October 2007 passed by the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar (Tribunal) in I.D. Case No.56 of 2002.
2. By the impugned award, the Tribunal concluded that the action of the Management in discharging the Opposite Party No.2-Workman from service was bad in law. The Management was directed to reinstate him in service with full back wages together with compensation of Rs.20,000/-. He was asked to be given continuity of service and other service benefits as available to his counterpart co-workers.
3. While issuing notice in the present petition, on 23rd April 2008, this Court stayed the operation of the award. By a further order

dated 17th December 2008, this Court clarified that the stay would continue subject to compliance with Section 17-B of the Industrial Disputes Act, 1947 (ID Act).

4. The dispute referred to the Tribunal for adjudication was as under:

“Whether the action of the Management of Indian Overseas Bank, Central Office, Chennai and Local Head Office, Berhampur (Ganjam) in relation to their Bissam Cuttack Branch, Koraput (Orissa) in discharging Shri B. Ramesh Chandra, Clerk assigned with Special Assistant duty from service vide Order dated 11.06.1999 is legal and justified? If not, what relief the workman is entitled?”
“Whether the action of the management of Indian Overseas Bank by not clearing timely Shri B. Ramesh Chandra’s TA Claims, 6th settlement arrears, Annual grade increments of 1977 etc, is legal and justified? If not, what relief the workman is entitled to?”

5. After the claims statement and reply were filed, the issues framed by the Tribunal for adjudication were as under:

- “1. Whether the reference is maintainable ?
2. Whether the domestic enquiry conducted against the disputant was fair and proper?
3. Whether the discharge of the delinquent, who was assigned with Special Assistant duty from service vide order dated 11.6.1999 is legal and justified?
4. Whether the action of the Management of Indian Overseas Bank by not clearing timely Shri B. Ramesh Chandra’s TA claims, 6th settlement arrears, Annual grade increments of 1977 etc. is legal and justified?
5. If not, to what relief the workman is entitled?”

6. By an order dated 2nd March 2005, the Tribunal accepted the plea of the Management for taking Issue No.2 as a preliminary issue. However, the plea of the Management that Issue No.1 should be taken up as a preliminary issue, was rejected by the Tribunal by an order dated 14th July, 2005. The parties were directed to adduce evidence in respect of Issue No.2 alone.

7. The Management then produced the enquiry officer and another officer for recording their evidence as M.Ws.1 and 2. The Workman examined himself as W.W.1. Exhibits 1 to 32 were marked on the side of the Management and Exhibits A to H on the side of the Workman. The Management states that it received under cover of a letter dated 15th February 2008 copy of the impugned award dated 31st October 2007 passed by the Tribunal.

8. According to the Management, although the finding was supposed to be restricted to Issue No.2, the Tribunal had answered all the issues and came to the conclusion that the order of punishment dated 11th June 1999 was liable to be set aside.

9. Mr. N.K. Mishra, learned counsel appearing for the Petitioner refers to the decision in ***Karnataka State Road Transport Corporation v. Smt. Laxmidevamma AIR 2001 SC 2090*** to urge that the right of the employer to adduce additional evidence in justification of the order of termination could not have been taken away and this had to await the decision on the issue of the propriety of the domestic enquiry. In other words, according to

him, the Tribunal ought not to have foreclosed the right of the management to lead evidence on the merits of the case and given a final verdict on the preliminary issue of the fairness of the domestic enquiry. He also refers to the impugned award where the sub-heading above paragraph No.6 reads “AWARD ON PRELIMINARY ISSUE NO.2” whereas the award finally decided all the issues.

10. Mr. R.K. Bose, learned counsel appearing for the Workman on the other hand points out that the Workman is at present over 70 years old and there is no possibility of one portion of the award regarding his reinstatement being implemented. The only relief that the Workman would get therefore was that of the compensation and with his having received 17-B wages, it is only the differential amount if any that would become payable.

11. The Court finds that in paragraphs 13 and 14 of the impugned award, the preliminary issue of fairness of the enquiry has in fact been dealt with squarely by the Tribunal. Even in the context of examining whether the punishment was proportionate to the misconduct the Tribunal examined it from the point of view of the fairness of procedure. The Tribunal came to the conclusion that as a result of the erroneous procedure adopted, the entire action was bad in law.

12. If the Workman had not superannuated in the meanwhile, it might have been worthwhile to examine questions of law sought to be urged by the Management regarding the Tribunal having

foreclosed its right to lead evidence on the correctness of the order of termination. However, there is no possibility of the Workman being reinstated now. With him having received Section 17-B wages during the pendency of this petition, the Court sees no purpose being served in entertaining the present petition.

13. Consequently, leaving the questions of law open for decision in some other appropriate case, the petition is disposed of. The interim order dated 23rd April 2008 passed in the present petition stands vacated.

14. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin