

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18614 of 2009

***OSWAL Sarakarakhana
Shramika Sangha,
Paradeep***

..... Petitioner
Mr. S.C. Pani, Advocate

-Versus-

State of Orissa and others

..... Opposite Parties
Mr. D.K. Mohanty, AGA
Mr. S.P. Sarangi, Advocate for OP No.3

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

**ORDER
22.02.2022**

Order No.

R.K. Pattanaik, J

11. 1. Instant writ petition under Article(s) 226 and 227 of the Constitution of India is at the behest of the Petitioner assailing the impugned award dated 15th April, 2008 (Annexure-7) passed by the learned Presiding Officer, Industrial Tribunal, Bhubaneswar (in short 'the Tribunal') in I.D. Case No.14 of 2002 on the ground that it is unsustainable since de hors evidence on record and therefore, deserves to be nullified with grant of consequential reliefs as may be deemed just and proper in the facts and circumstances of the case.
2. Impugned award under Annexure-7 is under question on the ground that the workmen were retrenched by the Management without due procedure being followed but a contrary finding was rendered by the Tribunal. In fact, the Petitioner represent the workmen who had been initially

engaged by a contractor at the establishment of OP No.4 which was later taken over by OP No.3. It is contended by the Petitioner that several contractors were engaged to supply labour force to OP No.4 and one of them was M/s. Bhagaban Parida (O.P.No.2), who had obtained license for supply of workers with effect from February, 2000. It is claimed that O.P.No.2 refused employment to 182 workmen (124 on 24th February, 2001 and 58 on 12th March, 2001) which was without due compliance of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the ID Act') and Contract Labour Abolition (Regulation & Abolition) Act, 1970 and in breach of the settlement arrived at on 17th February, 2001. As per the Petitioner, conciliation was attempted at the instance of Deputy Labour Commissioner, Cuttack after the termination of 182 workmen but then it could not be successful for which report dated 15th July, 2002 was submitted to the State Government which on being satisfied about existence of an industrial dispute between OP No.4 (Management), M/s. Bhagaban Parida and the workmen, referred it for adjudication by the Tribunal and accordingly, I.D. Case No.14 of 2002 was set into motion and ultimately, the impugned award under Annexure-7 was passed.

3. Heard Mr. S.C. Pani, learned counsel for the Petitioner, Mr. S.P. Sarangi, learned counsel for OP No.3 and Mr. D.K. Mohanty, learned AGA for the State.

4. Mr. S.C. Pani, learned counsel for the Petitioner would contend that the Tribunal received evidence from the

respective parties but miserably failed to appreciate it in proper perspective which resulted in passing of the impugned award i.e. Annexure-7. The fact of retrenchment of 182 workmen, as further contended by Mr. S.C. Pani, was illegal as the Management had not obtained prior permission as required under the ID Act and the Tribunal grossly erred in concluding that there was no retrenchment and therefore, no direction was required for their reemployment.

5. It is made to understand that the workmen were engaged by O.P.No.2, who by then used to supply labour force to O.P.No.4. The contractor, namely, Balaji Parida examined himself as MW1 and deposed before the Tribunal that workmen left job voluntarily when the Management took decision to reduce the work and during that time, they were on strike without any notice. It is made to suggest that notice i.e. Ext. C was issued to the Petitioner with a request to the workmen join in duties but as per MW1, they failed to turn up the fact which was intimated to the D.L.O. under Ext.E and again had issued a notice i.e. Ext.F but it yielded no result and according to the Tribunal, such evidence could not be shaken during cross-examination. In fact, MW1 had engaged the workmen and him shown to have issued notices under Exts.C & F requiring them to join and as a consequence, it is claimed that some of them even joined but others failed to resume in their duties. As per the Tribunal, version of MW1 received confirmation from the admission of WW1, who during his cross-examination admitted that from 14th February, 2001,

they all went on strike and had not joined in their duties till the date he was examined. WW1 deposed that the Management terminated the services of workmen on 24th February, 2001. It is being claimed that there was a strike from 14th February, 2001 but it was called off on 17th February, 2001 after conciliation, however, on 24th February, 2001, the workmen were terminated without any notice. Mr. S.C. Pani contended that no notice was ever received by the Petitioner or the retrenched workmen with intimation to join in their duties. It is also contended that in course of reconciliation, the Management agreed to reemploy the workmen. However, the Tribunal held that the aforesaid claim did not receive any support from the materials on record. In fact on a bare reading of the report i.e. Annexure-1, it is made to understand that despite conciliation, reemployment could not be worked out as by then some of the project work had been completed and many of the contractors had left OP No.4 on completion of the contract period and according to the Management, to a great number, the workmen had expressed their unwillingness to continue in the establishment due to prolonged strike and labour unrest.

6. As to the reemployment, WW2 claimed about a settlement with the Management which had agreed for the same but such a claim did not draw any attention which is also based on the factual finding of the Tribunal.

7. From the materials available on record, it is made to realize that there was labour unrest and disturbance in the

establishment of O.P.No.4 during the relevant period later to which conciliation was attempted but it failed, where after, Annexure-1 was furnished and then, the dispute was referred for adjudication by the Tribunal. In fact, it is revealed that many contractors had been engaged, some of whom even participated in the conciliation process. The materials on record suggest that due to strike of the workmen, the work in the establishment of O.P.No.4 had slowed down which demanded less number of workers but somehow, after conciliation, notices were issued to the Petitioner but the workmen did not return and at that point of time, as is made to suggest, the workmen were on strike, the fact which stood admitted by WW1. It is also revealed that when O.P.No.2 post conciliation issued notices widely circulated even through local dailies, the workmen did not resume in their duties. If at all the disengagement happened, it was at the instance of OP.No.2 and under the above circumstances, which was also on account of non-resumption in duty by the workmen, who were on strike by then. As regards the contention that the workmen were made to work under O.P.No.2 despite being the regular work force of O.P.No.4, it is not substantiated by any evidence. So, against the above backdrop, the conclusion would be inevitable that the finding of the Tribunal in this regard is far readily acceptable than of the Petitioner.

8. Hence, in the considered opinion of the Court, the Tribunal did not appear to have committed any gross error in reaching at a logical decision that there was no termination as

such by the Management and that the workmen could not have either been reemployed with other contractors under the situation then prevailed.

9. Accordingly, it is ordered.

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

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice