

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No. 5071 of 2013
(Through hybrid mode)**

***M/s. Tata Sponge Iron Limited and Petitioners
another***

-versus-

State of Odisha and another Opposite Parties

Advocates appeared in the case:

For petitioners - Mr. S.P. Sarangi, Advocate

For Opp. Parties - Mr. Rajendra Ku. Sahu
(O.P.2 in person)

CORAM:

**JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA**

JUDGMENT

08.12.2022

ARINDAM SINHA, J.

1. The writ petition was filed by the management challenging award dated 16th November, 2012 made in favour of opposite party no.2 workman. In it was held that termination of service of the workman (Ex-Senior Weigh Bridge Clerk) by way of discharge with effect from 19th January, 2008 was illegal and unjustified. Hence, the

workman was found entitled to reinstatement in service with all consequential benefits. On query from Court, we are told that the workman had achieved age of superannuation on 30th June, 2021, while the writ petition was pending.

2. On further query from Court we are told that relief under section 17-B in Industrial Disputes Act, 1947 was had by the workman till 30th June, 2021.

3. Order sheet reveals there was attempt at conciliation by the writ Court, at instance of parties. The writ petition was listed and called on for hearing by this Bench on 22nd November, 2022. We reproduce below paragraphs 1, 2 and 3 from order made that day.

“1. Mr. Sarangi, learned advocate appears on behalf of the management and submits, a settlement is possible. He refers to order sheet and submits, there was initiation of the process. Calculation sheets have been exchanged.

2. The workman appears in person. He relies on calculation sheet tendered by memo and thereafter as annexure-2 in his additional affidavit dated 27th September, 2022.

3. We have heard Mr. Sarangi and the workman, in trying to mediate a settlement. It appears, settlement is not possible since the management has offered

Rs.2,29,051/-, where the workman claims Rs.45,34,266/- and further interest. The writ petition is to be heard and disposed of.”

4. On next day of hearing (6th December, 2022) an order was made, from which we reproduce below, paragraphs 3 to 5 therein.

“3. On query from Court he submits, merits of the matter are that the workman produced a fake gate pass and left the work premises. He draws attention to annexure-1, which is the gate pass. He points out, signature appearing, as made by head of the department, was fabricated. This was the case in the Tribunal.

4. The management is required to demonstrate from its evidence that the head of the department had taken the box and deposed it was not his signature. We will allow the management to demonstrate this either from the enquiry report or from materials on record before the Court below.

5. Adjournment granted is peremptory since, the workman appears in person.”

Pursuant to above direction, today Mr. Sarangi produces the evidence of management witnesses 1 and 3. The witnesses had deposed on all issues.

5. Mr. Sarangi submits with reference to affidavit evidence of management witness no.3 (MW-3). In paragraph-3 he had said, inter

alia, on scrutiny of the permit, when it was produced at Gate no.3 at 6.55 p.m., it came to notice of the security personnel present there that the signature/initial on that permit did not match with any signature of superiors of the workman, including signature of the witness himself. On query from Court regarding deposition of said witness in cross-examination, Mr. Sarangi draws attention to paragraph-10 to submit, there was clear assertion by the witness that the workman had prepared false gate pass and submitted same to the security.

6. The workman appears in person. We have ascertained from him facts regarding relief obtained under section 17B and his age, as recorded above.

7. We have perused impugned award as well as the depositions relied upon by Mr. Sarangi. We reproduce below two passages from deposition in cross-examination of MW-1.

*“3. xx xx xx **Sunakar Nanda the Assistant Manager of raw materials also signed on the gate pass.** xx xx xx.*

4. xx xx xx It is not a fact that there is no fake document with the management and the second party workman used the original gate pass issued by Sunakar Nanda and the management created the fake gate pass to drive the second party workman from his service since he was

working as the president of the worker union and for his Trade Union activities. xx xx xx”

(emphasis supplied)

8. We reproduce following passages from affidavit evidence of MW-3 and his cross-examination.

“xx xx xx On the same day, around 5.00 p.m. the workman left his place of work for his own work obtaining a permit to leave the works while he was in the ‘B’ shift duty and his whereabouts till 6.55 p.m. were not known. On scrutiny of the permit when it was produced at Gate No.3 at 6.55 p.m. It come to notice of the security personnel present there that the signature/initial on that permit, which was produced by the 2nd Party-Workman, did not match with any of the signature of the superiors of the workman including by signature of the Raw Materials & Despatch Department. xx xx xx

Cross-examination by the workman:

“xx xx xx

7. ***On 27.4.2007 I issued gate pass in favour of the second party. On the basis of an application for leave submitted by the second party. I allowed the second party to leave the company premises at 5.00 P.M. alongwith the gate pass. xx xx xx The gate pass which I issued in favour of the workman was not available with the Gate Security staff and for that reason I think the second-party***

used a forged gate pass to leave the company premises.

xx xx xx”

(emphasis supplied)

It will appear from above passages that some facts were established. Firstly, MW-3 had issued gate pass. Secondly, the gate pass was not with the security. Thirdly, the workman was alleged to have produced a gate pass to the security with forged signature. Lastly, we note that though the gate pass was issued for the workman to leave at 5.00 p.m., he had actually left at 6.55 p.m. on 27th April, 2007.

9. As aforesaid we have perused impugned award and relied upon depositions as well as made query to Mr. Sarangi regarding production of the gate pass issued by MW-3. That gate pass was not produced in the inquiry and same noticed by the labour Court. In this regard, we reproduce a sentence from the deposition in cross-examination of MW-3.

*“10. By preparing a false gate pass and submitting the same before the security, **the second party could not have availed any benefit in his favour.** xx xx xx”*

(emphasis supplied)

10. Next we reproduce a passage from paragraph-10 in impugned award.

*“10. xx xx xx It is submitted by the representative of the management that the copy of the said gate pass is available in the bunch of documents filed with the enquiry report marked Ext.M-1. On perusal of the documents I find xerox copy of a permit issued on 27.4.2007 in favour of the workman performing ‘B’ shift duty was produced before the enquiry office which he marked Ext.II. **The workman does not admit to have produced the said document before the Gate Keeper.** The workman in his reply to the show cause (Ext.W-3) informed the management that Mr. B.M. Mishra and Mr. D. Sahu sanctioned leave on his original application. **The management for no reason has not produced the original leave application of the workman. Had this document been produced the signatures of the sanctioning authorities could have been confronted to the Management’s witness. For non-production of this vital documents I am inclined to draw adverse inference against the management.**”*

(emphasis supplied)

11. Our exercise of extracting and reproducing passages from relied upon depositions of management witnesses and impugned award is to demonstrate to petitioner that there is no perversity in impugned award. We reiterate that interference in writ jurisdiction is limited as declared by the Supreme Court in **Syed Yakoob v. Radhakrishnan**, reported in **AIR 1964 SC 477**.

12. The writ petition is found to be without merit and dismissed.

(Arindam Sinha)
Judge

(S.K. Mishra)
Judge

Sks

