

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 14223 of 2009

Northern Eastern Electric Supply of *Petitioner*
Orissa Ltd.

Mr. Ramanath Acharya, Advocate

-versus-

Bhagirathi Hansda and Others *....* *Opposite Parties*

Mr. S.Patra, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No.

ORDER
24.02.2022

Dr. S. Muralidhar, CJ.

11. 1. The challenge in the present petition by the Management is to an Award dated 13th April, 2009 passed by the Industrial Tribunal, Odisha, Bhubaneswar (Tribunal) in I.D. Case No.152 of 2008. The term of reference on which the Labour Court was asked to adjudicate the dispute by the order dated 23rd July, 1997 reads as under:

“Whether the refusal of employment of Sri Bhagirathi Hansda, Madan Mohan Marandi, Gobinda Soren, Jitrai Murmu, Lalmohan Soren from 1.3.1984 Sri Sunaram Murmu, Sri Jitrai Tudu from 1.9.83 Sri Lalmohan Baskay and Sri Madan Jena from 1.1.84 by the Executive Engineer, erstwhile O.S.E.B. Keonjhar Division (at present E.E. Grid Corporation, Electrical Division Anandapur) is legal and/or justified ? If not, to what relief the aforesaid nine workman are entitled”

2. Learned counsel for the Petitioner at the outset pointed out that the Management of the erstwhile Northern Eastern Electric Supply

of Orissa Ltd. has been now taken over by the TATA Power North Odisha Distribution Ltd. (TPNODL). On his oral prayer the name of the Petitioner has been substituted i.e. TPNODL, represented by its Chief Executive Officer (CEO).

3. The background facts are that the Opposite Parties-Workmen were working with Anandapur Electrical Section Office of the erstwhile Orissa State Electricity Board (O.S.E.B.) as casual labourers. Their case was that one of the several employees on various dates between 1st September, 1983 and 1st March, 1984.

4. According to the workmen, they approached the Conciliation Officer in 1985, 1988 and then 1992 and thereafter they approached this Court in OJC No.5374 of 1996 and pursuant to the order passed by this Court, the Conciliation Officer took up the proceedings and after failure in conciliation, the aforementioned terms of reference were made.

5. One of the contentions of the Petitioner-Management before the Tribunal was that there was delay on the part the workmen in approaching the Government for making the reference to the Labour Court. On this aspect the Tribunal had referred to an admission made by the Management witness in his examination-in-chief that in the year 1992 when the process of regularization of NMRs going on, the workmen in the present case “raised their voice to get into an employment of the first party”. On this basis it was held by the Tribunal that the dispute was not a stale claim.

6. Learned counsel for the Petitioner relied on the decisions in ***Nedungadi Bank Ltd. vs. K.P. Madhavankutty* 2000-I- LLJ 561; *Batala Co-operative Sugar Mills Ltd. v. Sowaran Singh* 2006-I- LLJ 12** and the decision of Delhi High Court in ***All India Institute of Medical Sciences v. Sanjay Kumar* 2011-IV-LLJ-207 (Del)** to urge that the delay in seeking the reference of the dispute for adjudication by the Labour Tribunal would render the reference itself bad in law.

7. On the other hand, learned counsel for the Opposite Party (Workmen) referred to the decision in ***Sapan Kumar Pandit v. U.P. State Electricity Board* AIR 2001 SC 2562** and ***Raghubir Singh v. General Manager, Haryana Roadways, Hissar* (2014) 10 SCC 301** which hold that the workman cannot be denied the benefit only on the ground of delay in raising an industrial dispute.

8. In the last mentioned decision in ***Raghubir Singh* (supra)**, the workman was charged under Section 409 IPC on 10th August, 1993 in a criminal case at the instance of the Respondent therein for alleged misappropriation of the amount collected from tickets and not depositing the cash in time. Only after acquitted by the Court, the Appellant (Workman) reported to join his duty but he was informed by the Respondent that his services stood terminated with effect from 21st October, 1994. Thereafter he sought reference of the dispute for adjudication.

9. The facts of the present case are different. The workmen here obviously were refused employment way back in 1984. The Labour Court has held that the records of the Conciliation Officer

do not show that the workmen approached the Conciliation Officer, as claimed by them, in 1985 and then 1992. Clearly therefore, there is no valid explanation for the inordinate delay in seeking the reference of the dispute to the Labour Court for adjudication.

10. The decision in *Nedungadi Bank Ltd. (supra)*, the case supports the case of the Management. It was held in para 6 of the said decision as under:

“6. Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising

industrial dispute was ex facie bad and incompetent.”

11. In the present case too, the explanation offered by the Workmen for not approaching the Government earlier than 1996 for making of a reference is not satisfactory. Therefore, this Court is unable to agree with the conclusion reached by the Tribunal that the claim in the present case cannot be characterized as stale claim. On that ground, the impugned Award of the Tribunal is set aside.

12. The writ petition is allowed, but in the circumstances, with no order as to costs.

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

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.