

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.17657 of 2013

Pramod Kumar Jena and others

....

Petitioners

Mr. D. Mohanta, Advocate

-versus-

***The Presiding Officer, Labour Court,
Bhubaneswar and another***

....

Opposite Parties

Mr. Ishwar Mohanty, ASC

Mr. R.Rath, Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

ORDER

18.07.2022

Order No.

04.

1. This is a petition by the Workmen challenging an award dated 28th May, 2013 passed by the Labour Court, Bhubaneswar in Industrial Dispute Case No.5 of 2011.

2. The grievance of the Workmen is that after finding the termination of the services of the Workmen to be unlawful, the Labour Court stopped at directing their reinstatement but denied them back wages.

3. In para 8 of the impugned award the Labour Court observed as under:

“When the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified.”

4. Learned counsel for the Petitioners urged that the Petitioners could not be expected to be employed when in fact they were out of employment.

5. This is a complete misunderstanding of what the Labour Court has pointed out. The burden of showing that they were not gainfully employed elsewhere while they were out of employment with the management, was on the workmen and they had not discharged it.

6. It was then submitted that this objection was not raised by the management in response to the prayer for back wages.

7. The Labour Court was not obliged to grant such relief without being satisfied whether the workmen were not gainfully employed elsewhere. In other words, the Labour Court has not committed any error in posing the above question and placing the burden in that regard on the workmen.

8. Consequently, the Court is not inclined to grant the relief as prayed for.

9. The writ petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge