

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21413 of 2012

***Orissa State Road Transport
Corporation***

Petitioner

Mr. B. Sahoo, Advocate

-versus-

Mallik Ahisan and another

Opposite Parties

Mr. K.A. Guru, Advocate for O.P. No.1

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**ORDER
16.08.2022**

Order No.

01.

1. This petition by the Orissa State Road Transport Corporation is directed against an award dated 20th September 2010 passed by the Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No.87 of 2008.

2. Notice was issued in the present petition on 2nd February 2015, but no stay was granted of the impugned award. On 29th June 2022, the following order was passed by this Court:

“1. During the long pendency of the present petition, there has been no stay of the impugned award and also the workman does not appear. Learned counsel for the Petitioner still insists that the Management is prepared to deposit the awarded sum of Rs.1.00 lakh in this Court to be heard in the matter. Accordingly, it is directed that the Petitioner will deposit Rs.1.00 lakh in this Court on or before 1st August, 2022. The amount so deposited shall be kept by the Registry in a fixed deposit and be kept renewed during pendency of the present petition.

2. None appears for Opposite Party No.1 workman although Mr. K.A. Guru shown to have filed vakalatnama on his behalf. Notice without process fee be issued to Mr. K.A. Guru to remain present on the next date.

3. List on 16th August, 2022.”

3. Pursuant to the above order, the Petitioner has deposited a sum of Rs.1,00,000/- in this Court and it has been kept in a fixed deposit (FD).

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

“Whether the termination of services of Sri Mallik Ahisan, Driver by the District Transport Manager (Admn.), Orissa State Road Transport Corporation, Cuttack with effect from 16th June 1992 is legal and/or justified? If not, to what relief Sri Ahisan is entitled?”

5. The case of the Workman was that he was appointed as substitute driver in 1985 with a consolidated salary of Rs.825/- per month which was subsequently increased to Rs.940/- per month besides daily allowance on duty. He continued as such for more than seven years up to 18th June, 1992. According to him on that date when he returned to the Headquarters after his last trip as a driver to Calcutta, he suddenly received the order terminating his services with effect from 16th June, 1992.

6. The case of the Management was that he had never worked continuously for the aforementioned period between 1987 to 1992

and in any event had not completed 240 days of work in any calendar year. The Workman exhibited 24 documents in support of his case. These were office orders issued to him extending the period of his engagement from time to time.

7. On its part, the Management failed to exhibit the registers, duty register, payment register etc. from which it could have been ascertained whether the Workman had completed 240 days of work during the twelve months preceding the termination.

8. The Tribunal accordingly concluded that the Management ought to have discharged the burden of proof that the Workman had not been engaged continuously for more than 240 days in the calendar year preceding his termination. Accordingly, an adverse inference was drawn against the management. However, instead of directing reinstatement of the Workman, the Tribunal ordered that he be paid a lump sum compensations of Rs 1,00,000/-.

9. Learned counsel for the Petitioner seeks to place reliance on the decision in ***Rajasthan Tourism Development Corporation Ltd. v. Intejam Ali Zafri (2006) 6 SCC 275*** and in particular, the following passage:

“4. As already noticed, it is the settled proposition of law that when the initial appointment itself is void then the provisions of Section 25F of the Industrial Disputes Act are not applicable while terminating the services of the workman. The respondent-workman has also not placed before the Labour Court the relevant documents and not even summoned the records before the Labour Court. It is seen from the records that neither the Labour Court called for the records concerned nor the respondent-

workman moved an application before the Labour Court for summoning the records. The respondent-workman led no cogent and convincing evidence before the Labour Court. Accordingly, the award passed by the Labour Court deserves to be quashed and set aside.”

10. In the present case, however, it is not that the Workman has not placed relevant documents before the Tribunal. On the contrary, by placing as many as 24 documents which substantiated his case, the Workman shifted the burden to the Management to prove that he had not been continuously engaged for more than 240 days in the preceding calendar year. Consequently, the Court is of the view that the above decision is of no application to the facts of the present case.

11. With the management failing to discharge the burden of showing that the Workman was not engaged continuously for 240 days, an adverse inference was rightly drawn against it by the Tribunal. Admittedly, since Section 25-F of the Industrial Disputes Act, 1947 was not adhered to, no fault can be found with the Tribunal in finding in favour of the Workman and against the Management as regards the illegality of the termination of his services.

12. In catena of decisions the Supreme Court has held that compensation can be ordered in lieu of the reinstatement. Therefore, the award of the Tribunal in the instant case cannot be faulted. Given that the Workman had worked for nearly 8 years for the Management, the sum awarded cannot be said to be unreasonable.

13. For all of the aforementioned reasons, the Court finds no reasons to interfere with the impugned award of the Tribunal. The writ petition is dismissed. A sum of Rs.1,00,000/- deposited in the Court be released forthwith in favour of the Workman upon proper identification by the Registry together with interest accrued thereof.

14. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Guin

