

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.4472 of 2012**

***The Management of Ramadevi  
Chhatrinivas (Ladies Hostel No.II),  
Utkal University, Bhubaneswar***

....

***Petitioner***

***-versus-***

***Sri Tankadhar Digal***

....

***Opposite Party***

**Advocates appeared in these cases:**

***For Petitioner***

:

Mr. Narendra Kishore Mishra,  
Senior Advocate

***For Opposite Party***

:

Mr. A.K. Rath,  
Advocate

**CORAM:**

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

**JUDGMENT**

**29.07.2022**

**Dr. S. Muralidhar, CJ.**

1. The Management of the Ramadevi Chhatrinivas in Utkal University, Bhubaneswar has challenged an Award dated 20<sup>th</sup> July 2011 passed by the Labour Court, Bhubaneswar in Industrial Disputes (ID) Case No.35 of 2004 whereby the action of the Management in terminating the services of the Opposite Party-Workman, who was working as a Watchman with them, with effect from 30<sup>th</sup> September 2000 was held to be illegal and he was directed to be reinstated with a lump sum amount of Rs.40,000/-.

2. While directing notice to issue in the present petition on 3<sup>rd</sup> April 2012, this Court stayed the operation of the impugned Award subject to the Management complying with Section 17-B of the Industrial Disputes Act, 1947 (ID Act).

3. This Court has heard the submissions of Mr. Narendra Kishore Mishra, learned Senior Advocate for the Management and Mr. A.K. Rath, learned counsel for the Opposite Party-Workman.

4. At the outset, it must be pointed out that although it was argued before the Labour Court that the Petitioner-Hostel was not an 'industry' within the meaning of the ID Act, Mr. Mishra in the course of his argument submitted that the Petitioner would not be pressing that point. The only question therefore is whether the Labour Court was justified in holding the termination of the services of the Opposite Party-Workman to be illegal and in directing his reinstatement with compensation of Rs.40,000/-?

5. The facts relevant to the above issue are that the Opposite Party was appointed as a Watchman in the said hostel by an order dated 31<sup>st</sup> January 1998 on a temporary basis on a consolidated pay of Rs.900/- per month with effect from 1<sup>st</sup> February, 1998. Subsequently, his pay was enhanced to Rs.1250/- per month.

6. The case of the Workman was that on 30<sup>th</sup> September 2000, he was refused employment verbally without notice or assigning any reason. He met the Superintendent of the hostel on 1<sup>st</sup> October 2000, and requested that he should be allowed to join duty, but this was refused. The Workman claims that later on he was

directed to work in the residence of the Superintendent, but he was not paid for that work. Claiming that the provisions of Section 25-F of the ID Act were not followed, and the principles of natural justice have been violated while terminating his services, an industrial dispute was raised by the Opposite Party Workman.

7. In his statement of claim, apart from averring the above contentions, the Workman pointed out that similarly situated employees who were junior to him were still continuing in employment.

8. The Petitioner Management filed a written statement in the Labour Court contending that the reference itself was barred by limitation. It was denied that the Workman had ever been asked to perform duties in the residence of the Superintendent. It was denied that the Workman had been refused employment. Therefore, the question of compliance with Section 25-F of the ID Act did not arise. His employment had been changed from that of a Watchman to a Gardener by an order dated 8<sup>th</sup> September, 2000. It was stated that on 18<sup>th</sup> October 2000 at around 9.30 am, the Workman abused the Superintendent and Warden of the Hostel and threatened their lives as a result of which the matter was referred to the Sahidnagar Police Station (PS) on 23<sup>rd</sup> October, 2000. It was stated that the Workman refused to do the work of Gardener and thereafter he never reported for duty. It was a case of abandonment of service by the Workman. It was submitted that the Management had lost confidence in the Workman and had

concerns about the reputation of the Hostel if he were to be reinstated.

9. Before the Labour Court, the Workman examined himself as WW-1 and proved Exts.1 to 7. The Management examined a Reader in Zoology as MW-1 and proved the documents as Exts. A to C. As regards the contention of the Workman that he had completed 240 days of service in the twelve calendar months preceding the date of his termination, the Labour Court took on board the xerox copies of the attendance register for the period from October 1999 up to the year 2000. It was held by the Labour Court that the above documents and the letter (Ext.A) supposed to have been written by the Management to the Workman asking him to work as Gardener instead of Watchman showed that the Workman had completed 240 days of service in twelve calendar months preceding the date of his termination.

10. As regards the plea of the Management that this was a case of voluntary abandonment of service by the Workman and not termination of his services, the Labour Court held that since no inquiry had been conducted by the Management for such alleged misconduct or misbehavior of the Workman in remaining absent from duty, the case of the Workman that he was refused employment which amounted to termination of his services was established. Therefore, Section 25-F of the ID Act had to be mandatorily followed prior to such termination of services. He was accordingly directed to be reinstated. It was noted that the Workman had not proved by cogent evidence that he was not employed elsewhere after the termination of his services.

Accordingly, instead of granting full wages, the Labour Court awarded him Rs.40,000/- as compensation.

11. The Court has considered the submissions of learned counsel for the parties. The case of the Management is that the Workman absented himself from service after 18<sup>th</sup> October, 2000. The fact remains, however, that no enquiry was held by the Management against the Workman for such absence. Further, from the documents produced by the Workman, it showed that he had been working continuously for 240 days in the calendar year preceding his termination.

12. Accordingly, this Court concurs with the Labour Court that in the absence of any disciplinary action taken against the Workman for his unauthorized absence, the Management cannot be heard to say that he was in fact absent from duty. The Court also concurs with the finding of the Labour Court that the termination of the services of the Opposite Party Workman, without complying with the mandatory provision of Section 25-F of the ID Act was illegal.

13. However, as regards the consequential reliefs, there is a plethora of case law of the Supreme Court of India holding that upon a finding of illegality of termination of services, reinstatement would not automatically follow. Here, it must be noted that the Opposite Party was 37 years in 2012 which means he is at present 47 years old. The Petitioner is the Management of a Ladies Hostel and the Petitioner categorically states that it has lost confidence in the Workman.

14. In the circumstances, given the above developments and the age of the Workman, at this stage, the Court is of the view that the ends of justice will be served if in lieu of reinstatement the Workman is awarded a substantial additional compensation. In that view of the matter, while modifying the impugned award of the Labour Court and setting aside that portion of the impugned award which directs reinstatement of the Opposite Party, this Court directs that the Petitioner-Management will pay the Opposite Party Rs.2,00,000/- (two lakhs) in all i.e., in addition to the Rs. 40,000 awarded by the Labour Court a further sum of Rs.1,60,000/- (one lakh sixty thousand) as compensation for the illegal termination of his services. The said amount will now be paid within eight weeks from today failing which the Management will, in addition, be liable to pay simple interest @ 6% per annum on the aforementioned sum for the period of delay.

15. The writ petition is disposed of in the above terms.

**(S. Muralidhar)**  
**Chief Justice**

**(R.K. Pattanaik)**  
**Judge**

S.K.Guin/ P.A.