

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.23536 of 2012

Kanhu Charan Jena

.... ***Petitioner***
Mr. B. Barik, Advocate

-Versus-

M/s. Orissa Air Product Pvt. Ltd. ***Opposite Parties***
and another

Mr. P.K. Chand, Advocate for O.P.No.2

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER
02.08.2022

Order No.

R.K. Pattanaik, J

04.

1. The instant writ petition is filed by the Petitioner challenging the impugned award dated 19th November, 2011 passed in I.D. Case No.4 of 1996 by the Presiding Officer, Labour Court, Bhubaneswar (in short 'the Tribunal') on the grounds *inter alia* that the same is not tenable in law and therefore, liable to be quashed with a further direction to reinstate him with full back wages.

2. The Petitioner questions the action of the Management in dismissing him from service which has been confirmed by the Labour Court, while adjudicating the dispute under the term of reference. In fact, the term of reference was whether the action of the Management in dismissing the Petitioner from service with effect from 21st January, 1995 is legal and/or justified?

3. To answer the reference, the Labour Court framed issues as to the fairness of the domestic enquiry conducted against the Petitioner was just and proper and whether the Management was right in dismissing him from service.

4. In so far as the fairness vis-à-vis the domestic enquiry is concerned, the Labour Court held that it was conducted as per the established procedure and following the principles of natural justice and accordingly answered it in favour of the Management. As regards the termination of the Petitioner, the Labour Court however held that the action taken by the Management in directing his dismissal from service is justified. In other words, the Labour Court upheld the action of the Management.

5. Heard the learned counsel for the parties.

6. Mr. Barik submits that under similar circumstances this Court by order dated 5th July, 2022 in W.P.(C) No.20434 of 2012 in relation to another workman held that the award of the Labour Court cannot be sustained. It is further submitted that the above decision was concerning the same Management and therefore, similar relief should be granted to the Petitioner as well.

7. Mr. Chand strongly objected to it by contending that the case at hand is not similar to the other workman in W.P.(C) No.20434 of 2012 and is distinguishable on facts. It is further contended that in that case, a preliminary issue on the fairness of the domestic enquiry was considered, whereas, in the present all issues have been taken up by the Labour Court for decision and finally, after assessing the evidence of the Management affirmed

its action in dismissing the Petitioner from service and therefore, the award under Annexure-1 is not to be disturbed.

8. From the record, it is made to reveal that the Petitioner was engaged with the Management since 2nd February, 1987 and according to him, due to certain demands not being fulfilled, the Union resorted to strike from 17th March, 1994 to 30th June 1994 and thereafter on a mutual discussion, the Management allowed all the workers to join in service from 1st July, 1994, however, on 11th July, 1994, the Management placed him under suspension by enclosing a charge sheet and he was directed to submit explanation, to which he responded by a reply dated 29th July, 1994 denying all the charges but the Management being not satisfied with the explanation, initiated the domestic enquiry.

9. After answering the issue on fairness of the domestic enquiry in favour of the Management, the Labour Court concluded that the action taken against the Petitioner in dismissing him from service to be justified. On issue of termination, the Labour Court observed that on careful consideration of all the materials available in the case record, the action taken by the Management in dismissing the Petitioner from service with effect from 21.1.95 is legal and justified.

10. From the above, it is made to understand that the Labour Court did not discuss the evidence of the parties and apparently passed a non-speaking award. Though the Labour Court held the domestic enquiry was conducted properly but it did not discuss and analyze the evidence before affirming the action of the Management on termination. In W.P.(C) No.20434 of 2012, this

Court while reaching at a similar conclusion, instead of remanding the matter for a fresh decision by the Labour Court and having regard to the fact that the dismissal order is almost three decades old and the matter itself was pending before the Labour Court for nearly 15 years and regard being had to the age of the workman, set aside the award and directed payment of a lumpsum amount of Rs.3,00,000/- as compensation for the wrongful dismissal. Since the Petitioner is from the same establishment and more or less on similar footing and for the fact that the Labour Court confirmed the action of the Management without analyzing the evidence, the Court is of the view that the impugned award under Annexure-1 cannot stand.

11. Accordingly, it is ordered.

12. Consequently, the impugned award dated 19th November, 2011 passed in I.D. Case No.4 of 1996 by the Presiding Officer, Labour Court, Bhubaneswar is hereby set aside with a direction to the Management to pay the Petitioner a sum of Rs.3,00,000/- (rupees three lac) and the said amount shall be paid to him within a period of eight weeks from today.

13. The writ petition stands disposed of in the above terms.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice