

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6439 of 2013

OSRTC, Cuttack

Petitioner
....
Mr. B.K. Sahoo, Advocate

-versus-

Sulochana Gochhi and Others

Opposite Parties
....
Mr. H.N. Mohapatra, Advocate

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

Order No.

**ORDER
19.07.2022**

09. 1. The Odisha State Road Transport Corporation (OSRTC) has filed this petition challenging an order dated 3rd January, 2012 passed by the Industrial Tribunal, Bhubaneswar ('Tribunal') in I.D. Case No.121 of 2008.
2. While notice was issued in the present petition on 29th April, 2015 no stay of the impugned Award was granted under which the Petitioner was asked to pay the legal representatives (LRs) of the deceased workman the sum of Rs.75,000/- (Rupees Seventy-Five Thousand) compensation for wrongful termination of the services.
3. In the above circumstances, when the case was heard on 14th September, 2021 this Court after noticing that the Petitioner had not even paid the said amount to the Opposite Party directed the Petitioner to deposit in this Court Rs.75,000/- on or before 1st November, 2021 and the said amount to be kept in a fixed deposit in

a nationalized bank initially for a period of three months and thereafter be kept renewed till further orders. Pursuant thereto, the said amount was deposited by the Petitioner in this Court.

4. The background facts are that the Opposite Party workman was employed as a conductor with the Petitioner OSRTC. He was dismissed from service with effect from 30th August, 1993 after being charge sheeted on 19th June, 1989. The dispute arising from the said dismissal was referred to for adjudication to the Industrial Tribunal to adjudicate the following question:

“Whether the termination of services of Sri Bihari Gochhi, Conductor with effect from 30.8.93 by the District Transport Manager (A), OSTRC, Cuttack is legal and/or justified? If not, what relief he is entitled to?”

5. In the Award dated 3rd January, 2012, the Tribunal considered two issues. The first was whether the domestic enquiry conducted was fair and proper. This was answered in the affirmative. The second issue was whether the dismissal of the workman from service was legal and/or justified. In para 12 of the impugned Award, it was concluded that in terms of the enquiry report, the workman had been found guilty of carrying ticketless passengers “several occasions” and on that short ground the punishment of discharge/dismissal from service was upheld.

6. However, the Labour Court proceeded to notice that as on the date of dismissal in ID Case Nos.19 and 21 of 1989 was pending before the Tribunal at the instance of the Petitioner Management in which the deceased workman was a concerned workman. It must be noticed

here that during pendency of the proceeding before the Tribunal the workman died on 17th February, 1997. Acknowledging the pendency of the above dispute before the Tribunal, Misc. Case No.34 of 1993 was filed by OSRTC seeking approval of the Tribunal from proceeding further for approval of the action taken by the OSRTC in the domestic enquiry. After the workman died, on 21st February, 1998 the Management withdrew the above Misc. Case No.34 of 1993.

7. However, in the meanwhile, the workman had filed Misc. Case No.1 of 1995 under Section 33-A of the ID Act contending that there had been violation of Section 33(2)(b) of the ID Act by the Management in proceeding to terminate his services without seeking approval of the action of dismissal. This application apparently was still pending before the Tribunal.

8. The Tribunal then decided to call for the records of both the cases and found that while orders were passed in Misc. Case No.34 of 1993 filed by the Management dismissing it as withdrawn, no order in fact been passed in Misc. Case No.1 of 1995 filed by the workman. Applying the principles settled by the Supreme Court of India in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma AIR 2002 SC 643* and *United Bank of India v. Sidhartha Chakraborty AIR 2007 SC 3071* the Tribunal held that the dismissal to be invalid for non-compliance by the Management with the provisions of Section 33(2)(b) of the ID Act.

9. Learned counsel for the Petitioner sought to contend, on the strength of the judgment of the Supreme Court in *Hindustan*

General Electrical Corporation Ltd. v. Biswanath Prasad AIR 1971 SC 2417, that the mere fact that there was non-compliance of Section 33(b)(2) of the ID Act would not automatically mean that the workman would be entitled to reinstatement.

10. In the present case, with the workman already having died during the pendency of the proceedings way back on 17th February, 1997 the question of reinstatement did not in any event arise. The law is well settled regarding non-compliance with the provisions of Section 33(2)(b) of ID Act. The only relief that could be granted, as was granted in the present case, was that of the compensation to the LR's of the deceased workman. That is indeed the only relief granted to the Opposite Parties here.

11. The facts in ***Rajasthan State Road Transport Corporation v. Satya Prakash (2013) 9 SCC 232*** also reveals that the Tribunal there had directed reinstatement of the workman. The facts also showed that the misconduct in that case had been conducted "very short span of service". In the present case, with the workman already having died on 17th February, 1997 and only his LR's having sought justice thereafter for more than 20 years, the compensation of Rs.75,000/- should be viewed as meager.

12. For all of the aforementioned reasons, the Court finds no grounds to interfere with the impugned Award of the Tribunal. The petition is accordingly dismissed. A sum of Rs.75,000/- (Rupees Seventy-Five Thousand) together with the interest accrued thereon shall be released forth in favour of the Opposite Parties by the Registry upon proper verification within a period of two weeks from today.

13. The writ petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.

