

A.F.R.

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.611 of 2012

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Mayurbhanj Central Co-operative Bank Ltd Petitioner

-Versus-

Ganeswar Sahu Opp.party

For Petitioner : Mr. Narendra Kishore Mishra,
Senior Advocate instructed by
Mr. Nitish Kumar Mishra,

For Opp.party : Mr. Aditya Narayan Das, along with
Mr. Bamadev Baral

P R E S E N T:

THE HONOURABLE SHRI JUSTICE S. TALAPATRA
A N D
THE HONOURABLE SHRI JUSTICE M.S. SAHOO

Date of hearing: 14.09.2022 Date of judgment: 14.12.2022

M.S.SAHOO, J The petitioner-Mayurbhanj Central Co-operative Bank Ltd., Baripada, Dist-Mayurbhanj by filing the present writ petition under Articles 226 and 227 of the Constitution of India challenges the award dated 17.09.2011 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No.9 of 2006 (Annexure-7 to the writ petition), the award being notified by the Government of Odisha, Labour and Employment Department Notification dated 24.11.2011 in terms of Section 17 of the Industrial Disputes Act, 1947 (herein after, 'I.D. Act, 1947' for short). Pursuant to the notice

issued, the opposite party-workman appeared and filed his counter. The records of the learned Labour Court were called for and placed before this Court.

2. The award passed by the learned Labour Court, Bhubaneswar was pursuant to the reference dated 09.02.2006 by the Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947. Terms of the reference made to the learned Industrial Tribunal is reproduced herein :

“Whether the denial of seniority and promotion of Sri Ganeswar Sahu with effect from 09.11.85 is legal and justified ? If not, to what relief Sri Sahu is entitled for ?”

3. The facts of the case as have emerged from the pleadings of the parties and on the perusal of records produced before the learned Tribunal are that the opposite party herein was appointed on 02.11.1974 (Ext.8 before the learned Labour Court) by the Management of Mayurbhanj Central Co-operative Bank Ltd. (herein after, ‘the Bank’ for short) as Junior Administrative Inspector temporarily. Thereafter, on 06.03.1978 by the order issued by the Bank, the opposite party was appointed as supervisor (Ext.9 before the learned Labour Court). It was specified in the said order of appointment dated 06.03.1978 (Ext.9) that the appointment is purely temporary and is terminable on the afternoon of 30th June, 1978 and the appointee (opposite party

workman) shall be deemed as if relieved from service on the expiry of 30th June, 1978 without assigning any reasons whatsoever.

3.1. Opposite party started Provident Fund Contribution with effect from May, 1979 as per the order dated 03.03.1979 [Ext.10]. He was then selected to undergo training in the Co-operative Training Institute, Baripada by the order dated 02.07.1979 (Ext.11). The Co-operative Training Institute by letter dated 09.12.1979 (Ext.12) relieved the opposite party on 09.12.1979 on completion of training from 16.07.1979 to 09.12.1979 directing to join their respective institution. The opposite party was terminated vide order of the Bank dated 31.08.1979 as pleaded before the Labour Court. Thereafter, by the order dated 26.09.1979 (Ext.3), the petitioner's service as temporary employee of the Bank was terminated with effect from the forenoon of 01.10.1979. Thereafter by the order dated 27.12.1979 (Ext.7) the opposite party was appointed as supervisor (temporary). In the said order dated 27.12.1979, the opposite party was directed to join the Bank by furnishing the required certificates, medical fitness certificate and other testimonials latest by 01.01.1980. Thereafter, the petitioner's continuance in the Bank was uninterrupted till raising the Industrial Dispute on 28.09.1991 before the District Labour Officer, Baripada, Mayurbhanj. The subsequent industrial dispute was raised by the letter dated 09.01.2003 of an Union (Ext.19) on behalf of the opposite party-workman, which ended up in failure of conciliation as per the letter dated 06.10.2005 and ultimately the

matter was referred by the State Government for adjudication as indicated above resulting in the award, i.e., impugned in the present writ petition.

4. By raising the Industrial Dispute on 09.01.2003 (through the Union), the opposite party-workman challenged his termination dated 31.08.1979. The opposite party-workman's appointment thereafter by the Co-operative bank as per his statement in the Ext.18 internal page-4 is that "... .. *again M.C.C. Bank conducted interview on 26.12.1979 and got appointed on 27.12.1979 and I joined*" (Odiya having been translated into English). The Staff Service Rules of the Employer Co-operative Bank Limited was produced and marked (Ext.20 before the Labour Court.)

The essence of the grievance raised before the learned Labour Court is that the opposite party is not placed in the gradation list prepared pursuant to the letter dated 19.01.1985 (Ext.14). In particular, the petitioner has referred to the position of two of his colleagues in the gradation list, i.e., Sri Asit Kumar Pani and Sri Sarat Chandra Pani. In the gradation list dated 25.09.1985 (Ext.16), the opposite party was shown at sl. No.16. Further grievance raised was that as per the order dated 09.11.1985 (Ext.17) similarly situated employees were given promotion to the rank of Accountant on ad hoc basis and it is claimed by the petitioner that he being entitled to be placed at a position ahead of both Sri Asit Kumar Pani and Sri Sarat Chandra Pani should have been given promotion to the rank of Accountant being otherwise

eligible. Before the Labour Court, the petitioner produced his representation dated 11.12.1985: (Diary No.4820/16.12.1985 of Bank (Ext.18), the contents of which are reproduced herein below :

“Respectfully, I beg to submit that I am working under your Bank as Supervisor and now as Managing Director of Podagarh LAMPS since one year.

I, describe, my service period in enclosed papers since beginning and pray your kind authority to kindly consider my case for promotion and for which act of your kindness, I shall remain grateful.”

The petitioner's representation in vernacular was marked as part of Ext.18. In the Ext.18, internal page-3, the statement by the opposite party-workman in Oriya, translated to English is as follows :

“... ... during the course of training by the Secretary's order no.1426 dated 31.08.1979 and Memo No.1427 (7) dated 31.08.1979, it was informed that temporary posting is given for one month and on 30.09.1979 afternoon appointment was to be terminated and by order no.1423 dated 31.08.1979 termination with effect from afternoon of 31.08.1979 was intimated....”

5. In response to the statement of claims filed by opposite party-workman on 01.12.2006, the first party-management, Co-operative Bank Limited filed written statement dated 01.05.2008. The copy of the statement gives a list of 11 documents relied upon by them. In response, the workman-second party before the learned Tribunal, filed his rejoinder and by the order dated 11.05.2010 the following issues were framed by the learned Industrial Tribunal:

“1. Whether the denial of seniority and promotion of Sri Ganeswar Sahu, with effect from 09.11.1985 is legal and justified.?”

2. If not, to what relief Sri Sahu is entitled for.?”

6. This Court heard the learned Senior Counsel, Mr. N.K. Mishra on behalf of the petitioner [first party management before the learned Industrial Tribunal] and Mr.A.N. Das, learned counsel at length on behalf of the second party –workman.

7. The learned Senior Counsel for the petitioner-Co-operative Bank made a survey of the evidence on record before the learned Labour Court and submitted the following :

- (i) The seniority of the opposite party-workman was settled in the year 1985 after which the persons senior to him in the gradation list dated 25.09.1985 (Ext.16) got their promotion. Therefore, the reference to the learned Labour Court is grossly barred by time having been made in the year 2006.
- (ii) The opposite party-workman in his representation, copy of which was marked as Ext.18 before the learned Labour Court, admitted his engagement as Supervisor temporary made on 31.08.1979 was terminated by the order no.2034 dated 26.09.1979 and subsequent engagement was made on 27.12.1979, after interview on 26.12.1979.

7.1. It is thus submitted that the learned Labour Court committed error apparent on the face of record, inasmuch as the

Court did not take into consideration the evidence on record that shows that cause of action, if any, arose on 31.08.1979. There is no dispute that the opposite party-workman continued after appointment as per the advertisement and interview held on 26.12.1979 and joined as Supervisor on 27.12.1979. It is further contended that the gradation list dated 25.09.1985 remained unchallenged by the opposite party-workman and the learned Tribunal entertaining the dispute in 2006 much after the gradation list was published in the year 1985 after about twenty one years acted in as contrast to the principle of serious laches as apparent on the face of the record.

7.2. As corollary to the aforesaid submission, it is submitted that the Tribunal has travelled well beyond the reference made, as quoted above, by granting promotion to the opposite party-workman to the post of Accountant.

7.3. It is submitted by the learned Senior Counsel that the opposite party-workman has accepted the fresh appointment dated 27.12.1979 and has continued as such for 12 years till 1991 when he raised dispute before the D.L.O. whereas the gradation list was published on 25.09.1985 and, therefore, by no interpretation, the Industrial Dispute could have been entertained by the learned Labour Court.

8. Learned counsel for opposite party-workman, Mr. Das with all the emphasis and acumen at his command defended the award passed by the learned Labour Court referring to the written

statement and rejoinder filed before the learned Labour Court as well as the counter affidavit filed before this Court.

9. When confronted with the exhibits referred to above as well as the fact that there is no dispute regarding the opposite party-workman's engagement pursuant to the interview on 26.12.1979 and his joining as Supervisor on 27.09.1979 and publication of the gradation list on 25.09.1985, the learned counsel for the opposite party-workman has fairly submitted that at this stage, he cannot improve the pleadings and the facts as pleaded before the learned Tribunal as well as the material evidence on record.

10. Having heard the learned counsel for the parties, this Court is of the considered opinion that the learned Labour Court glossed over the evidence on record by not considering the fact that the opposite party-workman has accepted his letter of engagement, his joining as a fresh candidate on 27.12.1979 pursuant to the interview held on 26.12.1979. While dealing with the aspect of the gradation list dated 25.09.1985, the learned Tribunal fell into apparent error, inasmuch as, it has not given any reason for unsettling the gradation list of 1985, i.e., almost after twenty years of the publication of the gradation list. The conciliation was pursuant to the letter dated 09.01.2003 issued by the Secretary of Orissa co-operative Bank Employees Federation to the D.L.O., Mayurbhanj, Baripada (Ext.19), which ended up in the failure report dated 06.10.2005. From the records and the pleadings, it is

not clear what happened to the earlier dispute dated 28.09.1991 raised before the D.L.O., Baripada.

This Court has to take into consideration of the fact that the learned Tribunal entered into the adjudication of the question whether the “termination” dated 30.09.1979 is valid in the dispute raised before it in the year 2003. Such endeavour of the learned Tribunal would have the effect of unsettling gradation list published on 25.09.1985. Such belated exercise made by the learned Labour Court is unsustainable in law and is liable to be set aside.

11. Accordingly, the writ petition is allowed. The impugned order dated 17.09.2011 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No.9 of 2006 is set aside.

12. In the facts and circumstances of the case, there shall be no order as to costs.

The records of the learned Labour Court, Bhubaneswar in I.D. Case No.9 of 2006 be sent back forthwith.

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M.S.Sahoo, J.

S.Talapatra, J. I agree

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S.Talapatra, J.

Orissa High Court, Cuttack
The 14th December, 2022/dutta/Gs