

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8391 of 2011

***Orissa State Co-operative
Marketing Federation
Ltd.Bhubaneswar*** ***Petitioner***

Mr. S.K. Pattnaik, Sr. Advocate

-versus-

Brudaban Mohapatra ***Opp. Party***
Mr. A.K. Rath, Advocate

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

ORDER

06.04.2022

Order No.

07.

1. The challenge in the present petition is to an Award dated 24th May, 2010 passed by the Labour Court, Bhubaneswar in Industrial Dispute Case No.46 of 2007. The following dispute was referred to the Labour Court for adjudication:

“Whether the action of the management of Orissa State Co-operative Marketing Federation Ltd.(MARKFED-ORISSA), Bhubaneswar in dismissing Sri Brundaban Mohapatra, Driver from service with effect from 31.12.2002 is legal and/or justified? If not, to what relief Sri Mohapatra is entitled?”

2. By the impugned Award, the Labour Court came to the conclusion that the action of the Management in dismissing the Opposite Party workman from service with effect from 31st December, 2002 was neither legal nor justified. As regards the consequential relief, the Labour Court directed

reinstatement of the workman in service together with compensation of Rs.10,000/- in lieu of the back wages.

3. As it turned out, the Management did not immediately challenge the impugned Award of the Tribunal. Although it filed the present petition on 30th March, 2011 it kept the petition in defect for more than three years. The petition was heard only on 13th February, 2015 i.e. nearly four years after it was filed. On that date, notice was issued to the Opposite Party. There was, however, no stay granted of the impugned award.

4. In the meanwhile, the workman once again approached the Labour Court with an application under Section 33 (C) (2) of the Industrial Disputes Act, 1947 (ID Act) to have Award enforced. An order award was passed by the Labour Court in his favour in those proceeding on 3rd July, 2014. It is only thereafter that the Management cured the defects in the present petition and got it listed for hearing. Learned counsel for the Opposite Party informs the Court that on account of the pendency of the present petition, the workman was not taken back into service. He attained the age of superannuation and therefore, one part of the Award requiring him to be reinstated has already been frustrated.

5. The only issue raised by Mr. Patnaik, learned Senior counsel for the Petitioner is regarding the procedure adopted by the Labour Court in proceeding with the matter after

finding the enquiry held by the Management prior to dismissal of the workman to be unfair. Relying on the decision of the Supreme Court of India in ***Uttar Pradesh State Road Transportation Corporation v. Gajadhar Nath*** ***AIR 2022 SC 139***, he urged that under Section 11A of the I.D. Act, it was incumbent of the Labour Court to have called upon the Management to lead evidence to prove that the removal of the workman was justified on merits.

6. In the present case, it is noticed that before the Labour Court not only did the Management not examine the enquiry officer but also “no document has been proved on behalf of the Management”. Mr. Patanaik while referring to the written statement filed by the Management before the Labour Court contended that therein a plea had been raised by the Management that if the enquiry was held to be bad in law, it should be permitted to lead evidence to justify the dismissal on merits. The fact remains that although such averment was made, the Management did not file documents before the Labour Court to justify the dismissal of the workman. Further, there is no dispute that it did not examine the enquiry officer as a witness. It was the workman who asked for the record of inquiry to be produced. The workman produced all the relevant documents and examined witnesses. The Management not having produced anything before the Labour Court cannot insist on being given an opportunity to prove that the dismissal was justified in law.

7. For the aforementioned reasons, the Court finds no reason to interfere with the impugned Award of the Labour Court.

8. The writ petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge

