

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.28712 of 2011

Gangadhar Pani

....

Petitioner

Mr. Agasti Kanungo, Advocate

-Versus-

***P.O., Labour Court,
Bhubaneswar***

....

Opposite Party

Mr. Kamal Ray, Advocate

W.P. (C) No.30555 of 2011

Choudwar Municipality

....

Petitioner

Mr. Kamal Ray, Advocate

-Versus-

P.O., Labour Court, Bhubaneswar

....

Opposite Party

Mr. Agasti Kanungo, Advocate

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

**ORDER
30.03.2022**

R.K. Pattanaik,J

1. W.P. (C) No.28712 of 2011 under Article(s) 226 and 227 of the Constitution of India, 1950 is at the instance of the Workman challenging denial of reinstatement in service with consequential benefits vide impugned award dated 10th June, 2011 (Annexure-3)

passed in Industrial Disputes Case No. 30 of 2008 by the learned P.O., Labour Court, Bhubaneswar (here-in-after referred to as 'the Labour Court').

2. W.P.(C) No.30555 of 2011 under Article(s) 226 and 227 of the Constitution of India, 1950 is at the behest of the Management questioning the correctness of the impugned award (Annexure-4) passed by the Labour Court in I.D. Case No. 30 of 2008 on various grounds contending that the Workman was in fact terminated from services by an order of dismissal with effect from 22nd February, 1984 and therefore, he is not entitled to any compensation in lieu of reinstatement and back wages.

3. It is revealed from the record that the Workman was appointed as a Sweeper in the establishment of the Management on 29th November, 1973 but was basically entrusted with the duties of a Salesman in Municipal Sale Centre which was dealing with distribution of essential commodities to the inhabitants of Choudwar area. According to the Management, the Workman while working in such capacity had misappropriated an amount of Rs.43,980.53/- from the sales counter for which departmental and criminal proceedings were initiated against him and subsequently, on the basis of the findings of the domestic enquiry, he was dismissed from services by an order dated 22nd February, 1984. As a matter of fact, the Workman approached the Assistant Labour Officer, Choudwar, Cuttack for settlement of the dispute but it could not be resolved and instead, a failure report was submitted to

the Government, where after, the dispute was referred to the Labour Court for adjudication and accordingly, I.D. Case No. 30 of 2008 was registered. Finally, the Labour Court passed the impugned award dated 10th June, 2011 by holding that the termination of services vis-à-vis Workmen to be unjustified and further concluded that he is entitled to receive a lump sum compensation of Rs.1,00,000/-in lieu of reinstatement and back wages. Resultantly, the Management was directed by the Labour Court to implement the award within a period of one month from the date of its publication failing which the above amount shall carry interest @ 9% per annum till realization.

4. Heard Mr. K. Ray, learned counsel for the Workman and Mr. A. Kanungo appearing for the Management.

5. Learned counsel for the Management contends that after the Workman had approached for conciliation and on submission of the failure report by the Assistant Labour Officer, Choudwar, Cuttack and later to the reference being made by the Government for adjudication by Labour Court, the Management had filed W.P.(C) No. 10621 of 2009 challenging the maintainability of reference on the ground of delay and that the relevant record vis-à-vis domestic enquiry not to be available. It is contended that this Court disposed it of by an order dated 1st September, 2009 with a direction that the Management may appear before the adjudicating authority and raise all questions with regard to maintainability of the proceeding, where after, an application was filed before the Labour Court on 9th

November, 2009. However, according to the learned counsel for the Management, the Labour Court did not examine the aforesaid ground rather rejected the application *ex parte* and even declined to recall it however recast the issues incorporating the question of maintainability of reference. It is pleaded that the Workman raised a dead or stale claim almost after 22 years of his dismissal from services. It is lastly contended that the Labour Court erroneously reached at a conclusion that the findings of the domestic enquiry was not to be fair and proper however to satisfy itself of the legality of the order, it ought to have provided opportunity to the parties to adduce evidence but instead straightaway passed the impugned award dated 10th June, 2011 and finally directed payment of lump sum amount of compensation in favour of the Workman.

6. On the other hand, learned counsel for the Workman urged that the domestic enquiry though conducted but was accomplished *ex parte* as such no fairness was observed consequent upon which the Labour Court arrived at a decision that the inquiry was not held properly and finally accepting the explanation as to delay passed the award in question but instead of directing reinstatement in service and back wages, simply ordered payment of compensation which is not tenable in law.

7. According to the Management, the Workman was dismissed from services w.e.f. 22nd February, 1981. From the impugned award dated 10th June, 2011, it is made to appear that a departmental proceeding was initiated against the Workman as well as two others on the allegation of misappropriation, one of whom admitted the

charge and deposited the amount and later on, was reinstated in service, whereas, the Workman did not respond which finally resulted in termination of his service. The Workman before the Labour Court admitted about the inquiry having been conducted by the Management. In fact, it was admitted by the Workman before the Labour court that his service was terminated by way of an inquiry. However, it was claimed by the Workman that inquiry was concluded ex parte, inasmuch as, no copy of inquiry report and dismissal order was supplied to him. It is the claim of the Workman that due opportunity was not provided to him while the inquiry being conducted by the Management. However, learned counsel for the Management contends that the Workman was issued with notices for the purpose of inquiry but he did not turn up and ultimately, it had to be concluded ex parte. The reference was challenged also on the ground that the records of the enquiry was not available since it had been concluded long back.

8. Learned counsel for the Management relied upon a decision of the Supreme Court in case of *Pravin Kumar v. Union of India reported in AIR online 2020 SC 703* which is to the effect that the powers of judicial review with regard to administrative actions is limited and can only be exercised on the grounds of patent illegality, irrationality or procedural impropriety. In the instant case, although an enquiry was conducted but the record could not be produced before the Labour court as it was not available with the Management. On the basis of an enquiry which was duly held and conducted and even admitted by the Workman though he failed to

participate, in the considered view of this Court, the Labour court could not have reached at a conclusion that the findings of enquiry not to be fair even without having the opportunity to examine the records of departmental proceeding. In other words, when the Workman admitted about the enquiry and there was no material on record to show that fairness was not observed, while holding the domestic enquiry, the Court is of the opinion that the Labour court should not have held it otherwise and against the Management. One more decision of the Supreme Court in case of ***Dharappa v. Bijapur Co-operative Milk Producers Societies Union Ltd.*** AIR 2007 SC 1848 is placed reliance on by the learned counsel which is with regard to the jurisdictional aspect of the Labour court to deal with service disputes of the co-operative societies and also on the issue of entertainment of stale claims. The Management contends that notwithstanding a reference made by the Government, the claim of the Workman could not have been entertained as it had become stale or dead being raised almost after 22 years. In the decision (supra), in the context of a reference made in terms of Section 10(4-A) of Industrial Disputes Act applicable to the State of Karnataka, it was held and observed by the Supreme Court that notwithstanding the object sought to be achieved in the amended provision, the legislative intent was never to revive stale or non-existing claims. In so far as the present dispute is concerned, the Workman is stated to have been terminated from service almost 22 years back and therefore, the Management rightly raised the question of maintainability on the ground of the claim to be stale or

dead. The said aspect was not duly examined by the Labour court despite a direction by this Court in W.P.(C) No. 10621 of 2009. Rather, the Labour court questioned the fairness of the findings ignoring the fact that the record of the domestic enquiry was not available for perusal and examination and ultimately, passed the impugned award dated 10th June, 2011. In view of the above and taking judicial notice of the fact that the Workman was terminated after holding a domestic enquiry which has not been denied and long thereafter, he approached the Labour Court, as has been rightly pointed out by the learned counsel for the Management, a stale or dead claim could not have been entertained and adjudicated upon.

9. Accordingly, it is ordered.

10. In the result, the impugned award dated 10th June, 2011 passed in Industrial Disputes Case No.30 of 2008 by the Labour Court, for the reasons discussed herein before, cannot be sustained and therefore, it is set aside. As a necessary corollary, W.P.(C) No. 28712 of 2011 stands dismissed, whereas, W.P.(C) No. 30555 of 2011 filed by the Management is hereby allowed, however, in the circumstances, without any order as to costs.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice