

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.19798 of 2013

Ganesh Santra & others **Petitioners**

Mr. Somanath Mishra, Advocate

-versus-

Executive Engineer, Central **Opp.parties**
Electrical Division, Balasore
and others

Mr. Pranaya Mohanty, Advocate

CORAM:
JUSTICE S. TALAPATRA
JUSTICE M.S.SAHOO

ORDER

17.10.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. Heard Mr. S. Mishra, learned counsel appearing for the workmen.
3. These petitioners have by means of this writ petition, challenged the action of the opposite parties no.1 and 2 in respect of non-payment of the compensation, as granted by the impugned award dated 26.07.2012, passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar in the Industrial Dispute Case No.40 of 2010.
4. The dispute that culminated into the said reference is that the petitioners were serving as the N.M.R. workers. The Executive Engineer, Central Electrical Division, Balasore and the Executive Engineers, Soro Electrical Division, Soro disengaged them from employment with effect from 24.10.1999 and hence, at instances of the workmen, the reference was made. For the purpose of adjudication two issues were framed by the learned Tribunal, viz;

- (i) whether the termination of service of 91 N.M.R. workers as per Annexure-1 by the Executive Engineer, Central Electrical Division, Balasore and Executive Engineer, Soro Electrical Division, Soro by way of refusal from employment w.e.f. 24.10.1999 is legal and/or justified ?
- (ii) If not, what relief these workers are entitled?

5. While responding to the issue no.(i), the Industrial Tribunal has clearly observed that there is no record to show that the workmen were employed under the management, i.e., the opposite parties no.1 and 2 permanently. As such, their claim has not been entertained. Issue no.(i) had been decided against the workmen. However, it has been accepted by the Industrial Tribunal that roughly about four years the workmen-petitioners had served the management [the opposite parties]. For that purpose, the observations of the Tribunal are extracted hereunder :

“In view of the findings on Issue no.1, the disputants are not entitled to any relief. However, in the event raising of adverse inference for non-production, of documents, is permissible and/or the Experience Certificates are held to be reliable and it is held that the disputants having completed one year of continuous service their retrenchment was illegal and/or unjustified, then in my considered view, they would not be entitled to either reinstatement or back wages. In Jagbir Singh v. Haryana State Agriculture Marketing Board & another, AIR 2009 (SC) 3004, award of reinstatement with full back wages, particularly, in respect of daily-wagers is held to be improper and instead compensation is to be awarded. In Ashok Kumar Sharma v. Oberoi Flight Services, AIR

2010 (SC) 502, it is observed by the Hon'ble Supreme Court that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure."

6. It has been thereafter observed that since the petitioners were working as NMRs and they were serving for four years, they will be entitled to compensation to the extent of Rs.20,000/- each. It is an admitted position that the management has not challenged the said award.

7. Mr. Mishra, learned counsel appearing for the workmen-petitioners has referred to the order dated 17.08.2022 where this Court has clearly observed and directed the opposite parties no.1 and 2, that the payment of the said compensation to the petitioners with simple interest @ 6% per annum from the date of the award till the date of payment be made and a compliance affidavit be filed before the next date. The next date was fixed today i.e. 17.10.2022. Mr. Mishra, learned counsel has apprised that no such payment has been made yet.

8. Mr. Mishra, learned counsel for the petitioners has further conceded that the challenge against the findings returned on issue no.(i) is no more insisted by the workmen-petitioners.

9. It is really unfortunate that despite the order dated 17.08.2022, the opposite party no.2-management did not pay the said paltry amount of compensation as granted by the Industrial Tribunal to the workmen-petitioners.

10. Mr. Pranaya Mohanty, learned counsel appearing for the opposite parties no.1 and 2 has submitted that the management has been changed and for that reason the management could not consider of implementation of the order dated 17.08.2022. In the face of this statement, we make it clarified that the present management owe the liability to pay the said amount to each of the workmen. It is reiterated that each of the workmen who has been disengaged (91 in total and shown in Annexure-1 to the reference) be paid the said compensation within a period of thirty days from today. Violation of which shall invite stern action against the management.

11. With this observation, the writ petition stands disposed of. No order as to costs.

Free copy of this order be furnished to the learned counsel for the parties, so that the order is implemented within the time as stipulated.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge