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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7209 of 2013

***M/s. B.B. Kar, Contractor
Establishment***

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Petitioner

-versus-

Sri Panchanan Pradhan and another

Opposite Parties

Advocates appeared in these cases:

For Petitioner

:

Mr. Ajay Ku. Roy,
Advocate

For Opposite Parties

:

Mr. Rajjeet Roy,
Advocate for O.P. No.1
Mr. N.K. Mishra,
Senior Advocate for O.P. No.2

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

JUDGMENT

29.07.2022

Dr. S. Muralidhar, CJ.

1. The Petitioner challenges an Award dated 12th October 2012 passed by the Labour Court, Bhubaneswar in Industrial Disputes Case No.31 of 2005.

2. It must be noted at the outset that there are two Opposite Parties in the present petition. Opposite Party No.1 is the Workman and

Opposite Party No.2 is M/s Paradeep Phosphates Limited (PPL) where the Workman was engaged.

3. The background facts are that the Petitioner is a contractor establishment and is registered under the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act). PPL is registered under the Companies Act. PPL issued a work order in favour of the Petitioner for supply of Pay Loader Drivers in 1996. This was renewed from time to time up to 2002. Since the need did not continue, no work order thereafter was issued to the Petitioner.

4. It is pointed out by the Petitioner that the period of services of the contract workers engaged by the Petitioner was co-terminus with the contract period. It is pointed out that all disputes and differences including conditions of service of the contract labourers during the entire tenure of their engagement by the Petitioner under Opposite Party No.2 i.e., PPL was governed by the provisions of the CLRA Act.

5. According to the Petitioner, the Workman all of a sudden absconded from duty from 3rd July 2000 till December 2000 without any prior intimation or information. It was not possible for PPL to indefinitely wait for the Workman to return to work. It accordingly claimed that the services of the Workman came to an end and he too accepted this. The Workman accepted the full and final settlement in December, 2000. Subsequently, on 20th December 2003, nearly three years thereafter, the Workman raised

an industrial dispute alleging refusal of employment with effect from 10th July, 2002. After conciliation efforts failed, the matter was referred to the Labour Court, Bhubaneswar.

6. According to the learned counsel for the Petitioner, Opposite Party No.1-Workman did not work between July and December 2000 on account of an involvement in criminal proceedings and therefore, he was not entitled to the relief claimed.

7. It was submitted that the Labour Court should not have, in the face of such unimpeachable evidence, ordered reinstatement of the Workman. Rather than the Petitioner refusing employment to the Workman, he had in fact misconducted himself in terms of Rule 12 (o) of the Orissa CLRA Rules, 1975. In terms of Clause-5 of the said Rules, the services of Opposite Party No.1-Workman were automatically terminable.

8. Appearing for the Workman, learned counsel Mr. Roy defended the impugned Award of the Labour Court and pointed out that the Labour Court was justified in directing his reinstatement with compensation. It did not call for any interference.

9. It must be mentioned here that a separate affidavit has been filed on 18th July 2022 by PPL (Opposite Party No.2) wherein in para 7, it is averred as under:

“7. That the period of Contract of the Opp. Party No.2 with the Petitioner expired in 2002 because of lack of further requirement. The service of all contract workers engaged by the Petitioner was co-terminable on the expiry of the Contract period and all disputes and differences of such contract labourers are governed under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and not under the Industrial Disputes Act, 1947. Law is well settled that the Principal Employer is not a party to any dispute between the Contractor and its contract labourers.”

10. This Court has perused the impugned Award in light of the documents on record and the submissions of learned counsel for the parties. The fact of the matter is that Opposite Party No.1- Workman was involved in the case of theft for which Paradeep Police Station Case No.66 of 2000 was registered against him under Section 379 IPC. On 6th July 2000, the Workman was released on bail. Even assuming that his absence from 2nd July 2000, up to 6th July 2000 was explained by the above events, the fact of the matter is that the Workman did not report for duty thereafter. The Labour Court simply went on the basis that a domestic inquiry ought to have been held against the Workman for his unauthorized absence from duty. There is nothing on record to show that the Workman in fact reported for duty. He does not appear to have returned to the Management saying that he was in fact reporting for duty and he had been refused to be offered employment. The Labour Court could not have presumed therefore that “refusal of employment of the Workman with effect from 10th July 2000 amounts to termination of his service.” The burden was on the Workman to show that the Management had

refused employment. With the Management in its written statement clearly pointing out that it had not refused employment and that it is the Workman who abandoned his service, the burden shifted to the Workman to show that in fact the Management refused to take him back when he reported the duty. In particular, it was incumbent on the Workman to show that after being released on bail on 6th July 2000, he actually reported for duty.

11. The procedure for termination of services is indicated in Rule 12 of the Orissa CLRA Rules. Under Rule 12 (2) (g) “Habitual neglect of work or habitual negligence” and under Clause-(m) of the said Rule “Habitual late attendance” would be treated as misconduct. Importantly, under Rule 12 (5) “If a Workman absents himself for more than 5 continuous working days without leave application of making a representation to the contractor and without sufficient cause, his services shall be liable to termination without notice.” The Labour Court despite noticing Rule 12, did not bestow attention on Rule 12 (5) particularly since there was no application for leave made by the Workman. It is evident that he was absent for more than five continuous days without permission. He did not even make any representation. Consequently, the finding of the Labour Court that there was an illegal termination of the services of the Workman in violation of Section 25-F of the ID Act is based on no evidence whatsoever.

12. For all of the aforementioned reasons, the impugned Award is hereby set aside. The writ petition is allowed. But, in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K.Guin/ P.A.

