

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1131 of 2007

Orissa State Cooperative Marketing Federation Ltd., Bhubaneswar and another ***Petitioners***

Mr. S.K. Pattnaik, Senior Advocate
-versus-

Lokanath Pradhan and another ***Opposite Parties***
Mr. Baidhar Sahoo, Advocate
along with Mr. G.N. Sahu, Advocate and AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
24.02.2022

Order No.

10. 1. The Management has filed this writ petition challenging an Award dated 11th May, 2006 passed by the Labour Court, Sambalpur in I.D. Case No.17 of 1997.
2. While directing notice to issue in this petition on 25th January 2008, this Court stayed the operation of the impugned Award. That stay has continued since.
3. It appears that during the pendency of the present petition, the Management has been paying the Opposite Party-Workman wages under Section 17-B of the Industrial Disputes Act, 1947 (I.D. Act).
4. This was the second round of litigation before the Labour Court. Earlier, the Labour Court had on 11th June, 1999 decided the reference in I.D. Case No.17 of 1997 against the Workman. It was

held that the Workman had not continuously worked for 240 days in a calendar period of a 12 months.

5. The Workman challenged the said Award in this Court by filing OJC No.13461 of 1999. On 22nd March 2004, the Court set aside the Award and remitted the matter to the Labour Court, Sambalpur giving the parties the liberty to adduce evidence in support of their respective claims.

6. The Management's witness was again cross-examined by the Labour Court and documents were filed. The Workman filed an affidavit of evidence-in-chief and was also cross-examined. Further documents were exhibited.

7. On 11th May 2006, the Labour Court passed a fresh Award, this time, answering the reference in favour of the Workman. The Labour Court has directed his reinstatement with full back wages.

8. One of the reasons for the Labour Court concluding in favour of the Workman as regards the issue whether he has completed 240 days of work in a calendar year, was that evidence adduced from the side of the Management "is weak and not cogent." The Labour Court noted that the Management had produced documents beneficial to them but withheld the production of documents, which might have supported the case of the Workman. Therefore, an adverse inference was drawn against the Management. That being the position, the non-compliance of the statutory provision of the I.D. Act was viewed strictly by the Labour Court. Although the Management had taken the plea that the termination of the services

of the Workman related to misappropriation as pointed out by the auditor, the Labour Court found that in the letter of termination there was no reference to any such misappropriation. The report of the auditor being a vital piece of evidence was not produced before the Labour Court. The evidence of area manager was also found to be supportive of this case. With the statutory provisions regarding removal from service of the Workman not being complied with, the first issue regarding validity of the termination was answered in favour of the Workman.

9. The Court thus finds that the impugned Award turns entirely on facts and is based on an appreciation of evidence. The Court is not persuaded that any legal error has been committed by the Labour Court in its analysis of the evidence or as regards the conclusion drawn.

10. It is then argued on behalf of the Management that the Workman had been engaged under a 'scheme' and that the said scheme was no longer operational and, therefore, the question of reinstatement of the Workman did not arise.

11. Counsel for the Workman, on the other hand, pointed out that persons juniors to the workman, who were engaged after him, were retained in service. He has produced pay slips of such employees. In fact, the letter of the engagement of the Workman makes no reference to any scheme. If indeed the persons junior to the Workman have been retained in service, there is no justification to

deny the Workman the benefit of reinstatement with full back wages.

12. For all of the aforementioned reasons, the Court finds no reason to interfere with the impugned Award of the Labour Court. The writ petition is accordingly dismissed, but in the circumstances, with no order as to costs.

13. The interim order passed earlier stands vacated. The LCR if available be returned forthwith to the Labour Court for further steps.

S. Behera/M. Panda

