

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C). No.10446 of 2006

Vice Chairman B.D.A. ***Petitioner***
Mr. Dayananda Mohapatra, Advocate

-versus-

Ajay Kumar Parida ***Opp. Parties***
Mr. Srikar Kumar Rath, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

Order No.

ORDER
06.01.2022

Dr. S.Muralidhar, CJ.

12. 1. The challenge in this petition is to an Award dated 29th April, 2006 passed by the Labour Court, Bhubaneswar in I.D. Case No. 24 of 1997. By the impugned Award the Labour Court held that the action of the Petitioner Bhubaneswar Development Authority (BDA) in terminating the services of the Opposite Party Mali with effect from 12th February, 1993 was neither legal nor justified. It was further held that he was entitled to be reinstated in service, but without back wages.
2. While issuing notice in this petition on 7th May, 2009 the impugned Award was stayed by this Court subject to compliance with Section 17-B of the Industrial Disputes Act, 1947 (ID Act).

3. The background facts are that the Opposite Party Workman claimed to have joined the establishment of the BDA with effect from 16th September, 1989 as Mali. He claimed to have worked continuously as such till 12th February, 1999 when his services were terminated.

4. The question referred to the Labour Court for adjudication read as under:

“Whether the action of the management of Bhubaneswar Development Authority in terminating the service of Sri Ajay Kumar Panda, Mali with effect from 12.2.93 is legal and/or justified? If not, what relief the workman is entitled to?”

5. The stand of the Management before the Labour Court on the other hand was that the workman had voluntarily abandoned from his service with effect from 12th February, 1993 and did not turn up for joining his duty. It was categorically pleaded that the workman was a casual worker and was engaged as and when work was available for him. It was further contended that the workman has never worked for more than 240 days as a regular employee and therefore Section 25-F of the ID Act would not apply.

6. The Workman examined himself as W.W.1 and relied on certificate Ext.1. The Management examined one Sri Sankar Sahoo as M.W.1 and relied on documents such as the authorization letter, xerox copies of the extract of the field diary and bank challan.

7. In the impugned Award, while noting the evidence of the Workman, the Labour court recorded that the workman “during cross examination clearly admits that he has not filed any document with regard to his appointment order as Mali and the receipt letters from the management for the above period.” The Labour Court’s Award further recorded that “the management on the other hand through M.W.1 Sankar Sahoo as led evidence to the effect as the workman working under the management since 1989 till 11.02.1993 he did not turn up for joining his duty w.e.f. 12.02.1993 onwards.” The evidence of M.W.1 to the effect that “the management used to pay the wages to the casual workers once in a month but on daily wage basis” was also noted by the Labour Court. Further, the fact that the wages for the Workman for the period 12th February 1993 to 11th March, 1993 was deposited in the Workman’s Bank account and that the bank challan was also placed on record as Ext. 3 was also taken note of by the Labour Court.

8. While analysing the evidence, the Labour Court referred to the decision of the Supreme Court in ***Divisional Manager, O.F.D.C. Ltd., Boudh Commercial Division v. Kanista Bisoi 2004 (Suppl.) OLR 694*** where it is observed as under:

“To constitute ‘abandonment of service’ there must be total or complete giving up duties and/or expression of the intention not to serve any further. This being a question of fact, onus lay on the management which took such a plea to prove with cogent evidence that in fact the workman had

abandoned his service. Retirement of an employee without following the mandatory pre-conditions of Section 25-F of the Act is not only unsustainable but also illegal.”

9. Yet, strangely, the Labour Court recorded that “in the case in hand, the management has totally failed to adduce any evidence to the effect that the workman had abandoned the service with effect from 12.2.1993”. This was the obviously erroneous since the Labour Court itself had recorded the earlier (as extracted hereinbefore) the evidence led by the Management through M.W.1 to the effect that the workman had abandoned his service and did not report for duty after 12th February, 1993. This is definitely one fundamental error in the Award.

10. The Labour Court than proceeded to observe as under:

“Admittedly, the management has taken a stand before this Court that the workman and voluntarily abandoned the job, but its my considered view, even if the case set up by the management is taken to be correct that the workman has abandoned, then also his services cannot be terminated in the manner as it has been done without complying with the provisions of Section 25-F of the Act.”

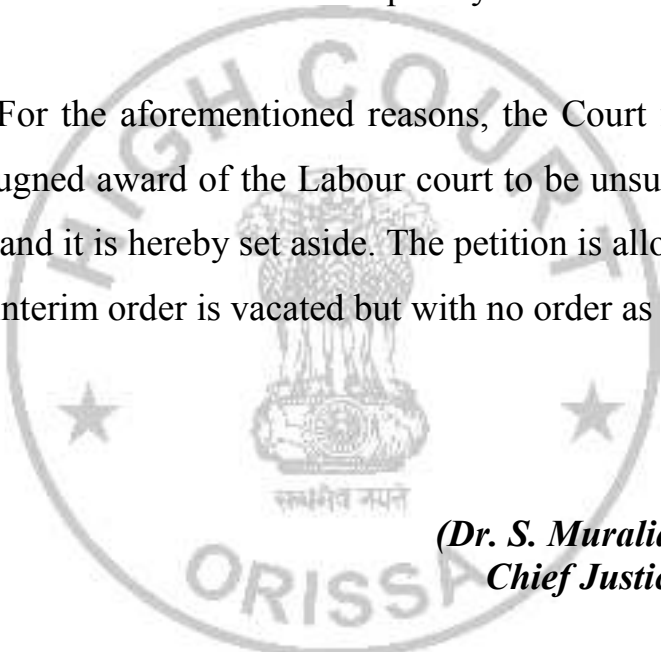
11. The above proposition appears to be legally flawed in terms of the decision of the Supreme Court of India in ***Manju Saxena v. Union of India (2019) 2 SCC 628*** where in para 6.5 it has been held as under:

“6.5. Once it is established that the appellant had voluntarily abandoned her service, she could not have been in ‘continuous service’ as defined under

Section 2(00) the ID Act, 1947. Section 25-F of the ID Act, 1947 lays down the conditions that are required to be fulfilled by an employer, while terminating the services of an employee, who has been in 'continuous service' of the employer. Hence, Section 25-F of the ID Act, would cease to apply on her."

12. With the Management having led evidence to show that the Workman had abandoned service, the requirement of compliance Section 25-F of the ID Act could not have been insisted upon by the Labour Court.

13. For the aforementioned reasons, the Court finds the impugned award of the Labour court to be unsustainable law and it is hereby set aside. The petition is allowed and the interim order is vacated but with no order as to costs.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, flanked by two stars. The text "ORISSA HIGH COURT" is written in a circle around the central image. Below the lion capital, the motto "सत्यमेव जयते" is inscribed in Devanagari script.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge