

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11584 of 2006

Debendra Nath Mohanty

....

Petitioner

Mr. R. Acharya, Advocate

-Versus-

***Management of Orissa State
Financial Corporation***

....

Opp. Party

None

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

**ORDER
05.01.2022**

Order No.

30.

R.K. Pattnaik, J.

1. In the instant case, the Petitioner by invoking the writ jurisdiction of this Court has assailed the impugned award dated 31st March, 2006 passed in I.D. Case No.278 of 1996 by the learned Presiding Officer, Labour Court, Bhubaneswar (herein after referred to as 'the Labour Court') as illegal, perverse and thus, untenable in law.

2. As revealed from the record, the Petitioner was appointed as a Junior Assistant by the Opposite Party on 18th June, 1979 and thereafter, was promoted to the post of Senior Assistant on 18th July, 1981 and while continuing as such, had availed leave and then extended the same on account of health issues. It is pleaded that while the Petitioner was on leave, the Opposite Party placed him under suspension, since he did not join at the place of posting

on transfer and without issuing any charge memo or conducting enquiry, terminated his service with effect from 27th September, 1982 which is, therefore, unjustified.

3. It is contended that the Petitioner preferred an appeal before the Board of Directors of OSFC challenging the order of termination as per Regulation 45 of the Orissa State Financial Corporation (Staff) Regulations, 1975 (in short, 'the OSFC Regulations') and as there was no communication of any order received from the Board, he raised a dispute before the District Labour Officer, Cuttack. It is further contended that during the pendency of appeal, the Joint Labour Commissioner, Cuttack initiated a conciliation proceeding and submitted a report in terms of Section 12(4) of the Industrial Disputes Act, 1947 before the Labour Department, Government of Orissa but in the meantime, the appeal was placed before the Board which, however, desired legal opinion in the matter on the premise that the disciplinary action was not concluded as per Regulation 44 of the OSFC Regulations and before anything could materialize, the Labour Department, Government of Orissa considered the case of the Petitioner and forwarded the matter to the Labour Court for decision with a reference, whether, the termination of the Petitioner by the Opposite Party with effect from 27th September, 1982 to be legal or justified and if not, to what relief, he is entitled. It is also contended that the Labour Court declined to interfere with the termination of service of the Petitioner primarily on the ground that the delay in raising the dispute after a lapse of 12 years could not be satisfactorily explained with an observation that the settled

position of law subscribes no formula of universal application so far as delay in seeking the reference which would depend on facts of each individual case. It is lastly contended that the Labour Court has only proceeded on the question of raising dispute at a belated stage and answered the reference negatively and that apart, failed to consider the relevant provisions of Regulation(s) 17 and 44 of the OSFC Regulations and therefore, the order of termination is bad in law and thus, deserves to be interfered with.

4. None appears for the Opposite Party.

5. It is revealed from the impugned award that the Labour Court disbelieved the medical ground with a conclusion that the materials in support thereof have been procured by the Petitioner for the purpose of the case in order to match the unexplainable delay in raising the dispute after a lapse of 12 years. In other words, the order of termination vis-à-vis the Petitioner directed by the Opposite Party was not interfered with by the Labour Court which doubted the genuineness of the medical papers produced to explain the delay. As it appears, the plea of the Petitioner was rejected on the ground of delay without answering the reference as to if his termination from service with effect from 27th September, 1982 to be legal or justified. The contention of the Petitioner is that the provisions of the OSFC Regulations have not been adhered to, inasmuch as, neither any show cause was called for nor any departmental proceeding was initiated against him before terminating his service which was not duly examined by the Labour Court as it simply on the ground of delay and rejecting the plea of illness confirmed the decision of the Opposite Party. In

fact, on a glance of the impugned award, it is made to suggest that the Labour Court answered the reference but primarily confined its decision with regard to the delay in raising the dispute by the Petitioner without really considering the legality or otherwise of the order of termination in juxtaposition to the relevant provisions of the OSFC Regulations. In the considered view of the Court, the Labour Court ought to have examined justifiability of the termination by referring to the OSFC Regulations applicable to the Petitioner. Admittedly, there has been delay of about 12 years in raising the dispute by filing an appeal in the year 1994 before the Board of Directors of OSFC which, according to the learned counsel for the Petitioner, had observed that the proceeding against the Petitioner was not accomplished in accordance with Regulation 44 of the OSFC Regulations and therefore, it required a legal opinion and in so doing, authorized the Managing Director to take decision in that regard and to place it before the Board for information. In the aforesaid backdrop, the Court is of the view that the Labour Court instead of upholding the termination by discarding the plea of illness and on the ground of delay from the side of the Petitioner in raising the dispute should have examined in threadbare the legality and propriety of the order of termination with a finding as to if it was in accordance with the OSFC Regulations.

6. On an earlier occasion, the learned counsel for the Opposite Party had apprised this Court that the issue involved in the case at hand stands squarely covered by a decision of the Supreme Court in the case of ***U.P. State Road Transport***

Corporation Vs. Man Singh reported in (2006) 7 SCC 752. In the decision (supra), the Supreme Court keeping in view the peculiar facts and circumstances of the case instead of reinstatement of the workman with back wages directed the Corporation to pay him a sum of Rs.50,000/-, wherein, the dispute had also been raised after a period of about 12 years, of course, with a positive finding by the Labour Court in favour of the workman. In the aforesaid case, the Corporation terminated the service of the workman and for that, an industrial dispute reference was made for its adjudication by the Labour Court, which held that the Corporation failed to comply the mandatory requirements of Section 25F of the Industrial Disputes Act, 1947 and such a direction was made as against the fact that his appointment was on a temporary basis and that no material had been on record to show that there was a regular vacancy or the workman was appointed while filling up said vacancy by a process of recruitment in conformity with the constitutional requirements as envisaged under Articles 14 and 16 of the Constitution of India. Thus, in the peculiar background of facts, the Supreme Court in that case considered it expedient to direct payment of lump sum amount instead of reinstatement. In such view of the matter and regard being had to the relief claimed by the Petitioner, whose service was confirmed by the Management and taking into account the fact that the Labour Court did not examine the aspects of law vis-à-vis order of termination with reference to OSFC Regulations, the Court, instead of entertaining any serious doubt on the claim of the Petitioner's illness, which was stated to be the cause of absence from duty and delay in raising the dispute, since reasonable evidence, if not adequate, was brought on record to substantiate it,

is of the view that it would be justified, if the impugned award is set aside for a fresh determination on the reference which could ultimately result in reinstatement entitling the Petitioner of all consequential benefits and accordingly, it is ordered.

7. In the result, the writ application stands allowed to the extent indicated. As a necessary corollary, the impugned award dated 31st March, 2006 passed in I.D. Case No.278 of 1996 is hereby set aside with a direction to the learned Presiding Officer, Labour Court, Bhubaneswar to dispose of the reference according to law and in terms of the observations made herein above by providing an opportunity of hearing to the Petitioner and to complete the entire exercise peremptorily within a period of four months from the date of receipt of a copy of this order.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice