

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 10508 of 2013

State of Odisha

....

Petitioner

Mr. P.K. Muduli, Addl. Govt. Advocate

-versus-

Mrutyunjaya Panigrahi and Others

....

Opposite Parties

Mr. Jyoti Patnaik, Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAIK

Order No.

ORDER
19.07.2022

07. 1. The State of Odisha has file this writ petition challenging an Award dated 27th June, 2011 passed by the Labour Court, Sambalpur in I.D. Misc. Case No.1/88(SC)-752.
2. While directing notice to issue in the present petition on 25th August, 2014 this Court stayed the impugned Award. That stay order has continued since.
3. At the outset, it must be noticed that although the impugned Award was passed on 27th June, 2011 the present petition was filed nearly two years later on 1st May, 2013 without any explanation for the delay in approaching this Court.
4. Be that as it may, the claim of the Opposite Party workman stemmed from an order passed by the Supreme Court of India on 13th August, 1985 in Civil Appeal No.348-349 of 1974 regarding benefits to be given to erstwhile employees of Hirakud Dam Project, Sambalpur Irrigation Division, Burla. On the basis of the said order,

an application being Misc. Case No.1/88 was filed by the Opposite Party workman before the Labour Court stating that he was initially appointed as 'Amin' in the work charged establishment of Hirakud Dam Project on 1st June, 1955 in the Canal Sub-Division, Bargarh under the Central Scale of Pay and Conditions of Service by the Government of India. After the project was taken over by the Government of Odisha with effect from 1st April, 1960 his services under the Central Scale of Pay were terminated with effect from 31st March, 1963 afternoon due to abolish of the Central Scale. He claimed that he had been reappointed under the State Scale of Pay with effect from 1st April, 1963 in accordance with the decision dated 9th February, 1963 of the IMP Department of the Government of Odisha. The Opposite Party stated in his application that he had retired with effect from 8th June, 1978 and he was residing in the interior village in bad health. Since he was ignorant about the matter, he could not file the application earlier.

5. On the said application, notice was issued by the Labour Court which was served on the present Petitioner who filed an objection on 15th December, 2007. It was stated in the said reply that the Petitioner was working under the Sub-Divisional Officer of Attabira Canal Sub-Division for the period from 4/56 to 6/56, 10/59 to 3/60, 8/75 to 5/76, 6/76 to 2/77, 3/77 to 2/78 and 3/78 to 8.6.78.

6. It is contended that he was appointed as 'Work Sarkar' and joined in the office of the S.D.O., Canal Sub-Division, Bargarh on 7th December, 1964 under the State Scale of Pay and retired on 8th June, 1978. It was contended that in terms of the norms fixed by the Labour Court by an order dated 25th May, 1989 in order that the

workman is entitled to get the CPWD benefit, he may satisfy the following conditions:

“1. He must be in the service as on 31st May, 1960 as well as 1st April, 1960.

2. He must have been issued with a termination notice of a kind the substance of which has been extracted in the Award of I.D. Case No.3/64 or of any other a like notice issued with specific reference to the decision of the government of Orissa in their Irrigation and Power Department letter no.2765-IF-2/6-HKD, and

3. In pursuance of such notice he must have been adjusted against post in the State Government without there being any break in this service.”

7. It is contended that the Opposite Workman did not fulfill the above conditions and therefore, his application was liable to be rejected.

8. In the impugned order the Labour Court has discussed the respective contentions of the parties. It also examined the documents carefully. It is noted in para 7 of the impugned order that the learned Government pleader submitted that the applicant “was appointed as Amin in the year 1955 and got promotion on 7th December, 1964.” The Labour Court then observed: “Unless the applicant was serving under Opposite Party No.2 and 3 since 1955, how he got promotion on 7th December. 1964? It is apparent from the record that the applicant was in service on 7th December, 1964 under the State Govt. scale of pay as ‘Work Sarkar’. So from the above contents as well as documents filed by both the parties it can be presumed that the applicant was in the service on 31st March, 1960 as well as on 1st April, 1960.”

9. Since both the parties had failed to file the documents relating to the above period the Labour Court presumed that the Opposite Party workman had been “adjusted against the post in the State Government without there being any break in service”. Given the fact that he had been as Work Sarkar on 7th December, 1964 the Labour Court observed as under:

“So it can be presumed that after the project was taken over by the Government of Orissa with effect from 01.4.1960, the services of the applicant/workman were terminated from the Central scale of pay with effect from 31.3.1963 and again the applicant was reappointed as such under the State Government scale of pay with effect from 01.4.1963 and got promotion on 07.12.1964 as Work Sarkar. So in view of such facts and circumstances the applicant is identified to receive the benefits of order dtd. 13.8.1985 of the Hon’ble Supreme Court passed in C.A. No.348 and 349 of 1974.”

10. Mr. Muduli, learned Additional Government Advocate for the Petitioner sought to contend that the Opposite Party workman did not fulfill the basic conditions for being eligible for the benefit of the order of the Supreme Court since he was not in service of the State Government as on 31st March, 1960. He sought to contend that there was no document placed on record to show that the Opposite Party had been appointed as Amin in the year 1955 itself. According to Mr. Muduli, he was first appointed only as a Work Sarkar with effect from 7th December, 1964 and not by way of promotion. As regards the contention of the Government Pleader as recorded in Award of the Labour Court, he sought to submit that this was contrary to the pleadings.

11. A careful look at the pleadings reveals that there is an admission that the Opposite Party workman was working in Attabira Canal Sub-Division for the period from April to June, 1956 and October 1959 to March, 1960 and so on. That the Opposite Party workman was working as of 1956 itself and even from October 1959 to March 1960 is therefore, admitted. As recorded in the Award of the Labour Court, the Government Pleader himself admitted that the workman was “appointed as Amin in the year 1955 and got promotion on 7th December, 1964”. There is nothing in the present petition to say that the said statement attributed to the government pleader was wrongly recorded by the Labour Court. The Court is therefore not prepared to accept the submission made that what is recorded in the Award of the Labour Court was erroneous.

12. The Court does not find any merit in the present petition and it is dismissed as such. The interim order is vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.