

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 13400 of 2012

The Management of Horticulturist, ***Petitioner***
Ekamrakanan, Odisha, Bhubaneswar

Mr. P.K. Muduli, Addl. Standing Counsel

-versus-

Banalata Mohanty, W/o. Late
Gyanaranjan Mohanty, At-Rahamba,
P.O. Postala, Govindapur, Dist- ... ***Opposite Party***
Cuttack

Mr. Satyabrata Mohanty, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER
13.07.2022

Order No.

11. 1. This is the second round of challenge by the Petitioner Management concerning the dispute referred to the Labour Court, Bhubaneswar in the following terms:

“Whether the termination of services by way of refusal of employment to Sri Gyana Ranjan Mohanty, Attendant by the Management of Horticulturists, Ekamrakanan, Bhubaneswar with effect from 13.4.1993 is legal and/or justified ? If not, what relief Sri Mohanty is entitled to ?”

2. Initially, the Labour Court passed an Award dated 31st March, 2004 in I.D. Case No.152 of 1995 in favour of the workman. That was challenged in this Court by the Management by filing Writ Petition (C) No.4493 of 2005 which was disposed of by this Court by an order dated 10th May, 2010 and the matter was remitted to

the Labour Court for fresh adjudication. It was observed in the said order as under:

“The Labour Court is therefore directed to deal with the specific question as to whether the Management of Horticulturist, Ekamrakanan, Bhubaneswar is an industry or not and the parties are at liberty to adduce fresh evidence over and above the materials already available on record.”

3. It was further observed as under:

“...The Labour Court shall also consider the question raised by the learned Counsel for the State that the dispute is not covered under the Industrial Dispute Act on other grounds also...”

4. The matter then went back to the Labour Court. At this stage, it will be noticed that the case of the workman is that he was employed under the Management as an Attendant in the pay scale of Rs.750/- to Rs.940/- per month on an ad hoc basis initially for 44 days and then his appointment was extended from time to time by a series of appointment letters for 44 days each with one day's artificial break. The pay of the workman was reduced from monthly salary to daily rated wages with effect from 24th March, 1993; the Workman nevertheless continued in employment. According to him, while terminating his services with effect from 13th April, 1993 the provisions of Section 25-F of the Industrial Disputes Act, 1947 (ID Act) were not complied with.

5. The Labour Court in the impugned fresh Award dated 20th October, 2010 framed one issue namely, “whether the termination of services by way of refusal of employment of the workman with

effect from 13th April, 1993 was justified?” In para 7 of the impugned Award, it was noted that after receipt of the case record from this Court “the Management did not turn up in spite of notice to it.” Therefore, it is seen that despite an opportunity given to the Management it did not adduce any evidence in support of the plea that the Horticulture Department is not an industry. It may be recalled that this was one of the questions that was required to be dealt with by the Labour Court.

6. Nevertheless, following the decision of the Supreme Court in ***Bangalore Water Supply v. R. Rajappa (1978) 2 SCC 213***, the said question was answered by the Labour Court in favour of the workman.

7. Mr. Muduli, learned Additional Government Advocate appearing for the Petitioner (Management) while not disputing that he could not possibly question the finding of the Labour Court on the issue of whether the Horticulture Department is an Industry nevertheless sought to urge that the workman had not completed 240 days of continuous service in terms of Section 25-B of the ID Act and therefore, Section 25-F thereof, was not attracted. Here again, since the Management failed to lead evidence whatsoever even in the first round to show that the workman had not completed 240 days of continuous service, it was not possible for the Labour Court to have come to a different conclusion. It therefore accepted the contention of the workman that he had been working continuously for more than 240 days in the 12 calendar months preceding his termination.

8. For the aforementioned reasons, the Court is unable to find any error having been committed by the Labour Court in passing the impugned Award. The writ petition is dismissed. The interim order is also vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.

