

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4984 of 2013

M/s. Rathi Steel and Power Limited, Petitioner
New Delhi

Ms. Zenish Marywallace, Advocate
-versus-

Presiding Officer, Labour Court, Opposite Parties
Sambalpur and another

Mr. P. K. Muduli, AGA and
Mr. S. Sahoo, Advocate for Opposite Party No.2

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
12.07.2022

Order No.

12. 1. The present petition by the Management seeks the quashing of two orders—(i) an order dated 11th December, 2012 passed by the Labour Court, Sambalpur in I.D. Case No.14 of 2011 declining the prayer of the Petitioner to engage a lawyer to conduct its case; and (ii) an order dated 5th February, 2013 passed by the Labour Court in I.D. Case No.14 of 2011 rejecting the application filed by the Petitioner that the issue regarding fairness of the domestic enquiry should be decided as a preliminary issue permitting the Management to lead evidence in that regard.
2. As far as the first impugned order is concerned, learned counsel for the Petitioner states that by virtue of a judgment dated 13th May, 2022 passed by this Court in W.P.(C) No.20007 of 2013, the issue has been decided against the Management. This Court has perused the said judgment by calling for the file of the said writ petition and

finds that indeed the prayer of the Management in that case on similar terms has been rejected. Accordingly, the challenge to the first impugned order dated 11th December, 2012 of the Labour Court is hereby rejected.

3. As far as the second impugned order is concerned, it is contrary to the decision of the Constitution Bench of the Supreme Court in ***Karnataka State Road Transport Corpn. v. Smt. Lakshmidevamma AIR 2001 SC 2090***, where in para 39, it has been held as under:

“39. For the foregoing reasons, it is not possible to hold that if the employer does not express his desire to lead additional evidence in reply to statement of claim in proceedings under Section 10 or when an application is filed for approval under section 33(2)(b) of the Act, the employer cannot be allowed to exercise option at a later stage of the proceedings by making an application for the purpose. The employer's request, when made before close of proceedings, deserves to be examined by the Labour Court/Tribunal on its own merits and it goes without saying that the Labour Court/Tribunal will exercise discretion on well settled judicial principles and would examine the bona fides of the employer in making such an application.”

4. With the law being clear in this regard, the Court sets aside the order dated 5th February 2013 passed by the Labour Court, Sambalpur and holds that the prayer of the Management to be permitted to lead evidence on the preliminary issue of the fairness of domestic enquiry shall stand allowed and further that that issue will be decided first by the Labour Court as a preliminary issue.

5. The interim order dated 17th May, 2013 passed by this Court is accordingly vacated.

6. I.D. Case No.14 of 2011 will now be listed before the Labour Court, Sambalpur on 29th August, 2022. The Labour Court will proceed in accordance with law by taking up as a preliminary issue, the fairness of the domestic enquiry, and permit the Management and the Workman to lead their respective evidence on that issue. After deciding that issue first, the Labour Court will proceed in accordance with law.

7. The writ petition is disposed of in the above terms. A copy of this order be sent forthwith to the concerned Labour Court.

M. Panda

