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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7013 of 2012

Ramesh Chandra Hati and others ***Petitioners***
Mr. K. P. Mishra, Senior Advocate

-Versus-

Presiding Officer, Industrial ***Opposite Parties***
Tribunal and others
Mr. D. Nayak. AGA

W.P.(C) No.20747 of 2012

Executive Engineer, Rural Work ***Petitioners***
Division, Jagatsinghpur and
another
Mr. D. Nayak, AGA

-Versus-

Ramesh Chandra Hati and others ***Opposite Parties***
Mr. K. P. Mishra, Senior Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK

ORDER

08.08.2022

Order No.

R.K. Pattanaik, J

08. 1. In W.P.(C) No.7013 of 2012, the Petitioners (Workmen) have challenged the impugned award dated 30th June, 2011 passed in I.D. Case No.8 of 2008 by the Presiding Officer, Industrial

Tribunal, Bhubaneswar (in short 'the Tribunal') to extent that it should have directed their reinstatement instead of awarding compensation on the ground that they were engaged on DLR basis and worked for nearly 12 years in the establishment of O.P.Nos.2 & 3 (Management), whereas, in W.P.(C) No.20747 of 2012, the legality and judicial propriety of the award has been questioned by the Management by taking a stand that there was no evidence from the side of the Workmen regarding the alleged employment which was simply presumed by the Tribunal.

2. In fact, the Tribunal received a reference dated 2nd February, 2008 for determination as to whether termination of the Workmen and five others with effect from 1st April, 2006 by the Executive Engineer, Rural Works Division, Jagatsinghpur is legal and/or justified and if not, what relief they are entitled to? The Workmen filed a claim statement by pleading that the Management did not pay their wages for about 18 months and when it was demanded, employment was refused to them without any notice/notice pay nor any compensation was paid to them. The Management, however, claimed that the Workmen had never been engaged in their establishment and therefore, question of refusal of employment did not arise at all. With the pleadings on record, the Tribunal framed an issue and proceeded to answer the reference and ultimately, passed the award under Annexure-1 directing payment of compensation of Rs.1 lac to each of the Workmen instead of reinstatement.

3. Heard learned counsel for the parties.

4. Mr. Mishra, learned Senior Advocate contends that the Workmen ought to have been reinstated by the Tribunal since all of them worked for number of years under the establishment of the Management. On the contrary, Mr. Nayak, learned AGA contended that the Workmen were never engaged and therefore, the Management was not even liable to pay compensation, inasmuch as, such employment was presumed by the Tribunal without any evidence being produced by the Workmen. The rival contentions of the parties are to be examined to ascertain whether the impugned award under Annexure-1 can be sustained in law.

5. The Tribunal while dealing with the issue found that the Management adduced evidence specifically denying the employment of five persons but remained silent for the Workmen and therefore, it presumed that the Management admitted about their employment and accordingly proceeded but finally instead of directing their reinstatement, allowed compensation only. Mr. Nayak, learned AGA would contend that the Workmen were obliged to produce evidence in support of their engagement with the establishment but the Tribunal presumed it without any basis. Since the evidence of the Management was specific in denying the employment of five others, the Tribunal had no occasion to take a contrary view vis-à-vis the Workmen. The Management when denied the employment of five others leaving the Workmen aside, it impelled the Tribunal to arrive at a conclusion regarding their engagement with the Management which this Court in the facts and circumstances of the case is not inclined to interfere.

6. In so far as the contention of Mr. Mishra, learned Senior Advocate regarding the reinstatement of the Workmen is concerned, the Tribunal declined on the ground that such a relief with full back wages is not automatic even though the termination was in contravention to the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') and while reaching at a such a decision, it referred to an authority of the Apex Court in the case of **Jagbir Singh v. Haryana State Agricultural Marketing Board (2009) 15 SCC 327**.

7. In **BSNL v. Bhurumal (2014) 7 SCC 177**, the Supreme Court was seized of a similar question regarding reinstatement vis-à-vis violation of Section 25-F of the I.D. Act and observed as under:

“It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken a view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

The Apex Court further held therein that in plethora of decisions in recent time, it has been the principle that an order of retrenchment passed in violation of Section 25-F of the I.D. Act although may be set aside but reinstatement should not be automatically directed particularly when it relates to termination of daily wagers and also referred the judgment in **Jagbir Singh** (supra), wherein, it was held that the relief of reinstatement and back wages to such employment cannot be said to be justified and instead monetary compensation would subserve the purpose.

8. In the decision of **Bhurumal**, the Apex Court referred to an earlier decision in **Telecom District Manager v. Keshab Deb (2008) 8 SCC 402**, wherein, it was emphasized that automatic direction for reinstatement of the workman with back wages is not contemplated and at best he is entitled to one month's pay in lieu of notice and wages of fifteen days for each completed year of service as envisaged under Section 25-F of the I.D. Act and cannot be directed to be regularized in service since such a scheme has been held to be unconstitutional in **A. Umarani v. Registrar, Cooperative Societies (2004) 7 SCC 112** and **Secretary, State of Karnataka v. Umadevi (2006) 4 SCC 1**. However, the Apex Court added a caveat in the decision of **Bhurumal** and held that termination of daily wage worker may be found to be illegal on the ground that it amounted to unfair labour practice or in violation of the principle of 'last come first go' and there may also be a situation where persons junior to him were regularized and in such circumstances, the terminated employee should not be denied reinstatement unless some other weighty reasons exist for adopting the course of grant of compensation and in such a

case, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such relief can be denied.

9. The Supreme Court in a recent decision in ***Ranbir Singh v. Executive Engineer, PWD*** decided in Civil Appeal No.4483 of 2010 and disposed of on 2nd September, 2021 reiterated the above principle and in similar circumstances awarded lumpsum compensation instead of reinstatement. In such view of the matter, this Court while considering the fact that the Workmen although stated to have been engaged for quite some year on DLR basis which is a temporary employment, the Tribunal did not err in not directing their reinstatement, rather, was correct in its approach for payment of compensation which again does not appear to be disproportionate. In fact, a decision is cited at the Bar in the case of ***Assistant Engineer, Rajasthan Development Corporation and others v. Gitam Singh (2013) 5 SCC 136***, wherein, the Supreme Court held and observed that before exercising judicial desecration, a Labour Court has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service etc. after referring to the principles laid down in ***Jagbir Singh*** case and host of other decisions. Having regard to the fact that the employment of the Workmen was on a temporary basis, the Court finds that the Tribunal rightly awarded compensation as there was no material to bring the case within the exception carved out by the Supreme Court in the decision of ***Bhurumal*** (supra). In other words, the Court holds that the impugned award under

Annexure-1 does not suffer from any legal infirmity and therefore, it calls for no interference.

10. Accordingly, it is ordered.

11. In the result, the writ petitions stand dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

TUDU

