

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No. 20434 of 2012*****Dibakar Sahoo***

....

Petitioner

Mr. Ramanath Acharya, Advocate

*-versus-****M/s. Orissa Air Product Pvt. Ltd. and
Another******Opposite Parties***

Mr. P.K. Chand, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK****Order No.****ORDER
05.07.2022**

05. 1. The challenge by the workman in the present petition is to an Award dated 4th February, 2012 passed by the Labour Court, Bhubaneswar in Industrial Dispute Case No.42 of 1996 whereby the action of the Opposite Parties Management i.e. M/s. Orissa AIR Products Pvt. Ltd., Dhenkanal in dismissing the workman from service with effect from 21st January, 1995 was held to be legal and justified.
2. Notice in the present petition was issued way back on 21st November, 2012. However, till date, no reply has been filed by the Management. The dispute referred to for adjudication to the Labour Court was as under:

“Whether the action of the management of M/s. Orissa Air Products Ltd., Gundichapada, Dhenkanal in dismissing Sri Dibakar Sahoo from services with effect from 21.1.95 is legal and/or justified ? If not, to what relief he is entitled ?”

3. On the basis of the above reference, the following issues were framed by the Labour Court:

“(i) Whether the domestic enquiry conducted against the second party workman is fair and proper ?

(ii) Whether the action of the management in dismissing Sri Dibakar Sahoo, from service with effect from 21.1.95 is legal or justified ?

(iii) To what relief, the workman is entitled to ?

4. As far as issue no. (i) concerning the fairness of the domestic enquiry, the Labour Court passed an order on 5th November, 2002 upholding the domestic enquiry to be fair and proper.

5. It appears that the workman belatedly filed repeated applications before the Labour Court thereafter for recall of the above order. Against one such order dated 8th December, 2010 rejecting the recall application of the workman, he filed writ petition i.e. W.P.(C) No.70 of 2011 in this Court. The said writ petition was dismissed by an order dated 18th August, 2011. In sum therefore, the order dated 5th November, 2002 passed by the Labour Court holding the domestic enquiry to be fair, attained finality.

6. Turning to issue nos. (ii) and (iii), which the Labour Court took up together, it was noticed that during the period of a settlement effected between the Workers' Union and the Management on 5th June, 1992 which was valid till 30th June, 1996, the Petitioner workman along with certain others are alleged to have forcibly trespassed into the factory with weapons and physically assaulted the workers on duty causing them serious injuries. It is stated that an FIR was also registered and a criminal case was initiated.

7. After noticing the above facts, the Labour Court has in the impugned Award held that the workman failed to make good the allegation that the Management acted with mala fide intention. Thereafter, as far as merits of the dismissal is concerned, the Labour Court observed as under:

“8...So on perusal of the case record and the enquiry report submitted by the Enquiry Officer and after going through the evidence of both the parties and on careful consideration of all the materials available in the case record, as discussed above, in my opinion, the action taken by the management in dismissing the workman from service with effect from 21.1.95 is legal and justified. The workman is not entitled to any other relief. Hence both the issues are answered accordingly.”

8. Mr. Acharya, learned counsel appearing for the workman submits that the impugned Award as far as issue No.(ii) is concerned is virtually non-speaking since no evidence has been discussed. He further points out that the criminal case instituted

against the workman ended in acquittal. He submits that the workman, who was 59 years at the time of filing of the present writ petition, has already attained the age of superannuation. He accordingly, prays that a suitable amount by way of compensation be ordered to be paid to the workman for his wrongful dismissal. He submits that the principal office of the management is in Kolkata, whereas a unit of the company was functioning from Dhenkanal.

9. Learned counsel for the Management on the other hand, submitted that the unit in Dhenkanal has now closed its operations and certain other workmen were aggrieved by the closure, had approached the Labour Court. That dispute ended in a settlement and all the other workmen have been paid off. Although, he submitted on merits the Management has a strong case, he was unable to dispute the facts that the Labour Court has not discussed the evidence against the workman and has simply given its conclusion without reasons that the dismissal of the workman was justified.

10. Having considered the above submissions, the Court is of the view that it was incumbent on the Labour Court while discussing issue No.(ii) viz., the justification for the workman's dismissal to have discussed the evidence led before the Labour Court and given reasons why it was concluding that the dismissal was justified in law. Consequently, the Court is of the view that on issue Nos.(ii)

and (iii) the impugned Award of the Labour Court is a non-speaking one. On that short ground, the impugned Award cannot be sustained in law.

11. Remanding the matter the Labour Court to again answer issue Nos.(ii) and (iii) on merits would not serve the purpose on account of the long passage of time. The dismissal order is almost three decades old i.e. 21st January, 1995 and the matter itself was pending before the Labour Court for a long period of 15 years till the passing of the impugned Award. Secondly, the workman is almost 70 years now and it will be unfair to subject him to further litigation. Thirdly, with the Management already having settled the disputes with the other workmen, there can be no justification in denying similar relief to the present workman. Fourthly, the criminal case having ended in acquittal and that fact not having been denied by the Management, the workman would certainly have an arguable case as far as merits of the dismissal is concerned.

12. The Court further notes that the Petitioner workman was engaged as an electrician and served the Management for almost 15 years and his monthly salary was stated to be, at the time of his dismissal, around Rs.2500/- per month.

13. Keeping in view all the above factors and for the reasons aforementioned, the Court while setting aside the impugned Award directs the Opposite Party - Management to pay the Petitioner a

sum of Rs.3,00,000/- (Rupees Three lakh) as compensation for the wrongful dismissal of the workman. The said amount be paid within a period of eight weeks from today.

14. The writ petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.

