

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26338 of 2013

Orissa State Co-operative Marketing Federation Ltd., Bhubaneswar ***Petitioner***

Mr. S. K. Pattanaik, Senior Advocate
-versus-

Pramod Kumar Patra ***Opposite Party***

Dr. J. K. Lenka, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**ORDER
01.08.2022**

Order No.

05. 1. The Odisha State Co-operative Marketing Federation Ltd., Bhubaneswar (hereafter the Management) has filed this petition challenging an award dated 29th June, 2011 passed by the Labour Court, Bhubaneswar (Tribunal) in ID Case No.26 of 2008 whereby the Tribunal held that the retrenchment of the Opposite Party-Workman by the Management by order dated 28th April, 2001 with effect from 1st May, 2001 was contrary to Section 25-F of the Industrial Disputes Act, 1947 (ID Act) and that the Workman was entitled to reinstatement in service but without any back wages.
2. The background facts are that the Opposite Party-Workman was appointed as a Sales Assistant on temporary basis on 5th October, 1995 in the area office of the Petitioner-Society at Bhawanipatna. The Registrar, Cooperative Societies by a letter dated 27th November, 2000 advised the Petitioner to retrench the surplus NMR employees. Pursuant to the said order, the Petitioner prepared

a list of staff including 39 Sales Assistants on the principle of last come first go, category wise. This list included the Opposite Party-Workman. A notice of retrenchment dated 28th April, 2001 was issued to the Opposite Party-Workman along with an account payee cheque for Rs.5,100/- in which the Notice Pay was calculated on the basis of the last pay drawn @ Rs.1,020/- per month. However, the Opposite Party declined to receive it from the Area Manager. Subsequently, he supposed to have requested the Management for payment of the retrenchment compensation by a letter dated 21st August, 2001 and this was forwarded to him under cover of a letter dated 1st September, 2001.

3. The Workman first approached this Court challenging the retrenchment notice that by filing W.P.(C) No.4038 of 2002. The said writ petition came to be pending in this Court for five years and was thereafter disposed of with the following order:

“Heard learned counsel for the petitioner.

The petitioner has filed this writ petition challenging the order of his retrenchment from service dtd.28.4.2001 passed by the Management Director, O.P.-I vide Annexure-1.

We are not inclined to accede to the prayer of the petitioner in this writ petition. It is open to the petitioner approach the appropriate forum under the Industrial Disputes Act.

The writ petition is disposed of.”

4. Thereafter, The Petitioner raised an industrial dispute and the following reference was made to the Tribunal for adjudication:

“Whether the retrenchment order dtd. 28.4.2001 of the MARKFED, Bhubaneswar retrenching Sri Pramod

Kumar Patra w.e.f. 01.5.2001 as against the provision of Section 25-F of the ID Act, 1947 is legal and/or justified? If not, to what relief the workman is entitled?”

5. Before the Labour Court, the Workman examined himself as A.W.1 and *inter alia* deposed that his last wage was Rs.1,100/- per month at the time of termination of his service. However, the Management had calculated the retrenchment benefits on the basis of the last wage drawn being Rs.1,020/- per month. He further contended that the Management did not follow the principle of last come first go and had adopted a pick and choose method. A number of NMRs, who had been engaged after the Workman, were retained or reemployed.

6. The Management examined one witness. On the specific issue of last drawn salary of the Workman, he had filed an application dated 6th January, 2011 before the Tribunal for directions to the Management to produce ten documents. On that date, as noted by the Tribunal in the impugned Award, the Management agreed to produce the ten documents as sought by the Workman. These documents included “seniority list/gradation list of N.M.R. Sales Assistant, names of N.M.R. employees who were engaged after 1st October, 1995, name of N.M.R. employees who were retrenched in April, 2001 along with their dates of joining, names of N.M.R. employees who are on roll at present and name of N.M.R. employees who are re-engaged/re-employed under the management after 28th April, 2001 and true copy of document relating to last wage drawn of the workman.”

7. However, as noted by the Tribunal, the Management did not produce those documents and filed some other documents, which were irrelevant. The Tribunal then noted that on account of the Management withholding documents, which were in its control and possession, an adverse inference could be drawn against it. Further, in the cross-examination, M.W.1 also admitted that the Management had failed to produce the last wage drawn particulars of the Workman.

8. In the circumstances, it was concluded by the Tribunal that the Workman was indeed drawing a monthly pay of Rs.1,100/- at the time of his retrenchment and, therefore, the retrenchment compensation was not correctly calculated. Consequently, Section 25-F of the ID Act had not been duly complied with.

9. On this aspect, learned Senior Counsel for the Petitioner sought to contend that the burden of proof was on the Workman to show that he was drawing a monthly pay of Rs.1,100/- per month. The Court finds that the documents by which the Workman could have proved it were all in the control and possession of the Management. This is the reason why he filed the application in the Tribunal seeking production of such documents. Failing to produce such documents, the Management risked adverse inference being drawn against it. It cannot therefore be said that the Workman had failed to establish that he was drawing Rs.1,100/- per month at the time of his retrenchment.

10. Even as regards those persons who were engaged after the Workman had been engaged and were either reemployed or

retained contrary to Section 25-G of the ID Act, the Management failed to produce documents, which could have shown the contrary.

11. The Court is therefore unable to find any error having committed by the Tribunal in negating the pleas of the Management and holding the retrenchment of the Workman to be bad in law. The Tribunal also correctly denied the payment of back wages because the Workman had not proved that he was not gainfully employed elsewhere.

12. For all of the aforementioned reasons, the Court finds no merit in the present petition and it is dismissed as such. The interim order passed earlier stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

M. Panda