

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19853 of 2010

***General Manager, (EL),
Chiplima, Hydro Electric Project,
OHPC Ltd.***

Petitioner

Mr. D.P. Nanda, Senior Advocate
Ms. Sarita Moharana, Advocate

-Versus-

Rabindra Gardia

.... Opp. Party
Mr. Kamal Ray, Advocate

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

**ORDER
10.05.2022**

Order No.

R.K. Pattanaik, J

13. 1. The Petitioner by filing the present writ petition under Article(s) 226 and 227 of the Constitution of India, 1950 has questioned the legality and judicial propriety of the impugned award dated 11th June, 2010 (Annexure-9) on the grounds *inter alia* that the workman was not engaged by the Management, the fact which was not duly appreciated and taken cognizance of by the Presiding Officer, Labour Court, Sambalpur (hence called as 'the Labour Court') while disposing of I.D. Case No.08 of 2009.
2. The workman claimed to be engaged in the establishment of the Petitioner during the year 1984-87, 1998 and thereafter, 2005-06. It has been alleged that the Management disengaged the

workman without assigning any reason and prior notice and during his tenure, he was not paid any remuneration, gratuity and other benefits. According to the workman, the Management should have reinstated him in service and provided the benefits, he was otherwise entitled to and in that respect had even approached the DLC, Sambalpur ventilating his grievances. However, the conciliation before the DLC, Sambalpur ended in failure, where after, on receipt of report in respect thereof, the Govt. in Labour and Employment Department in exercise of power conferred under Section 12(5) read with Section 10(1)(C) of the Industrial Dispute Act, 1947 (hereinafter referred to as 'the I.D. Act') referred the dispute for adjudication by the Labour Court with the issue 'whether the termination of the workman by way of refusal of employment from September, 2005 by the Management in the establishment of the Petitioner was legal or justified'. After the reference was made, the Labour Court received evidence from both the sides and finally reached at a logical conclusion that such termination was unjustified and consequently vide the impugned award i.e. Annexure-9 directed reinstatement of the workman as a daily wager within the stipulated time.

3. Heard Ms. S. Maharana, learned counsel for the Management and Mr. K. Ray, learned counsel appearing for the workman.

4. Ms. Maharana would contend that despite having no evidence of employment of the workman in the establishment of the Petitioner, the Labour Court directed his reinstatement under

Annexure-9. It is claimed that the workman miserably failed to produce any such material vis-à-vis engagement with the Petitioner except few documents which are of no relevance. Lastly, it is contended that since the workman was found not employed with the Petitioner, the question of any such termination of his services in violation of Section 25-F of the ID Act doesn't arise at all and in such view of the matter, the impugned award under Annexure-9 suffers from legal infirmity.

5. On the contrary, Mr. Ray contends that there was evidence before the Labour Court to show that the workman was indeed engaged in the establishment of the Petitioner which also received corroboration through a certificate issued by one of the officials of the establishment. In fact, as per Mr. Ray, the workman having worked for 240 days and more, the fact which was pleaded and the same having been accepted by the Labour Court, the impugned award under Annexure-9 calls for no interference.

6. The reference before the Labour Court was to the effect that whether termination of services of the workman by the Management was justified? To substantiate the claim, the workman principally relied upon the documents, such as, copies of gate pass (Ext.W-1) and a conduct certificate (Ext.W-6). But then, the workman failed to produce any document in proof of his engagement with the Petitioner. The production of the muster roll for the periods 1984-87 and 2005-06 before the Labour Court could not even be ensured. Also no material was submitted

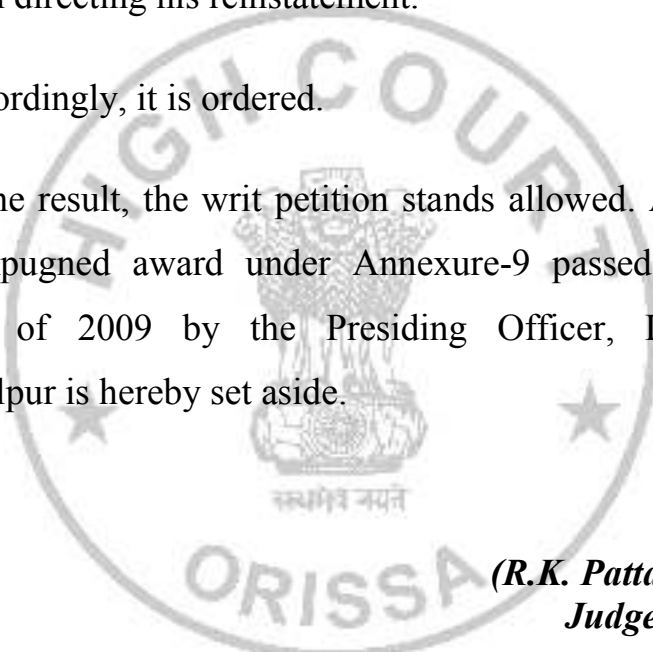
before the Labour Court to show that the workman was paid any amount towards wages by the Management. Furthermore, the Court does not find any material to satisfy itself that the workman had been in employment of the Petitioner for 240 days. The Labour Court appears to have been influenced by Ext.W-1 and Ext.W-6 to hold that the workman was under the employment of the Petitioner. So to say, the Court is of the view that in absence of any direct and positive evidence regarding employment for 240 days with the dues being paid by the Management, the reinstatement of the workman could not have been directed.

7. Mr. Ray, learned counsel for the workman cited ***Bank of Baroda V. Ghemarbhai Harjibhai Rabari AIR 2005 SC 2799*** to contend that even absence of a letter of appointment, the termination from services is contrary to the provisions of the ID Act and therefore, the decision of the Labour Court shall have to be upheld. In the decision (supra), the workman had produced couple of vouchers showing payment of wages and same being debited from the account of the employer which was not rebutted. As against the above backdrop, the Apex Court held and observed that the workman having worked for 240 days continuously and produced evidence with regard to payment of wages, the termination of his services was unjustified even in absence of any letter of appointment and therefore, he is entitled to reinstatement with full back wages. In the case at hand, the workman could not produce any evidence regarding payment of

wages and employment with the Petitioner but the Labour Court by referring to Ext. W-1 and Ext. W-6 held that the engagement was proved, a conclusion, which in the considered view of the Court is completely misplaced. That apart, the cited case law renders no assistance to support the claim of the workman. Thus, the conclusion would be that the Labour Court reached at an erroneous decision with regard to the employment of the workman in the establishment of the Petitioner and hence, was in error in directing his reinstatement.

8. Accordingly, it is ordered.

9. In the result, the writ petition stands allowed. As a corollary, the impugned award under Annexure-9 passed in I.D. Case No.08 of 2009 by the Presiding Officer, Labour Court, Sambalpur is hereby set aside.

The seal of the Orissa High Court is a circular emblem. It features the text "HIGH COURT" at the top and "ORISSA" at the bottom. In the center is the State Emblem of India, which is a four-lion capital of an abacus. Below the emblem is the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate). There are two stars on either side of the central emblem.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

TUDU