

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 568 of 2015

Shib Sakha Mukhopadhyay

....

Appellant

Mr. S.K. Das, Advocate

-versus-

***Industrial Development Corporation of
Orissa Ltd. and Another***

.... ***Respondents***

Mrs. Pami Rath, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

Order No.

**ORDER
28.09.2022**

03. 1. The challenge in the writ appeal is to a judgment dated 15th May, 2015 passed by the learned Single Judge dismissing OJC No.8831 of 1996 filed by the present Appellant seeking a direction to Industrial Development Corporation Ltd. (IDCOL) (Respondent No.1) to take him back from A.B.S. Spinning Mill Orissa Ltd. (ABS) to IDCOL and treat the period of service in ABS as being on deputation. He also prayed for quashing of the letter dated 24th July, 1996 issued by IDCOL rejecting his representation pointing out that he continued to be an employee of ABS, a subsidiary company of IDCOL with effect from 1st April, 1990.
2. The admitted facts are that although the Appellant was initially engaged by IDCOL by a letter dated 3rd December, 1983 as Senior Supervisor (Civil), he joined the Aska Spinning Mill on 15th

December, 1983. He was subsequently transferred to Baripada Spinning Mill and thereafter to ECBDL, Paradeep on deputation.

3. On 6th February, 1990 a memorandum of understanding was signed between IDCOL, Sonepur Spinning Mill bring the operation of three industrial undertakings i.e. Aska Spinning Mill Ltd., Baripada Spinning and Sonepur Spinning Mill under a single corporate entity. A new company called ABS Spinning Mill Orissa Ltd. (ABS) was registered under the Companies Act, 1956 with effect from 20th March, 1990. After the formation of ABS with effect from 1st April, 1990 the services of the Appellant was placed with ABS. He got his promotions there. His representation that he should be taken back to IDCOL was rejected on 24th July, 1996. Thereafter, he was promoted as Deputy Manager which post he joined under protest.

4. The learned Single Judge noted that after the formation of ABS with effect from 1st April, 1990 there was a severance from the earlier employment in IDCOL. Although it was the subsidiary of IDCOL, ABS was a separate entity. A reference was made by the learned Single Judge to OJC No.1599 of 1990 filed by the employees of ABS including the present Appellant asking for the same scale of pay made available to employees of IDCOL. The said petition was dismissed by this Court and that order became final.

5. With ABS being a new juristic person with its own standing, the Appellant could not possibly claim continuation in IDCOL.

6. During the pendency of the present appeal, the Appellant has superannuated and the question of granting him the relief of being reinstated in IDCOL and being treated as an employee of IDCOL does not arise at all.

7. In any event, apart from the fact that the delay of 100 days in filing the present appeal which has not been properly explained, even on merits, this Court finds no ground to interfere with the impugned order of the learned Single Judge. With the Appellant's service has been placed with ABS which is a separate entity with effect from 1990, he could not have claimed continuation with the erstwhile employer-IDCOL. Consequently, the Court dismisses the appeal both on the grounds of delay as well as limitation.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Jena/Secy.