

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7026 of 2003

***The Executive Engineer,
Sambalpur Irrigation Division,
Sambalpur***

....

Petitioner

Mr. Debakanta Mohanty, AGA

-versus-

***Sri Sudhansu Sekhar Bastia and
another***

....

Opposite Parties

Mr. S. K. Nayak-3, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE A. K. MOHAPATRA**

**ORDER
03.03.2022**

Order No.

09. 1. The challenge in the present petition by the Executive Engineering, Sambalpur Irrigation Division is to an Award dated 30th November, 2002 passed by the Labour Court, Sambalpur in ID Case No.14 of 2002.
2. The following dispute was referred to the Labour Court for adjudication:

“Whether Sri Sudhansu Sekhar Bastia was the employee of the Executive Engineer, Sambalpur Irrigation Division, Burla and if so whether his refusal of employment with effect from 30.6.2000 by the Executive Engineer ignoring his seniority is legal and/or justified? If not, to what relief this workman is entitled?”

3. The case of the Opposite Party No.1-Workman was that he had been engaged by the First Party-Management as a Nominal Muster Roll (NMR) worker from 1st September, 1995 onwards.

While initially he was paid as an unskilled mulia, he was subsequently paid as a semi-skilled and finally under the skilled category. Three persons appointed after him as NMR workers were in due course appointed on regular basis by a letter dated 21st December, 1997. The workman claimed that although, he was a graduate and, therefore, having higher qualification than the other three and also having knowledge of shorthand and type writing, the workman was overlooked for regularisation. According to him, after he served a legal notice dated 22nd June, 2000 on the Management, his services were terminated with effect from 1st July, 2000 under verbal orders.

4. The case of the Management was that Opposite Party No.1 was a casual labourer from 1st September, 1995 to 30th November, 1997. Thereafter, he declined to work and left service on his own. Therefore, the question of his termination being in violation of any of the provisions of the Industrial Disputes Act, 1947 (ID Act) relating to retrenchment did not arise. As regards the three NMRs junior to him, it is contended that they were willing to work and, therefore, continued. However, they had already been retrenched with effect from 16th March, 2002.

5. In the Labour Court, the Management examined a Junior Engineer as M.W. 2, who produced the work chart. M.W. 2 fairly admitted that the workman had actually worked from December, 1997 to June, 2000 but that the said engagement was through a contractor. He was paid through a contractor. Again,

another management witness M.W. 3 admitted in cross-examination that the workman had worked from 1st December, 1997 as usual but the mode of payment of his wages was changed from NMR to Contractor's Register. On the basis of this evidence, the Labour Court concluded that the Workman was actually employed by the Management from 1st December, 1997 to 30th June, 2000. This falsified the plea of the Management that after 30th November, 1997 the workman had left the work on his own. Since there was no pleading by the Management that he had been engaged through a contractor, the Labour Court concluded that the workman had continuously worked up to 1st July, 2000 and after that date, he had been refused work. This was held to be in violation of Section 25-F of the ID Act. The relief granted was of reinstatement of the workman with full back wages and consequential service benefits.

6. Having heard Mr. Debakanta Mohanty, learned Additional Government Advocate for the Petitioner and Mr. S. K. Nayak, learned counsel appearing for the Workman-Opposite Party No.1, the Court is satisfied that the Labour Court has committed no legal error in answering the reference in favour of the Workman. The conclusion was based on evidence laid by the Management itself. The evidence unmistakably proved that contrary to the case of the Management, the Workman continuously worked for them till 1st July, 2000. The Management's own witnesses falsified its case leading the Labour Court with no difficulty in arriving at its conclusion in favour of the Workman.

7. There is no merit in the petition and it is accordingly dismissed. The interim order dated 17th February, 2004 stands vacated. The LCR, if any, be returned forthwith to the Labour Court for further proceedings.

(Dr. S. Muralidhar)
Chief Justice

(A. K. Mohapatra)
Judge

M. Panda

