

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 29572 of 2011

Laxman Nayak

....

Petitioner

Mr. S. Mishra, Advocate

-versus-

***The Presiding Officer, Central
Government Industrial Tribunal-cum-
Labour Court and another***

.... ***Opposite Parties***

Mr. J. Nayak, CGC

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

**ORDER
05.07.2022**

Order No.

03.

1. The challenge in the present petition by the Petitioner-Workman is to an award dated 24th March 2011, passed by the Central Government Industrial Tribunal-cum- Labour Court, Bhubaneswar (Tribunal) in Industrial Dispute (ID) Case No.27 of 2004. By the impugned order, while holding two issues, namely, maintainability of the reference and retrenchment of the Petitioner being contrary to Section 25-F of the Industrial Disputes Act, 1947 (I.D. Act) in favour of the Workman. The Labour Court declined him the relief of reinstatement after noting that his original appointment as Extra Departmental Delivery Agent (EDDA) on 2nd March, 1998 with the Office of the Senior Superintendent of Posts, Berhampur was only on provisional basis.

2. Consequently, by the impugned award, the relief granted to the Petitioner was of one month's wages in lieu of notice and

compensation equivalent to 15 days average pay for every completed years of continuous service or any part thereof in excess of six months. It was noted that the Workman had rendered continuous service of one year only and he should therefore be entitled 15 days average pay for completed one year of continuous service.

3. Learned counsel for the Petitioner relying on the decisions in *Shyam Sundar Rout v. Orissa State Road Transport Corporation and Ors.* 69 (1990) CLT 357 and *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors* (2013) 10 SCC 324, urges that with the Labour Court having held in favour of the Petitioner, particularly in the issue of the termination of the Petitioner's service as being contrary to Section 25-F of the I.D. Act, ought to have directed reinstatement of the Petitioner, notwithstanding that the original appointment was on provisional basis.

4. The Labour Court has in the impugned award noted that aggrieved by the retrenchment of the Petitioner, he had approached the Central Administrative Tribunal (CAT) which had directed the Management to give him a hearing before deciding afresh as to his retrenchment. The Management in fact gave him that opportunity of hearing and reiterated its order of retrenchment. For reasons best known to him, the Petitioner did not further pursue the matter before the CAT and instead decided to raise an industrial dispute invoking the provisions of the I.D. Act.

5. Learned counsel for the Petitioner has not been able to explain how the original appointment was only on provisional basis, the finding that the Petitioner's retrenchment was on violation of Section 25-F of the I.D. Act would somehow change the character of that appointment from a provisional basis to a regular basis. Secondly, the Petitioner having elected for a certain course of remedy by approaching the CAT had to take that course of action to its logical end. Instead the Petitioner seems to have abandoned that course, once it did not serve the purpose and instead chose to invoke the I.D. Act in the manner indicated hereinbefore. The Court is unable to find any error having been committed by the Labour Court in declining the relief of reinstatement in the above circumstances.

6. There is no merit in the writ petition, it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera