

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 4446 of 2011

State of Odisha, represented by the Petitioner
Asst. District Veterinary Officer
(Disease Control), Balasore

Mr. P.K. Muduli, Addl. Govt. Advocate

-versus-

Kailash Chandra Mallick and others Opposite Parties

Mr. S.K. Mishra, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

Order No.

ORDER
18.05.2022

Dr. S. Muralidhar, CJ.

28. 1. The State of Odisha, represented by the Assistant District Veterinary Officer (Disease Control), Livestock Breeding & Dairy (LBD) Farm, Remuna, Balasore has filed the present writ petition under Article 227 of the Constitution questioning an award dated 25th March, 2009 passed by the Labour Court, Bhubaneswar in I.D. Case No.64 of 2005 whereby it was directed that Opposite Party Nos. 1 to 7 shall be reinstated in service.
2. While directing notice to issue in the present petition on 28th July, 2011 the operation of the award was stayed subject to compliance with Section 17 B of the Industrial Disputes Act, 1947 (ID Act).

3. During the pendency of the present petition, there was a controversy on whether the wages in terms of Section 17B of the ID Act was paid or not. Pursuant to the orders passed by this Court, it was reported finally on 7th September, 2021 that the wages had been paid.

4. Today, Mr. S.K. Mishra, leaned counsel appearing for the Opposite Party Nos. 1 to 7 states that while wages have been paid under Section 17 B of the ID Act up to January, 2022, they have not been paid thereafter. A direction is issued to the Petitioners to ensure that the Section 17B wages for the period from February, 2022 till date is paid to Opposite Party Nos. 1 to 7.

5. The background facts are that the Petitioner is a Government organisation under the control of the Fishery and Animal Resources Development Department having its office in Bhubaneswar.

6. The case of the Opposite Party Nos.1 to 7 (workmen) was that they were appointed as DLR employees on different dates in 1994, 1995 and 1996. At the time of their initial engagement, they were getting Rs.30/- per day as wages. This was enhanced from time to time. As on 21st July 2001, the date on which they were refused employment, each of them was earning Rs.42.50 as wages per day. The case of the workmen was that there was no complaint against any of them and despite putting in long years of service they were

without any prior intimation suddenly declined work on 21st July 2001 in violation of the ID Act.

7. In particular it was submitted that each of them had worked continuously for more than 240 days in the year prior to their retrenchment and therefore, it was violative of both Section 25F as well as 25G of the ID Act. As regards the point concerning Section 25G of the ID Act, it was pointed out that the last come first go principle was not adhered to by the Petitioner instead the person junior to the workmen was retained in service whereas they were retrenched.

8. The industrial dispute that arose as a result of the above action of the Petitioner was referred to the Labour Court for adjudication. The exact question referred to it was as under:

“Whether the termination of services of Sri Kailash Ch. Mallick, (2) Sri Pranakrushna Parida, (3) Sri Atul Kumar Jena, (4) Sri Ramachandra Behera, (5) Sri Prasanta Jena, (6) Sri Narayan Sethi and (7) Sri Ganeswar Baral, all daily rated workers by way of refusal of employment with effect from 21.07.2001 by the Veterinary Asst. Surgeon, I/C L.B.D. Farm, Remuna, Dist-Balasore is legal and/or justified? If not what benefit Sri Mallick and 6 others are entitled to get?

9. The stand of the Petitioner-Management was that the workmen were never regularly appointed but they were only casual labourers engaged in the farm on daily wage basis, according to need. Since the Government decided to dispose of uneconomical animals, the

requirement of casual labourers decreased and they were distinguished the principle of 'last come first go'. Along with the written statement the Management enclosed a chart showing the number of days in respect of which each of the workmen were engaged from the date of their engagement till the date of the retrenchment.

10. On behalf of the Management one witness (MW 1) was examined. The dates of engagement of each of the Opposite Party workmen was given by him. It substantiated the case of the workmen that they had been engaged on different dates in 1994, 1995 and 1996. It was further admitted by MW 1 that one Ganeswar Giri who was still working in the LBD farm had in fact joined on 26th March, 1997 i.e. much after Opposite Party Nos. 1 to 7 had joined. Thus, the Labour Court concluded that "it is proved that while the seniors have been terminated, the juniors have been retained by the Management violating the principle of 'last come first go' ". MW 1 further admitted before the Labour Court that "some other persons have been engaged after disengagement of the workmen of the present case to work on daily wage basis whenever required". The further admission by MW 1 was that Opposite Party Nos.1 to 7 were never re-engaged after their disengagement. He also admitted that he had not informed the workmen in writing to join duty after their disengagement.

11. After referring to the decisions on the issue, the Labour Court came to the conclusion that the retention of juniors while retrenching Opposite Parties 1 to 7 by the Management is illegal and unjustified. In the circumstances, it was held that the workmen were entitled to be reinstated in service “but without any back wages”.

12. Although the award of the Labour Court was passed on 25th March, 2009 the present petition challenging the Award was filed by the Management nearly 2 years later on 22nd February, 2011.

13. This Court has heard submissions of Mr. P.K. Muduli, learned Additional Government Advocate for the Petitioner (State) and Mr. S.K. Mishra, learned counsel appearing for the Opposite Parties (Workmen).

14. Mr. Muduli relied on the decision in *Jaipur Development Authority v. Ramsahai (2006) 11 SCC 684* to urge that Section 25G which introduced the rule of ‘last come first go’ is not ‘imperative in nature’. It was further observed therein that the said rule would be applicable when a workman belongs to a particular category of workmen. An employer would, in terms thereof, be ordinarily required to retrench the workman who was the last person to be employed in that category. However, “for reasons to be recorded, the employer may retrench any other workman.”

15. In the present case on the showing of MW 1, it was plain that the 'last come first go' principle was not adhered to and therefore, Section 25G of the ID Act had been violated. Even going by the observations of the Supreme Court in the aforementioned decision in ***Jaipur Development Authority v. Ramsahai*** (*supra*) the Management had to record reasons in writing for retaining a person engaged after the Opposite Parties workmen had been engaged. Here there are no such reasons produced by the Management before the Labour Court or for that matter even before this Court to justify the departure from the principle enshrined in Section 25G of the ID Act.

16. Mr. S.K. Mishra, learned counsel appearing for the Opposite Parties (Workmen), has relied on a large number of decisions including the decisions of the Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan*** AIR 1964 SC 477; ***Pepsico India Holdings Pvt. Ltd. v. Krishna Kant Pandey*** (2015) 4 SCC 270; ***Central Bank of India v. S. Satyam*** AIR 1996 2526; ***Director, Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda*** AIR 2010 SC 1236; and the decisions of this Court in ***Union of India v. Sudarsan Barik*** 2006 (Supp. I) OLR 619 and ***Gopinath Panda v. Mineral & Metals Trading Corporation of India Ltd.*** (2012) III LLJ 809 Orissa to urge that the impugned Award of the Labour Court called for no interference. It is pointed out how when admittedly, the workmen had worked for more than 240 days continuously, there could be no departure from Section 25F of the ID Act even if, the workmen had not been regularly employed.

17. The above decisions do support the case of the workmen here. The fact that the workmen were engaged for more than 240 continuous days and had worked for more than 5 to 7 years on a continuous basis which the Management was unable to dispute factually. In fact, MW 1 supported of the case of the workmen to that extent. The further fact that a person junior to the workmen had been retained while the workmen had been retrenched was also unable to be disputed by the Management.

18. For the aforementioned reasons, the Court finds no error having been committed by the Labour Court in passing the impugned Award. The interim order passed earlier is vacated. The directions issued regarding the balance Section 17B wages as in para 4 above is reiterated.

19. The writ petition is accordingly dismissed in the above terms, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.