

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 2083 of 2011

M/s. Express Publications (Madurai) **Petitioner**
Ltd.

Mrs. S. Mohanty, Advocate

-versus-

Lenin Kumar Ray **Opposite Party**

Mr. Satyabrata Mohanty, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

Order No.

ORDER
04.04.2022

Dr. S. Muralidhar, C.J.

16. 1. The challenge by the Management in the present petition is to an Award dated 22nd September, 2010 passed by the Labour Court, Bhubaneswar in I.D. Case No.27 of 2007.

2. The dispute referred to the Labour Court for adjudication was as under:

“Whether the action of the Management of M/s. Express Publications (Madurai) Ltd., Unit-III, Bhubaneswar in terminating the services of Sri Lenin Kumar Ray, workman with effect from 8.10.2003 is legal and/or justified? If not to what relief the workman is entitled to?”

3. The background facts of the case were that the Opposite Party workman was appointed as Junior Engineer by the Management on 7th June, 1997 in the scale of pay Rs.1975-3935/- with a total salary of Rs.4761.75 per month. He was initially on probation.

Condition 14 of the letter stated “after confirmation, termination of service will be the one month’s notice or one month’s salary in lieu of notice by other side. Subsequently, on 13th July, 1998 the Opposite Party was confirmed as Junior Engineer in the company with effect from 7th June, 1998. The letters stated that “other terms and conditions stipulated in her appointment order will however continue to hold good.”

4. The Petitioner was thereafter promoted as Assistant Engineer (E & C) on a monthly salary of Rs.6008.79. On 8th October, 2003 services of the workman was terminated by paying him by way of cheque of Rs.6995.65 being one month’s salary in lieu of notice.

5. Questioning the termination of services, an industrial dispute was raised by the Opposite Party workman, which was referred to for adjudication to the Labour Court.

6. Two issues were considered by the Labour Court as under:

(i) Whether the Opposite Party was a workman within the meantime of Section 2(s) of the Industrial Disputes Act, 1947 (ID Act)?

(ii) Whether the termination of services violates Section 25 A of the ID Act?

7. The Labour Court negated the plea of Management that the Petitioner was in a supervisory capacity and therefore, outside the ambit of Section 2(s) of the ID Act and, therefore, the Labour

Court had no jurisdiction to decide the dispute. The Labour Court further held that the termination of the Opposite Party workman services was in violation of Section 25-F of the ID Act. Accordingly, the Labour Court directed his reinstatement with compensation of Rs.75,000/- in lieu of the back wages.

8. By an order dated 15th February, 2011 this Court stayed the operation of the impugned Award subject to the Opposite Party being paid the wages under Section 17-B of the ID Act. The Court is informed today that by learned counsel for the Management that the said interim order has been complied with.

9. This Court has heard the submission of learned counsel for the parties.

10. As regards the first issue whether the Opposite Party is a workman, Section 2 (s) of the ID Act which defines the expression reads as under:

“2 (s) workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

11. Among the categories exempt from the definition is a person working in a supervisory capacity, who earns above Rs.10,000/- per month.

12. Learned counsel for the Management drew attention of this Court to the reply given by the workman who was examined as WW 1 in the Labour Court. In his cross examination he stated that there were two persons working under him, whose work he was supervising. The main part of the definition ‘workman’ under Section 2(s) of the ID Act includes a person working in a supervisory capacity. It is only where the wages payable to such persons exceeds Rs.10,000/- per month that such person would fall outside the ambit of definition of ‘workman’. In the present case, although the Opposite Party workman may have been engaged in a supervisory capacity since his monthly wages at the time of termination of the services was less than Rs. 10,000/-, he does not

fall outside the ambit of 'workman'. To that extent, the Court finds no error having been committed by the Labour Court.

13. However, as regards issue no.(ii), the Labour Court appears to have erred in holding that notwithstanding specific terms and conditions of the appointment letter, the Management still had to give reasons for termination of the workman's services, failing which there would be a violation of Section 25-F of the ID Act. The relevant portion of Section 25-F of the ID Act as far as present case is concerned, reads as under:

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.”

14. It is seen that the above provision itself contemplates that the workman being paid in lieu of notice, wages for the period of notice. In terms of Clause 14 of the conditions attached to the appointment letter as noticed hereinbefore, the workman was required to be paid one month's salary in lieu of notice, which in fact has been paid to him. The Labour Court overlooked these facts in holding that there was a violation of Section 25-F of the ID Act. Consequently, the Court is unable to sustain the impugned Award to the extent it holds that termination of the services of the Opposite Party workman was illegal.

15. Accordingly, the impugned Award to the extent it requires the Opposite Party workman to be reinstated and to be paid compensation in lieu of back wages is hereby set aside.

16. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

17. An urgent certified copy of this order be issued as per rules.

S.K. Jena/P.A.



(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge