

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.634 of 2015 and CONTC No.264 of 2017

In W.A. No.634 of 2015

Orissa State Road Transport Corporation ***Appellant***

M/s. B.K. Sahoo, Advocate and associates
-versus-

Prafulla Kumar Superkar and others ***Respondents***

In CONTC No.264 of 2017

Prafulla Kumar Superkar ***Petitioner***

None

-versus-

Mr. Sanjay Kumar Rastogi, IAS, Chairman-cum-Managing Director Odisha State Road Transport Corporation ***Opposite Party***

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

ORDER

11.10.2022

Order No.

02.

W.A. No.634 of 2015

1. Respondent No.1, a retired employee of the present Appellant, approached the learned Single Judge in W.P.(C) No.26179 of 2011 for release of his terminal benefits after he obtained for the Voluntary Separation Scheme (VSS) implemented by the Appellant.

2. As it transpires, after accepting the VSS, Respondent No.1 was supposed to get refund of Rs.48,000/-. This amount has however not released to him on the ground that the Respondent had not submitted a 'no due certificate' (NOC).

3. As it evident from the impugned order, the Appellant despite notice in the petition did not choose to file any counter affidavit. The learned Single Judge then queried from the Appellant what was meant by 'dues' lying with the Respondent. The reply of the learned counsel appearing for the Appellant before the learned Single Judge was that the Respondent had been assigned the duty of plying a bus and had been asked to attain some target but had failed to do so as a result of which financial loss had been caused to the Appellant to the tune of Rs.48,000/-. The learned Single Judge has, and in view of this Court, rightly rejected the said argument noting that Respondent No.1 had not taken any advance in cash from the Appellant which he had not returned to the Appellant. Merely not meeting some target would not amount to the Respondent owing the Appellant an amount because at best it could be said to be a dereliction of duty or misconduct for which there had to be some inquiry held. In the impugned order in paragraph 23, it has been observed by the learned Single Judge as under:

“23. It is admitted fact that the petitioner has not taken any advance from the Corporation hence it cannot be said there is something which can be said to be dues which is lying with the petitioner. Since according to the opposite parties since the petitioner has not performed his duty up to his target due to that the Corporation has sustained financial loss which shall be recovered to met

out the financial loss to the Corporation. This cannot be said to be the dues rather it may be said to be not good performance of the employee but certainly it cannot be said to be dues.”

4. The learned Single Judge has rejected the stand of the Appellant that until and unless the said sum of Rs.48,000/- was paid by the Respondent, no NOC could be issued.

5. Having heard learned counsel for the Appellant, this Court is unable to take a view different from that taken by the learned Single Judge. It appears that the Appellant unilaterally decided that the aforementioned sum was due to the Appellant from the Respondent on account of his not meeting certain targets while plying the bus operated by the Appellant. It does not appear that there was any enquiry or an opportunity to the Respondent to meet the said charge prior to his retirement. It cannot therefore be said that the amount was due by the Respondent to the Appellant.

6. Before concluding this order, it must be noted that despite there being no stay granted by this Court against the order of the learned Single Judge issuing a mandamus to the Appellant to make the payment due to the Respondent together with 10% simple interest, the Appellant has made no such payment till date. In other words, merely because it has filed an appeal, it assumed that it did not have to comply with the order of the learned Single Judge. Further, as noted in the impugned order of the learned Single Judge, the Appellant has also not paid his GPF and other retrial dues.

7. In the circumstances, the present appeal is dismissed with cost of Rs.10,000/- which will be paid by the Appellant to Respondent

No.1 along with the dues in terms of the impugned order of the learned Single Judge within four weeks.

CONTC No.264 of 2017

8. In terms of the above directions, the contempt petition is disposed of.

9. Issue urgent certified copy of this order as per rules.

M. Panda



(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge