

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. (OAC) No.1017 of 2016

Narendranath Nayak

....

Petitioner

Mr. Swapnil Roy, Advocate

-versus-

State of Odisha and Others

....

Opposite Parties

Mr. P.K. Mohanty, ASC

CORAM:

JUSTICE M.S. RAMAN

ORDER

29.08.2022

Order No.

- 14.
1. This matter is taken up through virtual/physical mode.
 2. The Original Application No.1017 of 2016 (C) was filed before the Odisha Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OAC) No.1017 of 2016.
 3. The petitioner challenged the order dated 19.02.2016 issued from the office of Department of Water Resources vide order No.LC-I-226/2015-3923/WR, Bhubaneswar dated 19.02.2016, whereby he was not found eligible to be brought over to work-charged establishment.
 4. Mr. Swapnil Roy appearing for the petitioner placed the following from the aforesaid order:-

“Whereas, Sri Narendra Nath Nayak and Sri Khageswar Sahoo were engaged as NMR on 01.03.1986 and 21.12.1979 respectively. Both of them left the job at their sweet will but however it was established in the court of law in I.D Case No.58/1992 & I.D. Case No.94/1996 that they were retrenched. By virtue of Hon’ble Court’s Order in above cases, Sri Nayak & Sri Sahoo were paid back wages amounting to Rs.2,29,212/- &

Rs.5,000/- respectively and were re-instated in the NMR job w.e.f. 09.03.2009 and 6.4.2009 respectively. There is no court order regarding the service continuity of these employees.”

5. Mr. Roy submitted that the said fact is incorrect in view of an award dated 30.12.1994 which is available at Annexure-A to the counter filed on behalf of Opposite Parties. Mr. Narendra Nath Nayak, the present petitioner approached the Labour Court, Bhubaneswar in I.D. Case No.58 of 1992, wherein the following issues were framed:-

Issues

- i. Whether the N.M.R workman served under the management continuously exceeding the statutory period?
- ii. Is his, termination of service with effect from 29.08.1988 legal and justified? If not, to what relief?

As regards Issue No.1, the learned Labour Court came to hold as follows:-

“6. It is, therefore, clear that even accordingly to the evidence of M.W.1 and the averments of the written statement, the workman has worked from 1.12.1986 to 20.3.1988 and thereby he worked continuously for 34 days. The management taken a plea that he voluntarily abandoned the service. There is nothing on record to show that the management issued any letter directing him to join in the duty on a particular date. Hence, the plea of the management is not accepted. After completion of the project work, Kalo irrigation Division merged with Mayurbhanj Irrigation Division, Baripada. The management could have complied the requirement of Section 25 of the Industrial Disputes Act while terminating the services of the workmen. Admittedly that has not been followed by the management in this particular case. The N.M.R. workman served under the first party continuously exceeding 240 days and he was not taken into services again. Therefore his termination amounts to retrenchment “for any reason what so ever” mentioned in Section 2(oo) of the Industrial Disputes Act. The issue is answered accordingly.”

With regard to Issue No.II, the Labour Court held at Para 7 of its order as follows.

“7. Issue No.II- The workmen as well as the management have pointed out that he has been in continuous service for not less than one year under the employer who have retrenched him from service. He was engaged from 01.03.1986 to 30.11.1986 and subsequently from 1.12.1986 to 20.07.1988. Pre-condition for a valid retrenchment has not been satisfied and the termination of service is as initio void, invalid and inoperative. He must be deemed to be in continuous service. Where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits, namely, back wages in full and other benefits. *Hindustan Steel Ltd., Rourkela Vrs. A.K. Ray* (A.I.R. 1970 S.C. 1041). Hence, in the circumstances the termination of his services with effect from 29.08.1988 is neither legal nor justified. Kalo Irrigation Division has already been merged and the Executive Engineer, Mayurbhanj Irrigation Division, Baripada is to reinstate this workman with full back wages up-to date. The issue is answered accordingly.

6. Mr. Roy, therefore, submitted that in view of clear finding of fact by repelling the objections raised by the management, the Labour Court came to conclude that the petitioner was in continuous service.

7. Learned counsel for the petitioner has pressed into service *Judgment dated 21.06.2021* of this Court rendered in the case of *Trinath Jena Vrs. State of Odisha and Others* in *WPC(OAC) No.1823 of 2015*. Paragraphs 6, 7 and 8 of the said judgment are extracted herein below:-

“6. Considering the rival contentions of the parties this Court finds, for the direction of the Labour Court the Petitioner was directed to be reinstated into service after holding his termination as bad. For the finality of the dispute involving Industrial Dispute Case No.115 of 1993 and for the reinstatement of the Petitioner into service with 50% back wages, the Petitioner is deemed to be continuing in service as NMR employees. It is a different case; whether the Petitioner's case was available to be taken over to work charged establishment along with similarly situated persons, who were all

through continuing at the relevant point of time but once the Petitioner is reinstated into service, he would be deserved to be continuing. This Court here observes, had there been no illegal retrenchment of the Petitioner, Petitioner's case would have been available to be brought to work-charged establishment and he cannot be suffered for the latches of the establishment. This Court, therefore, observes, for the reinstatement not only the Petitioner is deemed to be continuing in service as NMR employee, but his case should have also been considered at par with the NMR employee who were all through continuing.

7. Now coming to the impugned order this Court finds, considering the continuity of the Petitioner and pursuant to the direction of the Labour Court the establishment has rightly considered in recommending the case of the Petitioner for his absorption in the work-charged establishment of the Water Resources Department, Government of Odisha. Taking into account 6 the development through the award passed by the Labour Court and reinstatement of the Petitioner into service as NMR employee and the imports in the order at Annexures-5 & 6 requiring all the NMRs engaged prior to 12.04.1993 to be brought to work-charged establishment and also keeping in view that the Petitioner was engaged as NMR on 1.01.1977 prior to the date fixed, this Court observes, the Petitioner ought to have been brought to the work charged establishment from the date his juniors were brought to the work-charged establishment. As the nature of dispute required to be considered by the Water Resources Department, Government of Odisha involving the Petitioner independently, there was no room to apply the award passed by the Labour Court. There is wrong application of mind in working out the direction of the Labour Court particularly at the time of considering the case of the Petitioner to be brought over to the work-charged establishment vide Annexure-9 which is not sustainable in the eye of law.

8. Keeping in view the observation made hereinabove and the development bringing over the junior NMR employees to the work-charged establishment and for the Petitioner's reinstatement into service, this Court finds, only remedy available with the Water Resources Department is to accept the proposal of the department and place the Petitioner in the work-charged establishment just above his juniors, who have already been brought to the work charged establishment. In such view of the matter, this Court finds, the order vide Annexure-9 is not sustainable in the eye of law and accordingly, interfering in the order vide Annexure-9 this Court sets aside the same and directs the Water Resources Department, Government of Odisha to treat the Petitioner to have been brought to work-charged

establishment from the date his juniors have been posted in the work-charged establishment. As a consequence, 7 Petitioner also deserves to be entitled to all financial benefit accrued in the meantime along with interest at the rate 6% per annum all through and the whole arrear which shall be worked-out and released in favour of the Petitioner within a period of two months hence.

8. Mr. Roy also placed for perusal copy of the *order dated 23.06.2021* passed in *WPC(OAC) No.1002 of 2015* in the case of *Bala Bhadra Behera Vrs. State of Odisha and Others* wherein this court followed its earlier Judgment dated 21.06.2021 in the case of *Trinath Jena (Supra)*. Mr. Roy, therefore, submitted that the relief as claimed for is bound to be allowed in terms of said judgment as well as order as the petitioner is similarly situated.

9. Mr. P.K. Mohanty, learned Additional Standing Counsel has conceded to the position as set at rest on earlier occasions by this Court.

10. In view of the aforesaid, the present writ petition stands disposed of in terms of the judgment rendered by the co-ordinate Bench of this Court in case of *Trinath Jena (Supra)*.

(M.S. Raman)
Judge

Basudev