

(2016) 09 OHC CK 0034

ORISSA HIGH COURT

Case No: O.J.C. No. 4417 of 1996.

The Project Manager, Cattle and
Poultry Feed Processing Plant,
Orissa Agro Industries Corp. Ltd.,
BBSR - Petitioner @HASH P.O.,
Labour Court, Bhubaneswar and
another - Opposite Parties

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 15, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 25F

Citation: (2016) 4 LLJ 508

Hon'ble Judges: Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench: Division Bench

Advocate: M/s. Gouranga Ch. Mohapatra, Advocate, for the Petitioner; M/s. N.K. Mishra, K.K. Sahoo, M. Rath and S. Mishra, Advocates, for the Opposite Parties No. 1

Final Decision: Disposed Off

Judgement

Shri Sujit Narayan Prasad, J. - In both the writ petitions award dated 20.03.1996 passed in I.D. Case No. 180 of 1991 is under challenge.

2. OJC No. 4417 of 1996 has been filed by the management assailing the entire award while OJC No. 10135 of 1996 has been challenged by the workman for a direction to make payment of full back wages.

3. Case of the opposite party-workman is that he was working as Khalasi in the Cattle and Poultry Farm Plant, Mancheswar under the control of the Project Manager, Cattle and Poultry Farm, Laxminagar on payment of consolidated amount of Rs. 250/- and subsequently by virtue of revision of minimum wages w.e.f.

1.7.1999, he got payment @ Rs. 25/- per day. The management called him and forced him to sign in a bond in support of his service as contract basis. He disagreed to sign it, the management instead of paying revised wages has retrenched from service w.e.f. 22.09.1990.

4. Case of the management is that the workman was engaged for sweeping, cleaning of the machine of the Godown rooms on part time basis from the month of May, 1993 on consolidated pay of Rs. 250/- per month. He was never engaged either on daily wage basis or like other full time employees for the factory. Since he was part time worker as such he has got no right to continue in service and also there is no question of compliance of Section 25F of the I.D. Act, 1947.

5. The Labour Court has formulated three issues, the Labour Court considered the documents which has been placed before it and thereafter the Labour Court has come to finding that there is violation of Section 25F of the I.D. Act and as such directed for reinstatement in service with 25% back wages. There is no disagreement of the settled law that the provision of Section 25F is mandatorily to be followed in case of retrenchment.

6. The Labour Court has rightly reached to the conclusion on the basis of material placed before it that there is violation of provision of Section 25F of the I.D. Act, 1947.

7. Now question which is to be examined by us, as to whether in case of violation of provision of Section 25F of the Act, the order of reinstatement is to be ordered by the Labour Court as a routine course, in this regard we have examined the judgment rendered by the Hon'ble Apex Court in the cases of **The State of Bombay and others v. The Hospital Mazdoor Sabha and others reported in AIR 1960 SC 610**, **Pramod Jha and others v. State of Bihar and others reported in (2003) 4 SCC 619** and **Hari Nandan Prasad v. Employer I/R to Management of F.C.I., reported in AIR 2014 SC 1848**. From its perusal, we find that in case of violation of Section 25F of the I.D. Act, 1947, the proper course for the Labour Court would be to pay compensation leaving the exceptional case but according to us, it is not an exceptional case where the order of reinstatement ought to have been provided to the workman.

8. Since the award has been passed by the Labour Court answering the reference in favour of the workman which is based upon cogent evidence and as such there is very limited scope of the High Court sitting under Article 226 of the Constitution of India. Reference in this regard may be made to the judgment rendered by Hon'ble Supreme Court by its Full Bench in the cases of **Syed Yakoob v. K.S. Radhakrishnan and others reported in AIR 1964 SC 477**, **Swaran Singh and another v. State of Punjab and others reported in (1976) 2 SCC 868**, **Heinz India Private Limited and another v. State of Uttar Pradesh and others reported in (2012) 5 SCC 443**, **M/s.Pepsico India Holding Pvt. Ltd. v. Krishna Kant Pandey, (2015) 4 SCC 270**. We

applying the proposition laid down by the Hon"ble Supreme Court referred in the preceding paragraph are not declined to interfere with the finding given by the Labour Court since the same does not suffer with perversity or any error apparent on the face of record.

9. However, so far as the relief part is concerned, in case of violation of provision of Section 25F of the I.D. Act, 1947 that was reinstatement with back wages but after taking into consideration various judgments pronounced in this regard by the Hon"ble Supreme Court in the case of **The State of Karnataka v. Uma Devi (3) reported in (2006) 4 SCC 1** and **Hari Nandan Prasad v. Employer I/R to Management of F.C.I., reported in AIR 2014 SC 1848**, has been pleased to hold at paragraph 17 as follows:-

"17. xxxxxxxx

Taking note of the judgments referred to in the aforesaid paragraphs and also few more cases in other portion of the said judgment, the legal position was summed up in the following manner: "It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimization, unfair labour practise etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization. Thus when he cannot claim regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was

resorted to as unfair labour practise or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied".

10. We have examined the direction passed by the Labour Court in the award which is the order of reinstatement along with 25% back wages. We have already discussed herein above, the position of law as on today with respect to the fact that in case of violation of provision of Section 25F of the I.D. Act, 1947, the earlier view of the Hon"ble Apex Court was to reinstate the workman in service but subsequently, this view has been changed as would be evident from the judgment rendered by the Hon"ble Apex Court in the case of Hari Nandan (Supra), we have examined the part of the order by which the order of reinstatement has been passed as to whether it is coming under the exception as has been laid down by the Hon"ble Supreme Court in the case of Hari Nandan (supra) whereby and where under, it has been held that only in case of disengagement of permanent/regular employee on ulterior motive or by way of unfair labour practise order of compensation or of reinstatement should have been passed otherwise the award should have been passed by directing for making payment of retrenchment compensation and that ratio has been laid down taking into consideration the judgment laid down in the case of **State of Karnataka v. Umadevi (3) reported in (2006) 4 SCC 1**, whereby and where under the regularisation has been prohibited as because if in case order of reinstatement is passed, then the employer/management will again retrench the workman after making payment of retrenchment compensation. Hence, the order of compensation has been found just and proper in case of violation of Section 25F of the I.D. Act as per the judgment passed by the Hon"ble Supreme Court in the case of State of Karnataka v. Umadevi (3).

11. It is not the case of the workman that he has been engaged on regular basis rather it is a case of daily wages, hence applying the proposition as above, in our considered view the relief part in the Award needs modification to the extent that in place of order of reinstatement in service with 25% back wages, the same is hereby modified by directing the management to make payment of lump-sum amount of compensation of Rs. 50,000/- in favour of the workman which shall be paid by the management within the period of two months from the date of production of copy of this order.

12. Accordingly, the writ petitions are disposed of.