



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1296 of 2006

**AFR**

*Narendra Kumar Nayak @ Narendra Nayak* .... *Petitioner*

-versus-

*Presiding Officer, Labour Court, Bhubaneswar and another* .... *Opposite Parties*

**Advocates appeared in the case**

*For Petitioner* : *Mr. P. K. Das, Advocate*

*For Opposite Parties* : *Mr. T. K. Patnaik, Additional Standing Counsel*

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE MURAHARI SRI RAMAN**

**JUDGMENT**

**24.04.2024**

**Chakradhari Sharan Singh, C.J.**

We have heard learned counsel for the parties.

2. In the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has questioned the legality of an award dated 29.10.2004 passed in Industrial Dispute Case No.275 of 1995 by the Labour Court, Bhubaneswar, whereby a reference made by the Labour and Employment Department under Section 12(5) read with Clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 ('ID Act' in short) has been answered against the petitioner-workman.



3. The brief facts of the case which emerge from the materials on record are that the petitioner claimed that he was working under the management of Horticulturist, Bhubaneswar ('Management' in short) on Nominal Muster Roll ('NMR' in short) basis from 01.07.1984 to 28.02.1990 upon a verbal engagement made by the Management. With a case that his service was illegally terminated, he raised an industrial dispute by making an application on 21.07.1993 against the refusal of his employment. A reference was made, after failure of the conciliation proceedings, by the State Government as noted above by Memo No.11291(5)/LE dated 25.08.1995, for adjudication of dispute to the Labour Court, Bhubaneswar. The following was the term of reference:

*“Whether the refusal of employment to Sri Narendra Kumar Nayak, Casual Labour with effect from 26.10.85 by the Management of Horticulturist, Bhubaneswar is legal and/or justified? If not, what relief the workman is entitled to?”*

4. The petitioner-workman asserted before the Labour Court that he had completed 240 days as a regular employee in the last preceding 12 months and though he had rendered continuous and uninterrupted service for more than five years, the Management without any rhyme or reason illegally refused employment with effect from 26.10.1995 without following the mandate of Section 25-F of the ID Act.

5. The Management admitted before the Labour Court that the workman was engaged from 15.06.1984 to 26.10.1985 and his engagement was as a casual labour on temporary basis in Canan



Embankment Coconut Plantation under Economic Rehabilitation of Rural Poor ('ERRP' in short) Scheme—a beneficiary oriented temporary scheme. The said scheme was intended to be handed over to ERRP beneficiaries identified by the Block Development Officer of the concerned block after maintenance for next three years after the first-year plantation. The Management also asserted that there was no integrated approach for the said scheme and that the Management had no subsequent control on the production or disposal of the said plantation. The Management, in its reply, took a plea before the Labour Court that after completion of the scheme period, the above plantation works automatically ceased, and after closure of the said scheme, there was cessation of work and that the workman was neither employed as NMR worker nor he was a regular employee of the establishment.

6. Based on rival pleadings of the parties, the Labour Court framed following two issues for decision:

*“i) Whether the refusal of employment to Sri Narendra Kumar Nayak, Casual Labour with effect from 26.10.85 by the Management of Horticulturist, Bhubaneswar is legal and/or justified?*

*ii) If not, what relief the workman is entitled to?”*

7. The parties led evidence before the Labour Court. The workman examined himself as the sole Workman Witness (WW1). He, however, did not produce any document in support of his claim. The Management, on the other hand, got examined its Junior Horticulture Officer as Management Witness (MW1) and relied



upon certain documents including an award dated 12.11.1993 passed in I.D. Case No.192 of 1994, statement showing the engagement and payment of wages to the workman, a letter of the Director of Projects dated 15.04.1983, etc..

8. The Labour Court while dealing with the evidence adduced by the parties before it and other materials on record, noticed that the workman admitted during his cross-examination that no appointment order was issued to him to work in the establishment and that he was receiving his wages after signing on the muster roll. MW1 had specifically deposed before the Labour Court that the workman was engaged as casual labourer in Canan Embankment Coconut Plantation Scheme during 16.06.1984 to 26.10.1985 only. He also deposed in his evidence that the scheme was temporary in nature under ERRP financed by the District Rural Development Agency ('DRDA' in short) for a period of four years. The MW1 denied the suggestion made by the workman that after refusal of employment to the workman, the Management had engaged other employees ignoring his case.

9. Upon analysing the pleading and evidence adduced before it by the rival parties, the Labour Court reached a conclusion that the workman failed to establish that he had rendered his service with effect from 01.07.1984 to 28.02.1990, in the absence of any proof of receipt of salary or wages. The Labour Court accepted the evidence adduced by the Management about the workman's engagement from 16.06.1984 to 26.10.1985. The Labour Court, based on documentary evidence in the nature of letter dated



15.04.1983 of the Director of Projects (Ext.C), recorded his finding that the project was a time bound scheme and after the closure of the scheme, the engagement of workman had ceased since the temporary necessity disappeared. The scheme was implemented with a limited grant released under ERRP programme. The Labour Court further held, based on the evidence led by the Management, that the project was temporary in nature and that the Plantation work was a time bound scheme. On the closure of the scheme, services of the casual labourers including the workman were terminated due to automatic cessation of work. After having held so, the Labour Court concluded that the workman's claim for his reinstatement for non-compliance of the provisions of Section 25-F of the ID Act was not tenable in the eye of law.

10. Relying on a Supreme Court's decision in case of *State of Himachal Pradesh v. Suresh Kumar Verma and another* reported in (1996) 7 SCC 562, the Labour Court concluded in its impugned award that since the project in which the workman was engaged had come to an end, the workman was not entitled to any relief as claimed by him. The Labour Court finally concluded that refusal by the Management to employ the workman with effect from 26.10.1985 was legal and justified and that the workman was not entitled to any relief as prayed for.

11. Mr. P. K. Das, learned counsel appearing on behalf of the petitioner, assailing the impugned award has submitted that the conclusion of the Labour Court that Section 25-F of the ID Act was not attracted despite the finding that the workman had worked from



16.06.1984 to 26.10.1985 is manifestly erroneous and unsustainable. He has also submitted that once the Labour Court reached a conclusion that the project in question was for a period of four years, there was no justifiable reason why the petitioner was engaged only for the period 16.06.1984 to 26.10.1985. He has further argued that the persons, who were engaged for the same work on the same basis subsequent to the petitioner's engagement, were retained upto 28.06.1990. He contends accordingly that the Labour Court's finding that the workman's engagement came to an end because of termination of the scheme itself is unsustainable. He has accordingly submitted that the findings recorded by the Labour Court, while answering the reference made by the State Government, are perverse and deserves interference by this Court. He has specifically referred to the case of one Japani Jena who was initially engaged on 17.06.1984 and was allowed to continue upto 26.09.1987. He was again engaged from 01.04.1988 to 04.08.1988. Apparently thus, whereas the petitioner's employment was discontinued, persons engaged subsequent to the petitioner's engagement were allowed to continue for further period.

12. A counter affidavit has been filed in this case on behalf of the Management. The stand of the Management has been reiterated in the counter affidavit to the effect that the provisions of the ID Act are not attracted because the workman was engaged temporarily in the Canan Embankment Coconut Plantation under ERRP, a beneficiary-oriented scheme, the beneficiaries being identified by the Block Development Officer of the concerned Block. It has been



asserted that there was no integrated approach for the said scheme and the Management had neither control over the production and disposal of the produce nor there was any scope for the Management to collect revenue out of sale of the produce. It has also been asserted that the petitioner had ceased to work after 26.10.1985 of his own accord, for the reasons best known to him. No formalities had been followed to call him back to the work, he being a casual labourer. Responding to the assertion made in the writ petition in respect of Japan Jena by the petitioner as noted above, it has been asserted that said Japan Jena had worked under ERRP Scheme from 17.06.1984 to 26.09.1987 and from 01.04.1988 to 04.08.1988 in another scheme i.e. National Rural Employment Programme ('NREP' in short) (Institutional Plantation) Scheme as per his availability. It has been reiterated that the petitioner was never refused employment rather he himself had not turned up for the reasons best known to him. It has also been stated in the counter affidavit that similarly situated workmen—*Surendra Sethi and Narendra Kumar Bhoi* had approached this Court by filing writ petitions vide *OJC No.2411 of 2002 and OJC No.2412 of 2002* respectively, challenging respective awards of the Industrial Tribunal. Similar contentions, as raised in the present writ petition have been rejected by this Court by two separate orders, both dated 04.05.2007, copies of which have been brought on record by way of Annexures-B/1 and C/1 respectfully to the counter affidavit.

13. A rejoinder affidavit has been filed on behalf of the petitioner to the counter affidavit filed by the Management denying



the stand that the petitioner had voluntarily abandoned the service. It has been asserted with reference to Section 25-F (a)(b)(c), 25-G and 25-H of the ID Act, it being an admitted fact that the petitioner had completed 240 days of working during preceding 12 months, termination from service during the operation of scheme, which was valid for five years, is violative of principles of natural justice and mandatory provisions of the aforesaid sections of the ID Act.

14. It has been argued by Mr. T. K. Patnaik, learned Additional Standing Counsel that the petitioner could not establish by leading cogent evidence before the Labour Court that he was disengaged from daily wage employment. He has submitted that the Management was able to establish before the Labour Court that the petitioner himself had voluntarily abandoned his employment after 26.10.1985. There is no evidence to conclusively establish that the petitioner was denied employment after 26.10.1985 though he had volunteered to work.

15. We have carefully gone through the impugned award and other materials on record and we have given our thoughtful consideration to the rival submissions advanced on behalf of the parties, as has been noted above. We find force in the submissions advanced on behalf of the Management by referring to the Co-ordinate Division Bench decisions of this Court in cases of *Surendra Sethi* (supra) and *Narendra Kumar Bhoi* (supra). In the said cases also the learned Presiding Officer, Labour Court, relying on the Supreme Court's decision in case of *Suresh Kumar Verma* (supra) had held that no direction could be given for reengagement





since the engagement was under a time bound scheme as casual labourers. After having noticed that the finding recorded by the Labour Court did not suffer from any illegality or perversity, the Co-ordinate Division Bench declined to interfere with the said finding.

16. We are of the considered view that the impugned award passed by the Labour Court cannot be said to be perverse since the findings are based on appreciation of evidence adduced by the parties. It is not the petitioner's case that any finding of the Labour Court is contrary to any evidence or without evidence.

17. Situated thus, we decline to interfere with the said finding of the Labour Court exercising power of judicial review under Article 226 of the Constitution of India. This writ petition is devoid of any merit and stands dismissed accordingly. There shall be no order as to the costs.

**(Chakradhari Sharan Singh)**  
**Chief Justice**

*Mr. M.S. Raman, J. I agree.*

**(M.S. Raman)**  
**Judge**

*M. Panda*