

STATE OF ORISSA & ANR.

V.

BILASH CHANDRA OJHA
Civil Appeal No. 1966 of 2009

MARCH 27, 2009

(DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.)

Labour Law – Termination – Of casual worker – Labour Court directed re-instatement – Order upheld by High Court – On appeal, held: Both Labour Court and High Court failed to consider relevant aspects – Matter remitted to High Court for decision afresh – Industrial Disputes Act, 1947– ss. 25F and 25I.

Respondent-workman, engaged on casual basis, was terminated from service. The Labour Court directed his re-instatement. The order was upheld by the High Court. Hence the instant appeal.

Allowing the appeal, the Court

HELD: Neither the Labour Court nor the High Court considered the relevant aspects like whether the concerned Department was an Industry and that whether there was any scope for regularization when admittedly the Labour Court found that the respondent was engaged on casual basis. The other question was whether there was any termination or whether the respondent had abandoned the work. These factors apparently have not been considered. Further, the question whether the respondent had worked for more than 240 days in a calendar year has also not been considered in the proper perspective. That being so, the impugned order of the High Court cannot be maintained and is set aside. The matter is remitted to the High Court to consider the relevant aspects afresh. (Para – 5) [1222-C-E]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1966
of 2009

From the Judgement and Order dated 22.06.2005 of the
Hon'ble High Court of Orissa at Cuttack in O.J.C. No. 13108 of
1997.

B Shibashish Mishra, for the Appellants.

C.K. Sucharita, for the Respondent.

The Judgement of the Court was delivered by

C **DR. ARIJIT PASAYAT, J.**

1. Leave granted.

D 2. Challenge in this appeal is to the order passed by a
learned Single Judge of the Orissa High Court dismissing the
writ petitions filed by the appellants. In the Writ Petitions filed by
the appellants the challenge was to the order passed by the
Presiding Officer, Labour Court in I.D. Case No. 71 of 1988.

3. Background facts in a nutshell are as follows:

E The industrial dispute was initiated by the respondent
workman, inter alia, challenging the termination of his service.
Conciliation having failed, the State Government in exercise of
the powers conferred upon it under Section 10 read with Section
12 of the Industrial Disputes Act, 1947 (in short the 'Act') referred
F the following dispute to the Labour Court for adjudication. The
reference read as follows:

G "Whether the termination of Sri Bilash Chandra Ojha,
Compositor from service by the management of M/s.
Information and Publication Printing Press, Krushi
Sambada Sarabaraha Sanstha in November, 1981 is legal
and/or justified? If not to what relief Sri Ojha is entitled?"

H The case of the workman before the Labour Court was
that he was engaged as a Compositor by the Management from
14.3.1980 till 10.10.1981. He asserted that as statutory

provisions of Section 25 F of the Act having not been complied with the order of termination of his service was unjust, illegal and he was entitled to reinstatement in service with full back wages.

The management appeared before the Labour Court and filed a written statement admitting the fact that the workman was engaged under it but then took a stand that he had voluntarily abandoned his service and, as such, he was not entitled to any relief. It was also pleaded that the appellant is not an industry and, therefore, the Act had no application. It was also pleaded that the claim of the workman of having worked for more than 240 days was without any basis. The workman had appeared at a test for selection, but was not successful.

The labour court found that the workman worked continuously for more than 240 days in the calendar year preceding the date of termination of the service. Therefore, the mandatory provisions of Section 25-I of the Act were not complied with and, therefore, the termination was unjust and illegal. Therefore, the Labour court directed reinstatement but without back wages. The Award was assailed by the appellants in a writ petition. The High Court dismissed the same holding that the conclusion of the Labour Court that the workman had worked for more than 240 days, was based on available material. Additionally, the mandatory provisions of Section 25(F) were not complied with.

3. In support of the appeal learned counsel for the appellant submitted that various stands taken by the appellant have not been considered. Basic stand was taken before the Labour Court that the appellant is not an industry. That question has not been decided. The Labour Court had directed and held that though the respondent was engaged on casual basis, he deserves to be regularized. Further stand of the appellants that he had abandoned the work has not been considered also. It is pointed out that the Conciliation Officer categorically recorded while holding that there was failure of conciliation that a test

A was held in February, 1982 where the respondent had appeared and was unsuccessful. It was also noted that the respondent had not worked for more than 240 days in one calendar year, and he was engaged only as a casual labourer and had abandoned the job and was not thrown out employment as claimed.

B

4. Learned counsel for the respondent on the other hand submitted that the Labour Court and the High Court have taken note of the relevant aspects and there is no scope for any interference.

C

5. We find that neither the Labour court nor the High Court considered the relevant aspects like whether the Agricultural Department of the Government of Orissa is an Industry and that whether there was any scope for being regularised when admittedly the Labour court found that the respondent was engaged on casual basis. The other question was whether there was any termination or whether the respondent had abandoned the work. These factors apparently have not been considered. Further the question whether the respondent had worked for more than 240 days in a calendar year has also not been considered in the proper perspective. That being so, the impugned order cannot be maintained and is set aside. The matter is remitted to the High Court to consider the relevant aspects afresh.

D

E

6. The appeal is allowed.

B.B.B.

Appeal allowed.