

Appearances :

None	.. For the First Party—Management
Shri Bata Krushna Satapathy	.. The Second Party—Workman himself

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 3792—li/1(B)-50/2001-L.E., dated the 4th May 2004 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008.

“Whether the termination of services of Shri Bata Krushna Satapathy, Sub-Editor by the management of M/s Prajatantra Prachar Samity, Cuttack in the guise of transfer with effect from the 19th July 2000 is legal and/or justified ? If not, what relief is Shri Satapathy entitled to ?”

2. Shorn of all unnecessary details, the case of the second party (hereinafter referred to as the ‘workman’) is that he was appointed under the first party (hereinafter referred to as the ‘management’) as a Proof Reader in the year 1982. In 1984, he was transferred to the Editorial Section and subsequently in the year 1985, he got promoted to the post of Sub-Editor and was confirmed in the said post. While continuing so, it is pleaded that on the 29th June 2000, he was transferred to Sambalpur where there was no office of the management nor any regular staff was working there. It is alleged that the management with a view to harass/humiliate him asked him to report before a Journalist, who was neither in the Pay Roll of the management nor a regular staff of the establishment. It is pleaded further that soon after issuance of the said transfer order, the workman sought for certain clarifications vide his letter, dated the 5th July 2000 to which the management replied in a casual/vague manner against which he had filed a Suit challenging the transfer together with a Misc. Case praying for injunction. It is alleged that for the aforesaid action of the workman, the management became vindictive and struck off his name from the Pay Roll and did not allow him to enter into the office to perform his duties w. e. f. the 19th July 2000. According to him, the aforesaid act of the management amounts to termination of his service as it violates the conditions of service enshrined in the Certified Standing Orders and consequently renders the action to be illegal as well as unjustified one because of non-compliance of the provisions of the Industrial Disputes Act. The workman has, therefore, prayed for his reinstatement in service with all consequential service benefit including back wages.

3. The management filed its written statement stating therein *inter alia* that the reference is not maintainable and further that the management being empowered to transfer its employees under the Certified Standing Orders, no illegality can be attributable to such action of the management and accordingly in the present dispute the workman having not joined his transferred place of posting, he is not entitled to any relief. The specific stand of the management is that there has been

no termination of service of the workman as pleaded, but because of his transfer he has lost his legal right to work at Cuttack and accordingly his name was removed from the attendance register. It is admitted in the written statement that no disciplinary proceeding was contemplated against the workman as it was felt not necessary. With the aforesaid averments, the management has prayed to answer the reference in the negative as against the workman.

4. On the aforesaid pleadings of the parties, the only issue that arises for consideration is “whether the termination of services of the workman by the management in the guise of transfer w. e. f. the 19th July 2000 is legal and/or justified and if not, to what relief the workman is entitled ?”

5. In course of hearing of the dispute, the management neither participated nor took any step and as a result of such non-appearance of the management, it was set *ex parte* vide Order No. 33, dated the 20th June 2007. The workman, on the other hand, tendered evidence by examining two witnesses including himself and proved as many as nine documents which have been marked as Exts. 1 to 9.

6. It is not in dispute that the workman entered service under the management in the year 1982 and by efflux of time, he was promoted to the post of Sub-Editor and later on was confirmed and further he continued to work as such till the last part of June, 2000. On the 29th June 2000, the dispute arose when the workman was transferred to Sambalpur Unit of the management where according to the workman, there was no organisational set up and he was asked to report to a Journalist who was neither an employee of the management nor his name was borne in the Pay Roll of the establishment. He has, therefore, alleged that with a *mala fide* intention to victimise him such a transfer was effected, which is not in accordance with the provisions of the Standing Order and consequently the same is illegal as well as unjustified. On the other hand, the plea of the management is that transfer of an employee being within its domain and same having been exercised keeping in view the administrative exigency, such action needs no interference.

7. True it is that transfer of an employee is within the competency of the management and the Court or Tribunal should not interfere with such action of the management. But at the same time, it is also the settled principle that if at all a Court or Tribunal finds that such transfer is not with a *bona fide* intention but done with an intention to victimise the workman concerned, certainly it has powers to intervene in the matter and pass orders to curb the unfair labour practice adopted by a management concern.

8. The crux of the issue is therefore the *bona fideness* of the transfer order, dated the 29th June 2000 which is required to be adjudicated basing on the evidence available on record. At the cost of repetition. It is indicated here that the management in spite of opportunity did not adduce any oral or documentary evidence in the case and accordingly it was declared *ex parte*.

In his uncontroverted evidence, W.W. No. 1 stated with reference to the documents exhibited by him that although he was transferred to Sambalpur vide Ext. 3, there was no office of the management at Sambalpur nor there existed the post of Sub-Editor which he was holding and on his query as per Ext. 4, he was asked to submit joining report through one Bamapada Tripathy of Sambalpur vide Ext. 5. Ext. 7 reveals that during conciliation, it was suggested by the Conciliation

Officer to keep the transfer order of the workman in abeyance till a full fledged Unit starts functioning at Sambalpur to which the representative of the management submitted that it was not acceptable to the management. Corroborating the version of W.W. No. 1, W.W. No. 2, an ex-employee of the management stated in his evidence that prior to the transfer of the workman (W.W. No. 1), the management transferred him to Sambalpur and directed him to work under one Bamapada Tripathy, who was not an employee of the management. He deposed that in the Sambalpur Office excepting some old printing machines of erstwhile Hirakhand Press, neither the basic amenities were there nor was there anyone to run office. He deposed that when in the name of transfer, he became a victim of the management and was victimised by the management in the matter of leave and monthly wages, he tendered resignation in order to get back his legal dues. According to him, the office of the management at Sambalpur is a place to victimise its employees in the name of transfer. Ext. 9 proved by him shows the advertisement of the management seeking application for the post of Press Manager which was published on the 6th August 2001.

Apart from the above, the workman has proved the Certified Standing Orders of the management which has been marked as Ext. 6 and Clause 4 thereof reads as under :

“An employee is liable to be transferred to any other post of the establishment or branch similar in status, nature and emoluments at the cost of the employer”.

(emphasis supplied)

In view of the clear stipulation in the Standing Orders, as quoted above, and basing on the evidence available on records, it cannot be said that the management with a *bona fide* intention transferred the workman to Sambalpur and in the matter Ext. 8 is a relevant document which shows that the Assistant Labour Officer sought for certain clarification from the management regarding Clause 4 of the Standing Order but till the conciliation failed, no reply was furnished to the Conciliation Officer with regard to the clarification sought for. Hence, the management is found to have adopted unfair practice in its establishment and transferred the workman, a Sr. employee to Sambalpur knowing it fully well that there was no organisational set up to function an office and thereby it violated the stipulations embodied in the Certified Standing Order.

9. Now coming to the next question as to the refusal of employment, as pleaded by the workman, it is seen that although the Standing Orders provide that in the event of disobedience of orders of the authority, the same would constitute a misconduct, but in the case in hand, no such action was taken against the workman for his not proceeding to the transferred place and instead as stated by him, he was forcefully dragged from the office and was refused of employment. Such action of the management, therefore, amounts to termination of his service and such termination of service is a retrenchment within the meaning of Section 2(oo) of the I. D. Act as held by the Apex Court in *Delhi Cloth and General Mills Company Ltd. Vrs. Sambhu Nath Mukherjee* (reported in A.I.R. 1978, S.C.-8) and reiterated in the case of *L. Robert D. Souza Vrs. The Executive Engineer, Southern Railway* and another (reported in A.I.R. 1982, S.C. 854). Since admittedly the management has not followed the mandatory procedure laid down in the Industrial Disputes Act for retrenchment of the workman, the termination of his service in the guise of transfer w. e. f. the 19th July 2000 is held to be illegal and unjustified.

10. Now coming to the question as to the relief to which the workman is entitled, it is seen that the workman was a senior most employee of the organisation and for no fault of his, he was victimised and was kept out of employment since 2000. Hence, the management is directed to reinstate the workman forthwith and extend him all such service benefits including his arrear salary treating him to be in its employment w. e. f. the 19th July 2000.

Dictated and corrected by me.

P. C. MISHRA
20-12-2008
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. C. MISHRA
20-12-2008
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government