

## ORISSA HIGH COURT

Rasbehary Mohanty

Vs

Presiding Officer

O.J.C. No. 542 of 1972

(R.N. Mishra and B.K. Ray, JJ.)

16.04.1974

### JUDGMENT

**R.N. Misra, J.**

1. The petitioner was employed in the State Transport Service of Orissa as a conductor and was actually posted under the direct control of the District Transport Manager, Rourkela (opposite party No. 2). He was discharged from service with effect from 4th August, 1969. An industrial dispute was raised before the District Labour Officer-cum-Conciliation Officer, Rourkeh. On 29th April, 1970, the management represented by the opposite party No. 2 and the union representing the petitioner agreed that the dispute arising out of the discharge from service of the petitioner be referred for arbitration of Shri L. Misra, I.A.S., who was then working as Deputy Labour Commissioner, Rourkela. In the midst of the arbitration proceeding, Shri L. Misra was transferred from Rourkela to Bhubaneswar and his new assignment was as Director, Export Promotion and Marketing (Ex-Officio Deputy Secretary to Government in the Industries Department). After Shri Misra joined his new assignment he continued the arbitration proceeding and by notice dated 20th of October, 1970, required the parties to appear before him on 26th October, 1970. The parties appeared on the date fixed and Shri Misra delivered the award on the very same day after hearing parties. In terms of the award, the petitioner became entitled to reinstatement in service with full back wages. As the opposite party No, 2 did not accept the joining report of the petitioner and was not prepared to pay him the back wages, an application was made by the petitioner under Section 33C(2) of the Industrial Disputes Act of 1947 (hereafter referred to as the "Act") before the Labour Court (opposite party No. 1). The opposite party No. 2 challenged the validity of the award on the ground that the dispute had been referred for arbitration of the Deputy Labour Commissioner and Shri Misra was not appointed as Arbitrator in his personal capacity. Upon Shri Misra ceasing to hold office as Deputy Labour Commissioner, he had no authority to continue to act as the Arbitrator. The award was, therefore, vitiated. It was further contended that as the award had not been published in accordance with the

mandate given under Section 17 of the Act, it was not enforceable and no relief under Section 33C(2) of the Act was, therefore, available to the petitioner.

The Labour Court came to hold that : (i) the petition under Section 33C(2) of the Act was not maintainable ; (ii) the award was not rendered ineffective on account of non-publication under Section 17 of the Act ; and (iii) the reference to arbitration had been made to the Deputy Labour Commissioner and not to Shri Misra personally and, therefore, upon Shri Misra ceasing to hold office as Deputy Labour Commissioner, he ceased to be the Arbitrator. Accordingly, the Labour Court rejected the application. This application for a writ of certiorari is directed against the said decision of the Labour Court.

2. The opposite party No. 2 has reiterated his stand before the Labour Court. According to him, the Labour Court has gone wrong in holding that the application was maintainable under Section 33C(2) of the Act as also that the award did not require publication under Section 17 of the Act. He supports the finding of the Labour Court that the reference was to the Deputy Labour Commissioner and, therefore, Shri Misra upon vacating the said office could not have continued the arbitration proceeding.

3. Three distinct questions do arise for determination on the contentions of the parties;

- (1) Whether the reference was made to Shri L. Misra as persona designate or had been made to the Deputy Labour Commissioner at Rourkela which post at the relevant time Shri Misra held ?
- (2) Did the award require to be published under the Industrial Disputes Act in order to be effective ?
- (3) Is the application of the petitioner under Section 33C(2) of the Industrial Disputes Act maintainable?

Question No. 1:

4. As already indicated, the Labour Court has taken the view that the reference was to the Deputy Labour Commissioner and not Shri Misra, the incumbent in that office. Item No. 1 of the terms of settlement (vide annexure 1) is to the following effect:

"As envisaged under the Code of Discipline, both the parties do hereby agree to refer the instant dispute for arbitration to Shri L. Misra, I.A.S., Deputy Labour Commissioner, Rourkela."

The mention of "Deputy Labour Commissioner, Rourkela" in the above extract is descriptive of Shri L. Misra. It is true, in annexure 1 it has also been stated that the consent of the Deputy Labour Commissioner has been taken. That in our view has no bearing on the question as to whether the reference was to Shri L. Misra in persona designata or to the Authority-the Deputy

Labour Commissioner at Rourkela. The Labour Court has unnecessarily emphasised upon the reference to the office held by Shri L. Misra at the relevant time. The conduct of the parties supports the contention of the petitioner. Admittedly, by 20th October, 1970, Shri L. Misra had joined his new assignment at Bhubuneswar. Annexure 2, the notice in the proceeding issued by Shri Misra is the foundation for such a contention. He gave notice that he would proceed to Rourkela on the 26th October, 1970, for the final hearing of the arbitration proceeding. The petitioner has asserted in his application before us that on the 26th October, 1970, the opposite party No. 2, participated in the proceeding. That fact has not been controverted by the opposite party No. 2. The award also specifically refers to such participation, if the opposite party No. 2 knew that the reference was made to the Deputy Labour Commissioner, Rourkela, and not Shri L. Misra, he could not have participated in the arbitration proceeding on the 26th of October. From the contemporaneous conduct it is manifest that parties knew that the reference had been made to Shri L. Misra as persona designate and not in his official status which he held at the time reference was made. The objection raised before the Labour Court seems to be an after-thought. We would accordingly conclude that the reference was made to Shri L. Misra and the award is not vitiated for want of jurisdiction. The finding of the Labour Court on this score stands reversed. Question No. 2.

5. The petitioner's stand is that there was a settlement in the conciliation proceedings which led to reference of the dispute to the arbitration. This is said to have been under the Code of Discipline and annexure 1 is said to be in Form K prescribed by the Orissa Rules under the Act. According to the petitioner, such a settlement was outside the purview of Section 10A of the Act and to an award ultimately delivered by the Arbitrator Section 17 of the Act had no application. On the other hand, learned standing counsel for the transport department, appearing for the opposite party No. 2, contends that the ambit and scope of Section 10A of the Act is wide and any voluntary reference of disputes to arbitration would be covered. Section 10A of the Act provides :-

"(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the Presiding Officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(1-A) .....

(2) .....

\* \* \* \*

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government

and the Conciliation Officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

(3-A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represents the majority of each party, the appropriate Government may, within the time referred to in Sub-section (3), issue a notification in such manner as may be prescribed ; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the Arbitrator or the Arbitrators.

(4) The Arbitrator or Arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be

(4-A) .....

(5) Nothing in the Arbitration Act, 1940 (X of 1940), shall apply to arbitrations under this section.

It has been the stand of the petitioner that annexure 1 represents a settlement. We hardly find any scope for such a stand. The dispute arising out of the termination of service of the petitioner subsisted even after parties agreed to refer the dispute to arbitration. All that was done under annexure 1 was to agree to refer the dispute to an Arbitrator. "Settlement" has a statutory definition under the Act in Section 2(p) and reference thereto gives the impression that it must be settlement of a dispute or part thereof. In the instant case, the dispute subsisted and a mode of settlement of the dispute was arrived at under annexure 1. Annexure 1, therefore, does not represent a settlement but is an agreement to refer the dispute to arbitration.

It was arrived at admittedly during the pendency of the conciliation proceeding. The provisions of Section 10A(1) in terms apply to such a reference voluntarily made by agreement between the parties. We find no force in the contention of Mr. Ram for the petitioner that the reference under annexure 1 was outside the purview of Section 10A of the Act.

Sub-section (5) of Section 10A of the Act makes the Arbitration Act inapplicable to such arbitrations. The legislative intention seems to be to subject such arbitrations to the special provisions of the Act. Admittedly, the arbitration agreement was not forwarded to the appropriate Government nor was it ever published in the Official Gazette Thus, there was no compliance with the requirements of Sub-section (3) of Section 10A. Similarly, the arbitration award was not submitted to the appropriate Government as required under Sub-section (4) of Section 10A of the Act. Thus, there has been statutory infraction in the matter of the reference to the Arbitrator as also in the matter of making of the award.

Section 17 of the Act provides:

"(1) Every report of a Board or Court together with any minute of dissent recorded

therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of Section 17A, the award published under Sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

Section 17-A provides:

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 17:

Provided that -

.....

Once it is held that Section 10A of the Act applied to the voluntary reference for arbitration in this case, it must also be held that the award had to be published in terms of Section 17(1) of the Act and it would have become effective on expiry of thirty days from the date of publication under Section 17 of the Act. The conclusion of the Labour Court on this score accordingly is erroneous and must also stand reversed.

Question No. 3

6. The petitioner had applied under Section 33C(2) of the Act to the Labour Court. The award having not been published as required under the Act, it never became effective and the petitioner's claim having been founded upon the award was, therefore, not enforceable. No relief under Section 33C(2) of the Act was, therefore, available.

7. Counsel for the parties had referred to certain decisions in support of their various contentions. We have not thought it necessary to refer to them as in our view a plain analysis of the statutory provisions of the Act is sufficient for disposal of the writ application. The writ application accordingly fails and is dismissed. No costs.

**B.K. Ray, J.**

8. I Agree.

Application dismissed.