

Supreme Court of India

Orissa State Warehousing ... vs Orissa State Warehousing ... on 29 March, 1994

Equivalent citations: (1995) ILLJ 429 SC, 1994 Supp (2) SCC 488

Bench: P Sawant, M Punchhi

ORDER

1. The Orissa State Warehousing (Staff) Regulations, 1985 ('the Regulations') govern the service conditions of the employees working under the Corporation. These regulations are made under Section 42 of the Warehousing Corporation Act, 1962 with the previous sanction of the State Government. We are concerned here with Regulation No. 3 which deals with "Classifications & Categories of Posts with Scale of Pay". Sub-clause (1) of the said Regulations classifies the employees into different grades from Grade-I to Grade-IV and also states their pay scales against each of the grades. Sub-clause (2) thereof states that the scale of pay of different grades of employees can be revised by the Board of Directors from time to time as and when necessary. This Regulation was amended by the Orissa State Warehousing Corporation (Amendment) Regulations, 1989 by inserting the following Sub-clause (3) after Sub-clause (2) except the employees holding posts of Typists, Diarists, Stenographers, Drivers and engineering personnel, other employees of the Corporation drawing same scales of pay in the category of Grade-II or Grade-III or Grade-IV posts shall each constitute a cadre. Their seniority in the respective cadre shall be fixed according to the date of their regular appointment in the posts in the cadre. An employee holding a post in a cadre can be transferred to other posts in that cadre by way of inter-change.

2. It appears that the Corporation had proposed the said amendment without giving a notice to the employees. The employees, however, learnt of the same and raised an industrial dispute in connection with the said proposed amendment, and the matter was pending in conciliation. However, during the pendency of the conciliation proceedings, the aforesaid amendment was brought into force.

3. The employees challenged the amendment before the High Court by way of a writ petition : under Article 226 of the Constitution on two grounds, namely, that the said amendment was in contravention of Section 9-A and also of Section 33 of the Industrial Disputes Act, 1947 (the 'Act'). The High Court by its impugned decision dealt with the challenge based on Section 9-A of the Act and came to the conclusion that inasmuch as the amendment related to Item 7 of Schedule 4 of the Act, it was hit by the provisions of Section 9-A and hence a notice of change was necessary before the amendment was effected. For coming to this conclusion, the High Court held that the proposed change related to the "Classification and Grades". We are afraid that the High Court has misconstrued the said amendment. We have already quoted the amendment which shows that all that was sought to be done by it was to constitute the employees holding posts other than those specifically mentioned therein in the category of Grades-II, III and IV, into a separate cadre each and to make the employees holding the posts in the said cadre, transferable to the other posts in the same cadre. No new categories or grades were being created. The High Court is, therefore, clearly wrong in its construction of the amendment. We, therefore set aside the said findings.

4. However, the learned Counsel appearing for the respondent Union contended that the High Court has not dealt with the other objection to the said amendment based on Section 33 of the Act. We find much force in this contention. Section 33(1)(a) reads as follows:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. - (1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or xxx xxx xxx xxx save with the express permission in writing of the authority before which the proceeding is pending.

5. From the decision of the High Court, it is clear that the amendment was brought into force while the conciliation proceedings in respect of the said dispute, namely, the amendment to the regulation, was pending. In this view of the matter, we are of the view that it was necessary for the High Court to deal with this objection as well. Probably the High Court did not deal with the said objection because it felt that it was unnecessary to do so since it had already held that the amendment was hit by Section 9-A of the Act. We, therefore, set aside the impugned decision and remand the matter to the High Court for decision with regard to the challenge under Section 33 of the Act. The parties are at liberty to file their additional pleadings before the High Court on the said point. The order passed by this Court on February 8, 1993 would continue till the disposal of the writ petition before the High Court. The appeals are allowed accordingly with no order as to costs.