IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) Nos.14178 of 2020 and 5059 of 2020

(Applications under Articles 226 & 227 of the Constitution of India)

WP(C) No.14178 of 2020

Kanhu Charan Sahoo .... **Petitioner**

-Versus-

1. **The Presiding Officer, Industrial Tribunal, Bhubaneswar**
2. **The Registrar, Utkal University, Vani Vihar, Bhubaneswar** .... **Opposite Parties**

Advocates appeared:

For Petitioner : Mr. Sourya Sundar Das, Senior Advocate
Assisted by:
Ms. Sobhna Das, Advocate

For Opposite Parties : Mr. Sibanarayan Biswal, Additional Standing Counsel
(For Opposite Party No.1)

Mr. Guru Prasad Mohanty, Advocate
(For Opposite Party No.2)

WP(C) No.5059 of 2020

The Utkal University, ... **Petitioner**
Represented by the Registrar,
Vani Vihar, Bhubaneswar

-Versus-

1. **The Presiding Officer, Industrial Tribunal, Bhubaneswar**

2. **Kanhu Charan Sahu**

3. **The Govt. of Odisha,**
Labour and ESI Department,
represented by the Secretary,
Bhubaneswar. .... **Opposite Parties**

Advocates appeared:

For Petitioner : Mr. Guru Prasad Mohanty, Advocate

For Opposite Parties : Mr. Sibanarayan Biswal, Additional Standing Counsel (For Opposite Party Nos.1 and 3)

Mr. Sourya Sundar Das, Senior Advocate
Assisted by:
Ms. Sobhna Das, Advocate
(For Opposite Party No.2)

CORAM:

MR. JUSTICE K.R. MOHAPATRA
MISS JUSTICE SAVITRI RATHO

Heard and disposed of on 09.10.2025

JUDGMENT

By the Bench:

1. Perused the Mediation Report dated 17th September, 2025 at Flag-B. Learned Mediator submitted a failure report. Hence, on the consent of the learned counsel for the parties, the matter is taken up on merit.

2. Both the writ petitions have been filed challenging the award dated 30th October, 2019 passed by learned Presiding Officer, Industrial Tribunal, Bhubaneswar (for brevity, 'learned Tribunal') in ID Case No.22 of 2017. Hence, both the

writ petitions are taken up together for disposal. WP(C) No.14178 of 2020 has been filed by the Workman- Sri Kahnu Charan Sahoo, whereas WP(C) No. 5059 of 2020 has been filed by the Management of Utkal University assailing the selfsame award. For convenience of discussion, parties are described as per their status before learned Tribunal.

3. Short narration of facts necessary for proper adjudication of the case is that the Workman, namely, KanhuCharanSahoo was engaged under the Management of Utkal University on daily wage basis. He was engaged on 11th March, 1987 with a direction to work at Hostel No.3 w.e.f. 5th November, 1987. It is alleged by the Management that the Workman abandoned his job w.e.f. 9th January, 1991. On the other hand, the Workman alleged that he was terminated from service w.e.f. 9th January, 1991 without complying with the mandatory provision under Section 25-F of the Industrial Disputes Act, 1947 (For brevity, 'the Act'). In the year 2017, the Workman moved the labour machinery for redressal of his grievances. A conciliation proceeding was initiated and a failure report was ultimately submitted to the appropriate Government by the Conciliation Officer. Accordingly, the industrial dispute was referred to learned Tribunal for adjudication to answer the following reference.

> *"Whether the action of the Management of Utkal University, At/P.O. VaniVihar, Bhubaneswar in terminating the services of the workman Sri KanhuCharanSahoo by way of refusal of employment w.e.f. 09.01.1991 is legal and/or justified? If not, what relief he is entitled to?"*

4. The Workman filed his statement of claim narrating the fact that he was engaged on daily wage basis by the Management vide order dated 11th March, 1987 with a direction to work at Hostel No. 3 w.e.f. 5th November, 1987. It was also stated therein that the Workman rendered continuous services under the Management being posted at different places as per different orders issued by the Management. His name was placed at Serial No.114 of the Gradation List of Class-IV employees, which was prepared on the basis of seniority for the purpose of regularization of employees against available vacancies as and when arose. When the Workman was so continuing, the Management without assigning any reason restrained him (the Workman) to perform his duty w.e.f. 9th January, 1991 which occasioned termination of his services. Before termination the mandatory provision of Section 25-F of the Act was not followed. Hence, he prayed for reinstatement with full back wages.

5. The Management filed its written statement stating that the claim of the Workman was not maintainable as the Management had no role to play in the matter of employment or non-employment of the Workman. The Workman was working under the control and supervision of the Security Officer, who was working under the Management on being deputed from the Government of Odisha. No office order was issued to the Workman by the Management either appointing him as a DLR or terminating his services as claimed by him. It was also specifically stated in the written statement that the

Workman having left the work at his own volition on 9th January, 1991 without any intimation to the controlling officer, the question of complying with the provision of Section 25-F of the Act did not arise at all. It was also stated that although the name of the Workman was at Serial No.114 of the List prepared by the Management as per seniority, but as he remained unauthorisedly absent from duty, the question of his regularization could not also be considered. Thus, the Management contended that the Workman was not entitled to any relief as claimed.

6. On the basis of the rival pleadings of the parties, learned Tribunal framed as many as four issues as under.

> " *(i) Whether the case is maintainable?*
>
> *(ii) Whether the second party workman voluntarily abandoned the service since 09.01.1991?*
>
> *(iii) Whether the action of the Management of Utkal University, At/P.O. Vani Vihar, Bhubaneswar in terminating the services of the workman Sri Kanhu Charan Sahoo by way of refusal of employment w.e.f. 09.01.1991 is legal and/or justified?*
>
> *(iv) If not, what relief, Sri Sahoo is entitled to?"*

6.1 In support of his case, the Workman examined himself as W.W.1. and placed reliance on the copies of the documents such as, Office Order dated 3rd November, 1987 (Ext.1), Office Order dated 2nd January, 1988 (Ext.2), Office Order dated 11th May, 1989 (Ext.3), Office Order dated 27th October, 1990 (Ext.4), list of daily wage employees as per seniority (Ext.5) and information obtained by him under the RTI Act (Ext.6). On behalf of the Management, the Registrar of Utkal University

was examined as M.W.1, who proved the copy of the Orissa Universities Recruitment and Promotion of Non-Teaching Employees Rules, 1991 as Ext. A.

7. Considering the rival cases of the parties and evidence on record, learned Tribunal held that the dispute is maintainable. It was further held that it is not a case of abandonment of service by the Workman. Rather, it is a case of refusal of employmentto the second party-Workman which amounts to retrenchment, as defined under Section 2(oo) of the Act. It was also held that since provision under Section 25-F of the Act was not followed, the termination was neither legal nor justified. However, answering the Issue No.4, learned Tribunal held that the Workman is entitled to ₹50,000/- towards compensation in lieu of reinstatement and back wages. Assailing the said award, the present writ petitions have been filed.

8. Mr. Das, learned Senior Advocate appearing for the Workman vehemently argued that since the Workman has already attained the age of superannuation, question of his reinstatement does not arise at present. Relying upon the case of ***Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another***; ***(1999) 6 SCC 82***, Mr. Das learned Senior Advocated submitted that the Workman is entitled to 60% of the back wages till the date of the award and full back wages till his reinstatement. Since the Workman has already attained the age of superannuation and question of his reinstatement does not arise at present, he is

entitled to full back wages till today. Relying upon the case of ***Ajaib Singh*** (supra), he further submitted that the provision of Limitation Act, 1963 is not applicable to the proceedings under the Act as held therein. In the case of ***Ajaib Singh*** (supra) Hon'ble the Supreme Court discussing the scope of the Act at paragraph-5 and applicability of the Limitation Act to the proceedings under the Act (Industrial Dispute Act, 1947) and discussing the case law in ***Bombay Gas Co. Ltd. v. Gopal Bhiva; AIR 1964 SC 752***; ***Sakuru v. Tanaji; (1985) 3 SCC 590*** and ***Jai Bhagwan v. Ambala Central Coop. Bank Ltd.; (1983) 4 SCC 611,*** held that the provisions of Article 137 of the Schedule of the Limitation Act, 1963 are not applicable in the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. He, therefore, prays for modification of the impugned award to the aforesaid extent.

9. It is vehemently argued by Mr. Mohanty, learned counsel for the Management that the reference was hopelessly barred by limitation. The Workman abandoned his job with effect from 9th September, 1991 and he approached the Conciliation Officer in the year 2017, i.e., after 26 years. Delay in approaching the Conciliation Officer has not been explained. Thus, the reference was not maintainable at all. This vital aspect was not properly considered by learned Tribunal. He, therefore, submitted that the impugned award is not sustainable in the eye of law and is liable to be set aside.

10. Heard learned counsel for the parties.

11. Perused the case records and materials placed before us. Before delving into the merit of the case, it is worthwhile to mention here that on consent of learned counsel for the parties, this Court referred the matter to the Mediation Centre of the High Court of Orissa to make an endeavour for mediation. But, learned Mediator submitted a failure report dated 17th September, 2025.

12. An objection was raised by Mr. Mohanty, learned counsel for the Management to the effect that the workman was never engaged by the University. He was engaged by the Security Officer, who was working under the Management being deputed by the State Government. Thus, question of employment and/or disengagement by the Management does not arise.

13. Such submission is not acceptable, inasmuch as learned Tribunal scrutinizing the evidence on record came to a categorical conclusion that the Workman was engaged by the Management of Utkal University on daily wage basis. It also appears from the Ext.5 prepared by the Management, the Utkal University that the Workman was at Serial No.114. Such list of DLRs was prepared by the Management on the basis of seniority as per their date of joining on daily wage basis for regularization in the available vacancies as and when it arose. Thus, it cannot be said that the Workman was not engaged by the Management-Utkal University. In view of the ratio of ***Bangalore Water Supply and Sewerage Board v. A. Rajappa; AIR 1978 SC 548***, Utkal University can no doubt be termed as

an industry within the meaning of Section 2(j) of the Act, so far as the present case is concerned. It is not seriously disputed that the Workman was engaged on daily wage basis. Since the Workman was working under daily wage basis, he comes within the meaning of Section 2(s) of the Act. Thus, the provisions of the Act are applicable to the instant case. On analysis of evidence on record, learned Tribunal categorically held that the retrenchment of the Workman squarely comes under the definition of 'termination' under Section 2(oo) of the Act.

14. Mr. Mohanty, learned counsel for the Management of course, seriously objected to the findings recorded by learned Tribunal in the impugned award and submitted that learned Tribunal has erred in fact in coming to such a conclusion.

15. A finding of fact based on assessment of evidence cannot be interfered with by this Court in exercise of power under Article 227 of the Constitution. It is also well settled in the case of ***Syed Yakoob v. K.S. Radhakrishnan and others***; ***AIR 1964 SC 477***, where the Hon'ble Supreme Court has laid down the principles of interference with an award by the High Court under Article 227 of the Constitution. It held as under;

> *7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction*

conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam ([1958] S.C.R. 1240.), and Kaushalya Devi v. Bachittar Singh."

15.1. Relying upon ***Syed Yakoob*** (supra) this Court in the case of ***The Scientist in-charge, Regional Museum of Natural***

History v. Sri Gangadhar Das [WP(C) No.22599 of 2017, disposed of on 28th January, 2020] held as under;

> *"Keeping in view the aforesaid settled principles of law, this Court is of the opinion that the factual aspects of the case cannot be considered in a proceeding involving writ of certiorari.*
>
> *In the case of* ***Surya Dev Rai vs. Ram Chander Rai and Others****, (2003) 6 SCC 675, the same matter was also considered. Though we are aware that the ratio as far as maintainability of writ application against the order passed by the Civil Court is overruled by later decision of the Hon'ble Supreme Court in the case of* ***Radhey Shyam and Another vs. Chhabi Nath and Others****, (2015) 5 SCC 423, the distinction between the jurisdiction of the High Court under Article 226 and Article 227 of the Constitution is approved by the said later decision. The Hon'ble Supreme Court in the case of* ***Surya Dev Rai Ram Chander Rai and Others*** *(supra) has very categorically held that Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted*
>
> *(i) without jurisdiction - by assuming jurisdiction where there exists none, or*
> *(ii) in excess of its jurisdiction- by overstepping or crossing the limits of jurisdiction, or*
> *(iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice."*

16. Since on an assessment of evidence on record learned Tribunal has come to a conclusion that dispensing with services of the Workman comes under the provision under Section 2(oo) of the Act. It has also been held by learned Tribunal on assessment of evidence that the Workman had never abandoned his services as alleged by the Management, but was terminated by the Management. In view of the ratio in the aforesaid case laws, this Court is not competent to record a finding by re-appreciation of evidence on record.

16.1. In view of the above, the contention of Mr. Mohanty, learned counsel for the Management is not acceptable.

17. Admittedly, provision under Section 25-F of the Act was not complied with while dispensing with the services of the Workman. Thus, the termination of the Workman was neither legal nor justified as rightly held by learned Tribunal. Ordinarily the Workman would have been entitled to reinstatement with full back wages, when his termination was held to be neither legal nor justified, but in the facts and circumstances of the case, learned Tribunal awarded a meager amount of ₹50,000/- only to the Workman in lieu of reinstatement and back wages.

18. Apparently, there is no material on record with regard to the wages being paid to the Workman during his continuance with the Management. However, taking into consideration the minimum wages prescribed by the Government of Odisha at the relevant time and the period of service the Workman rendered to the Management, this Court feels that a total sum of ₹2,00,000/- (Rupees two lakhs) towards a lump sum compensation in lieu of reinstatement and back wages will serve the interest of justice. Thus, the Management is directed to pay the same to the Workman within a period of eight weeks from today with proper acknowledgement. If the compensation is not paid within the time stipulated, it will carry 6% interest per annum, which shall be calculated from the date of this judgment till the date of payment.

19. The impugned award dated 30th October, 2019 passed by learned Tribunal in ID Case No. 22 of 2017 is modified to the aforesaid extent.

20. Both the writ petitions are disposed of accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

(K.R. Mohapatra)
Judge

(SavitriRatho)
Judge

Orissa High Court, Cuttack,
Dated, the 9th October, 2025/RKS