
(2016) 09 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 9179 of 2012

Durga Charan Jena

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 21-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17, Section 17-A

Citation : (2016) 151 FLR 983

Hon'ble Judges : Kumari Sanju Panda and Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : Shashi Bhusan Jena, S. Behera, A. Mishra, S. Soren and S. Das, Advocates, for the Petitioner; S. Mishra, Additional Government Advocate, for the Opposite Parties

Final Decision : Disposed Off

Judgement

S.N. Prasad, J. - This writ petition has been filed for issuance of appropriate order/direction directing the opposite parties to disburse arrears of differential pay in the light of the order passed in I.D.Case No. 45 of 1992.

2. Brief facts of the case of the petitioners is that reference has been made before the Industrial Tribunal, Orissa Bhubaneswar for adjudication of the references, that is:

(A) "Whether the demand regarding equalization of pay of Tax Collector in the Municipality and N.A.C. with that of Revenue Inspector working in Government Departments is justified ? If so, what should be the details?

(B) Whether the Licence Moharir, Bill Moharir, Law Moharir, Amin, Worksarkar, Octroi Collector etc. working in the Municipalities and N.A.Cs are entitled to get the pay of Junior Clerks under the Government? If so, what should be the details?

(C) Whether the demand of the Zamadars of Municipalities and NACs for change of designations as Sanitary Supervisor is justified?"

3. The award has been passed on 30.11.2000. While answering the reference as contained in Reference No.(A) against the workmen, reference as contained in Reference No.(B) has been answered in favour of the workmen and Reference No. (C) has been answered against the workmen.

4. The award has been challenged before this Court in W.P.(C) No. 15593 of 2007, the same has been dismissed vide order dated 24.4.2009 against which Special Leave Petition has been preferred before the Apex Court being SLP(C) C.C. No. 19218 of 2011 which has been dismissed and thereafter the opposite party-management of State Government has issued an order through Housing and Urban Development Department under the signature of the Commissioner-cum-Secretary to Government whereby and where under the award has been implemented w.e.f. 16.3.2012. Grievance of the petitioners is that the award has been passed answering the Reference No.(B) in favour of the workmen vide award dated 30.11.2000 and as such it has to be implemented by disbursing arrears of dues with effect from 30.11.2000.

5. This Court while issuing notice upon the opposite party-State has allowed time to obtain instruction, but in spite of series of adjournments having been granted by this Court no such affidavit has been filed.

It is admitted position in this case that the award has attained its finality after dismissal of SLP by the Hon'ble Apex Court and as such the award has to be given its implementation. We are conscious of the fact that the High Court cannot act as implementing Court of award since there is specific provision in this regard under section 11(9)(10) of the Industrial Disputes Act, 1947 which has been inserted in the statute by way of notification published by the Government of India implemented w.e.f. 15.9.2010. The dispute has been raised by the workmen in the year 1992 and from that date 24 years has already gone even thereafter the award has not been implemented in its letter and spirit. The provision is very clear as per the provisions made in the Industrial Disputes Act, 1947 wherein as per the section 17 the award having been passed by the Labour Court or the Industrial Tribunal under section 17A and as per the provision as contained thereafter the award shall become enforceable on the expiry of thirty days from the date of its publication under section 17. There is no dispute that the award has been notified under section 17 and this is the reason Government has implemented but not with effect from the date of award i.e. 30.11.2000 rather it has been implemented with effect from 16.3.2012.

6. Since the award has already attained its finality by the Apex Court by dismissing the Special Leave Petition and as such the authority ought to have implemented the award from the date of the award i.e. 30.11.2000.

The issue of dispute is regarding parity in the pay scale in favour of Tax Collector/ License Moharir/Bill Moharir/Law Moharir/Work Sarkar/Amin of Urban Local Bodies and as such the award has to be implemented w.e.f. 30.11.2000 and once the award has been published in the notification as per the reference made by

Government under section 10(1) of the Industrial Disputes Act, 1947 it has to be implemented w.e.f. 30.11.2000 but instead of doing so the award has been implemented w.e.f. 16.3.2012 as would be evident from Annexure-3 whereby and where under the award has been made applicable from the date of issuance of order dated 16.3.2012. However, the petitioner has not prayed for quashing of that part of the order dated 16.3.2012 whereby and where under the award has been implemented from the date of issuance of the order i.e. 16.3.2012, but we in exercise of power under Article 226 of the Constitution of India even if specific prayer has not been made, but moulding the prayer made in the writ petition, the High Court can exercise power under Article 226 of the Constitution of India in the ends of justice, in this regard reference may be made to the judgment rendered by the Hon'ble Apex Court in the case of State of Rajasthan v. Hindustan Sugar Mills Ltd. and others reported in AIR 1988 SC 1621 wherein it has been held that the High Court in exercise of the power under Article 226 of the Constitution of India could have moulded the relief in just and fair manner as required by the demands of the situation, reference may be made to para-4 of the said judgment which is being quoted here under:

"The High Court was exercising high prerogative jurisdiction under Article 226 and could have moulded the relief in a just and fair manner as required by the demands of the situation."

It is also settled that on the ground of alternative remedy the power conferred under Article 226 of the Constitution of India cannot be exercised rather there is exception to that if the order is without any jurisdiction or against statutory provision or if there is violation of fundamental right, certainly High Court under Article 226 of the Constitution of India can exercise its power even in case of availability of alternative remedy, here in this case the order dated 16.3.2012 whereby and where under the award has been directed to be implemented from the date of issuance of said order is held to be without jurisdiction since action of the authority is contrary to the reference made by the appropriate Government under section 10(1) of the Industrial Disputes Act, 1947 and also against the award passed by the Industrial Tribunal dated 30.11.2000 which has been notified in the official Gazette of the State of Odisha and the moment it has been notified in the official gazette which attained its finality by the Apex Court, deviation from any part of the award is without jurisdiction and if the decision of the authority is without jurisdiction, the High Court in exercise of power conferred under Article 226 of the Constitution of India can interfere even though there is alternative remedy, reference may be made, in this regard, in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others reported in (1998)8 SCC 1, wherein the Apex Court held that writ petition is maintainable and it cannot be dismissed on the ground of availability of alternative remedy if there is violation of principles of natural justice or there is violation of any fundamental right or the order is without any jurisdiction.

7. Accordingly, invoking said jurisdiction and in the ends of justice and instead of

relegating the workmen to go for alternative remedy, we hereby quash part of the order dated 16.3.2012 whereby and where under the award passed in I.D.Case No. 45 of 1992 has been implemented from the date of the award and accordingly direct the opposite party-State to implement the award w.e.f. 30.11.2000 i.e. passing of the award by the Industrial Tribunal with further direction upon the opposite party-State to dispose differential salary in favour of the workmen within period of 12 weeks from the date of receipt of certified copy of this order. This order is being passed taking into consideration the fact that most of the workmen have already been retired from service and if the workmen would be relegated to approach alternative remedy for enforcement of the award, it will be harsh for them at this juncture of life.

8. With the above observation and direction, the writ petition is disposed of.