
(2005) 06 OHC CK 0046
In the Orissa High Court
Case No : O.J.C. No. 14546 of 2001

Nilachal Service Station

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 9 Rule 13
Constitution of India, 1950 — Article 226 , 227
Industrial Disputes Act, 1947 — Section 10, 12, 17, 17A, 29

Citation : (2005) 2 OLR 565

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : N.K. Mishra, S.K. Mishra, S.S. Mishra, D. Mishra and S.N. Dwivedy, for the Appellant; Addl. Standing Counsel For Opp. Party No. 1 and Satyabadi Das, R. Acharya, S. Mohanty and S.K. Das for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—An Industrial Dispute was raised by opposite party No.2-workman with regard to the propriety or otherwise of termination of his service by the Management of . Nilachal Service Station, the petitioner, in the present writ application. The said dispute was referred to the Labour Court by the State Government in exercise of powers conferred u/s 12 read with Section 10 of the Industrial Disputes Act. The reference read as follows:-

"Whether the termination of service of Shri Bhramabar Das by the Management of . Nilachal Service Station (Indian Oil Petrol Pump), Grand Road, Puri is legal and/ or justified ? If not to what relief Shri Das is entitled ?"

The Labour Court by award dated 19th August, 1985, videAnnexure-1, answered the reference in favour of the workman and held that the termination of service of the workman by the Management of . Nilachal Service Station (Indian Oil Petrol Pump), Grand Road, Puri was illegal and unjustified. The Labour Court

further held that the workman was entitled to reinstatement with full back wages. According to opposite party No.2-workman after the award was passed by the Labour Court he joined his duties and submitted his joining report which was accepted, but then no wages were paid as per the award. On 16.10.85, it appears the workman submitted an application for payment of wages but no action was taken. It further appears that the workman being aggrieved by the inaction filed an application u/s 33-C(2) of the Industrial Disputes Act before the Labour Court for computation of his service and other emoluments. The said application was registered as Industrial Dispute Misc. Case No. 104/87. In the year 1991 also another petition was filed for computation of service which was registered as Industrial Misc. Case No. 179/91.

2. While matter stood thus, the Management filed a Misc. Case before the Presiding Officer, Labour Court, Bhubaneswar praying to set aside the ex parte award dated 25.11.1989 alongwith a petition for condonation of delay. By order dated 16.3.91 the Presiding Officer on verification of the records did not accept the plea taken by the Management that it did not receive notice of the case. Consequently, the application filed for condonation of delay was rejected and so also the ex parte order passed on 25.11.89. It also appears that in the year 1991 the petitioner had approached this Court in OJC No.2685 of 1991, inter alia, challenging the order passed by Labour Court on the basis of the petition filed u/s 33-C(2) of the Industrial Dispute Act. A division bench of this Court by order dated 11.12.1991 dismissed the said writ application observing as follows:-

11.12.1991. Though notice of admission has been issued in this case, after hearing Mr. Kar for the petitioner and Mr. Das for opposite party No. 1 and on perusal of the records we do not find any justification for our interference in the impugned order dated 16.3.1991. The Presiding Officer, Labour Court has found that in the proceeding u/s 33-C(2), the petitioner refused to receive notice and avoid to attend the Court. This statement of the Labour Court is borne out by the service returns of the postal authorities. In that view of the matter, the petitioner cannot be permitted to invoke our extraordinary jurisdiction under Article 226 of the Constitution for interference with the order dated 16.3.91.

This application is accordingly dismissed. No. costs."

Opposite party No.2-workman being aggrieved by the inaction of the Certificate Officer in realizing the amount assessed approached this Court in OJC No.8547/96. A division bench of this Court by order dated 7.11.96. disposed of the said writ application directing the Certificate Officer to dispose of Certificate Misc. Case No.4/92 within a period of three months. After disposal of the writ application, the petitioner-management deposited the amount towards the wages of opposite party No.2 in the year 1993. The petitioner also filed an application under Order 9, Rule 13 of the CPC to set aside the order. The said order was registered as Restoration Misc. Case No. 7/92. After hearing both parties the Presiding Officer, Labour Court by order 2.2.93 dismissed the restoration Misc. Case on contest. The said order, as it appears, has not been set aside or varied

at any subsequent stage.

In the meanwhile a criminal proceeding was initiated against the petitioner on the basis of a complaint petition filed by the Inspector, Labour Department u/s 29 of the Industrial Disputes Act, 1947 alleging non-implementation of the award by the petitioner. The said petition was registered as complaint case No.2(C) C.C. 14/1994. Learned Magistrate by order dated 29.7.1995 found the petitioner guilty and convicted it. Challenging the said order of conviction, the petitioner filed Criminal Revision No.397/2001 before this Court.

3. The petitioner also filed T.S. No. 151/97 and Misc. Case No. 116/97 in the Court of Civil Judge (Senior Division), Puri with a prayer to declare the award passed by the Presiding Officer, Labour Court, vide Annexure-1, void and inoperative along with a petition under Order 39, Rules 1 and 2 of the Code of Civil Procedure, inter alia praying to restrain opposite party No.2 from realizing the amount. It appears that the learned Civil Judge (Senior Division), Puri has dismissed the Misc. Case and the suit is still pending. While matter stood thus, in the year 2000, the petitioner preferred another Misc. Case before the Labour Court, Bhubaneswar with a prayer to set aside the ex parte order. By order dated 24.9.2001, the Presiding Officer, Labour Court after discussing the entire history of the case and observing that a petition with the self-same prayer being Misc. Case No.7/92 filed by the petitioner was dismissed by the Labour Court earlier by order dated 2.2.93, declined to set aside the ex parte award passed as long back as on 19.8.85 and dismissed the petition for restoration by order dated 24.9.2001, vide Annexure-4. The said order is assailed in this writ application mainly on the grounds that the award dated 19.8.85 having been passed ex parte the petitioner should be given an opportunity to place its case that the disposal of the first Restoration Misc. Case would not bar a second Restoration Misc. Case since the principle of res judicata/constructive res judicata would not apply in such a case where the Court refused to exercise its jurisdiction on the ground of limitation and that the provisions of Sections 17 and 17-A of the Industrial Disputes Act having not been followed the ex parte order has not become enforceable.

4. On receiving rule a detailed counter affidavit has been filed by opposite party No.2-workman strongly repudiating the averments made in the writ application. It is averred that the award passed in the year 1985 has attained finality and cannot be avoided and/or set aside after lapse of more than a decade. It is averred that the notice of the Industrial Dispute Case was duly served on the Management and only with an avowed oblique motive of harassing the poor workman it did not appear in Court and allowed the Industrial Dispute Case to proceed ex parte and as such it is estopped by its conduct to challenge the ex parte order. It is further submitted that the award has worked out and a portion of the wages having already been paid, the Management is also estopped from making prayer to set aside the award which has already worked out.

5. I have heard Mr. Mishra, learned counsel for the petitioner, and Mr. S. Das,

learned counsel for opposite party No.2, at length. I have perused the materials available on record, orders annexed and other documents meticulously and considered the submissions made by the learned counsel diligently.

According to Mr. Mishra, the Management had no knowledge with regard to the ex parte award and as such it is a fit case where the award should be set aside and the Management should be given an opportunity to place its case. But then as would be evident from the records the award was passed on 19th August, 1985. The petitioner became aware of the aforesaid award in the year 1985 itself when it appears opposite party No.2 submitted his joining report or at least in the year 1987 when the notice on the application filed by the Management u/s 33-C(2) of the Industrial Disputes Act was served. It did not prefer any application for settling aside the ex parte order. Only in the year 1990 an application was filed to set aside the order in Industrial Dispute Misc. Case No. 104/87. The Presiding Officer, Labour Court after discussing the facts and circumstances and appreciating the evidence both oral and documentary disbelieved the plea that it was not served with any notice for which it was set ex parte in Misc. Case No. 104/87 and dismissed the said Misc. Case. The petitioner filed OJC No.2685/2004 before this Court. The prayer in the said writ application clearly reveals that only a relief sought was to quash the impugned order dated 16.3.91 (Annexure-7 in the said case). There was no prayer even with regard to setting aside the ex parte award nor was there any attempt made by the petitioner-management to challenge the ex parte order before this Court.

The scenario of facts narrated above clearly reveals that as the award of the year 1985, Annexure-1, was not implemented a petition u/s 33-C(2) of the Industrial Disputes Act was filed in the year 1987 which was allowed and as the petitioner-Management did not pay the amount assessed certificate proceedings were initiated, After initiation of the proceeding u/s 33-C(2) the petitioner had approached this Court in OJC No.2685/91. A division bench of this Court refused to entertain the writ application and interfere with the order dated 16.3.91. At the other hand, a division bench of this Court in OJC No.8547/ 96 directed the Certificate Officer to conclude the proceeding as expeditiously as possible. Perusal of the aforesaid two orders clearly reveals that even in the year 1991 this Court declined to interfere with the award passed in the year 1985 as well as the proceeding initiated u/s 33-C(2) of the Industrial Disputes Act which was consequential to the award passed. It further appears that the petitioner has paid wages to the workman in consonance with the award and having done so, it is also estopped from challenging the award passed.

6. The contention raised by Mr. Mishra that the earlier petition filed by the petitioner to set aside the ex parte order was rejected by the Presiding Officer, Labour Court only on the ground of limitation and as such it would not act as res judicata for a subsequent petition filed seeking the same relief has absolutely no legs to stand. A cause of action becomes stale by efflux of time. In the present case, the award was passed in the year 1985 and the application to set aside the

same was admittedly not filed within the time specified in the Limitation Act. A belated petition filed by the petitioner along with a petition for condonation delay was rejected by the Presiding Officer, Labour Court as long back as in the 1991. The said order was not assailed and became final and binding. After lapse of several years, it was not open to the petitioner to approach the same Court for the same relief which was not entertained by the said Court being barred by limitation.

7. In view of the aforesaid clear position of law though Mr. Mishra tried to convince this Court that a subsequent petition for the same relief can be entertained if the first petition was rejected on the ground of limitation, this Court stays unconvinced. The earlier restoration petition having been dismissed and the said order having attained finality not being challenged, a subsequent petition is not maintainable in the eye of law. The decisions cited by Mr. Mishra in support of his proposition being A.R. Antulay Vs. R.S. Nayak and Another, were completely on different facts and have absolutely no application to the facts and circumstances of the present case.

8. The further contention raised by Mr. Mishra that as the award was not duly published in Orissa Gazette in consonance with Sections 17 and 17-A of the Industrial Disputes Act the same has not become enforceable also cannot be accepted specially in view of the decision in the Supreme Court in the case of State of Punjab and others Vs. Krishan Niwas, wherein it has been clearly held that after implementation of an award it cannot be challenged. In the present case, admittedly, the award which was passed in the year 1985 has been implemented, inasmuch as a petition filed u/s 33-C(2) of the Industrial Disputes Act, on the basis of the award, has been allowed and the order of the Labour Court has been upheld by a division bench of this Court and the amount assessed has been paid. Under such circumstances the contentions raised by Mr. Mishra that as the award having not been published in the Orissa Gazette the same cannot be implemented has no legs to stand.

Be that as it may, fact remains that a petition for setting aside the award was filed seventeen years after, and as such the Labour Court has rightly rejected the same, more so in view of the fact that an earlier application filed for the same relief was rejected by the same Court and the said order of rejection, having not been challenged, had attained finality.

9. Perusal of the impugned order, Annexure-4, clearly reveals that the Presiding Officer has taken into consideration all the facts and circumstances in proper perspective and refused to set aside the award passed in the year 1985 after lapse of more than a decade. The reasoning assigned and the conclusions arrived in the impugned order are just, proper and in consonance with the materials available in the record. I do not find any infirmity or illegality in the impugned order. The conclusion arrived at by the Labour Court are borne out on the materials available on record.

10. In view of the aforesaid facts no relief whatsoever can be granted to the petitioner in exercise of extraordinary and supervisory jurisdiction under Articles 226 and 227 of the Constitution of India. The impugned order does not call for any interference.

Accordingly the Writ Application is dismissed. Parties shall bear their own costs.