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**(2017) 03 OHC CK 0065**

**In the Orissa High Court**

**Case No : 8352 of 2000**

State of Orissa and others

APPELLANT

Vs

Ganesh Ch. Jena and others

RESPONDENT

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**Date of Decision :** 31-03-2017

**Acts Referred:**

**Citation :** (2017) 03 OHC CK 0065

**Hon'ble Judges :** I. Mahanty, Biswajit Mohanty

**Bench :** DIVISION BENCH

**Advocate :** M. Sahu, Srinivas Mishra, Sarojananda Mishra, B. Dash, B.N. Mishra, N.K. Dash, R.C. Praharaj, H.M. Dhal, L. Pani, P.K. Tripathy, S.K. Parida, S. Dash, P.K. Patra

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## **Judgement**

1. In this writ application, the petitioners have prayed for quashing of the impugned order dated 28.6.1999 passed by the learned Orissa Administrative Tribunal, Bhubaneswar in O.A. No.72 of 1988.

2. The opposite parties filed O.A. No.72 of 1988 before the Orissa Administrative Tribunal with a prayer for payment of Project Allowance/Construction Allowance for the period they worked in the Sunei Irrigation Project. According to the opposite parties, Sunei Irrigation Project started from 1.5.1978 was a Medium Irrigation Project and it started functioning in inhospitable climate in the forest area in the district of Mayurbhanj. It was situated at a distance of about 25 Kms. from the nearest town. There was no school for the children of the opposite parties and no shops or markets or dispensary was available within 25 Kms. In such background, they demanded payment of Project Allowance/Construction Allowance as is being paid to the employees of all Major Projects in the State in consideration of the difficulties faced by the employees at the project sites. According to the opposite parties, when they made their demand, they were assured by the authorities that similar matter with regard to the Medium Irrigation Project like Ramiala Irrigation Project was pending disposal before the Industrial Tribunal and they have to wait till award is pronounced by that

Tribunal. During December, 1980, the Industrial Tribunal in I.D. Case No.18 of 1980 allowed payment of Project Allowance/Construction Allowance to the employees of Ramiala Irrigation Project. The present petitioners challenged the said award before this Court, which was dismissed by this Court. Ultimately, the State carried the matter to the Hon"ble Supreme Court and Hon"ble Supreme Court upheld the Award of the Industrial Tribunal. Ultimately the employees/workmen of Ramiala Irrigation Project which according to the opposite parties was a Medium Irrigation Project, were allowed the benefits of Project Allowance/Special Construction Allowance for the period of from 4.2.1975 to 28.2.1979. In such background, the opposite parties again represented to the authorities to allow the benefits of the Project Allowance as has been done in the case of the employees/workmen of Ramiala Irrigation Project. Since the approaches and pleas of the opposite parties at different levels remained unheeded, they approached the Orissa Administrative Tribunal by filing O.A. No.72 of 1988 for redressal of their grievances.

In reply before the Orissa Administrative Tribunal, the present petitioners relied on the memorandum dated 12.3.1963 by which Project Allowance was allowed to the staff employed in construction of Paradeep Port Project and Express-way Project etc. The said office memorandum is annexed as Annexure-1 in the present writ application. But a reading of the said memorandum reveals that it is only confined to the staff employed in construction of Paradeep Port Project and Express-way Project and this has nothing to do with the employees working in the Medium Irrigation Projects. There the petitioners also relied on Annexure- 2, which deals with Project Allowance/Special Construction Allowance to the staff employed in construction of Major Irrigation/Power Projects. It has been made clear there that Project Allowance and Special Construction Allowance would be sanctioned only if execution of project involves establishment of a large construction organization and the construction is spread over a number of years. The above noted allowance was intended not only to compensate the staff for lack of amenities such as housing, schools, market, dispensaries but also to provide incentive for arduous nature of work in the major projects where timely completion is of utmost importance. Accordingly, a plea was advanced that the Project Allowance/Special Construction Allowance is only for Major Irrigation Project and since Sunei Irrigation Project where the opposite parties stated to have worked, is not a Major Irrigation Project, they are not entitled to Project Allowance/Special Construction Allowance. According to the petitioners the case of Ramiala Irrigation Project was totally different from that of Sunei Irrigation Project and there could not be any comparison between the two projects as the two projects stood in different footings.

3. Learned Orissa Administrative Tribunal after applying its mind to the submissions made by both parties allowed the Original Application in favour of the opposite parties after coming to a finding that since the employees of Ramiala Irrigation Project which is a Medium Irrigation Project have been sanctioned Project Allowance/Special Construction Allowance under award of the

Industrial Tribunal, which attained finality after dismissal of O.J.C. No.2330 of 1983 by the High Court of Orissa and dismissal of the S.L.P. (Civil) No.5570 of 1984 by the Apex Court and since the working conditions in all Medium Irrigation Projects are more or less similar, there can be no conceivable reason to deny Project Allowance/Special Construction Allowance to the opposite parties, who have worked in Sunei Irrigation Project, which is also a Medium Irrigation Project. Accordingly, learned Tribunal held that the opposite parties were entitled to Project Allowance/Special Construction Allowance at the same rate as has been paid to the employees of Ramiala Medium Irrigation Project under the award of Industrial Tribunal.

4. Challenging the order of the learned Orissa Administrative Tribunal, Mr. Sahu, learned Addl. Government Advocate submitted that the case of the employees of Sunei Irrigation Project to which opposite parties belong is different from the case of Ramiala Irrigation Project and he also submitted that as per office memorandum dated 22.9.1979 (Annexure-2) only the employees of Major Irrigation Project are entitled to Project allowance and Special Construction Allowance and since Sunei Irrigation Project is a Medium Irrigation Project, the learned Tribunal erred in allowing their Original Application and directing payment of Project Allowance/Special Construction Allowance to the opposite parties. Learned counsel for the opposite parties on the other hand defended the impugned order of the learned Tribunal and submitted that since the Sunei Irrigation Project is a Medium Irrigation Project like Ramiala Irrigation Project and since Sunei Irrigation Project was functioning in inhospitable climate in the forest area with no school, no shops and no markets within 25 Kms. the Tribunal has done no wrong in allowing the claim of the opposite parties.

5. Perused the impugned order and L.C.R., which includes the evidence of opposite party nos.1 and 14 recorded by the learned Tribunal.

6. From an analysis of materials available on record, it is clear that there is no dispute that Sunei Irrigation Project is a Medium Irrigation Project like Ramiala Irrigation Project and once Project Allowance/Special Construction Allowance have been allowed to the employees of Ramiala Irrigation Project pursuant to the orders of the Industrial Tribunal as confirmed by this Court as well as the Hon"ble Supreme Court, there is no earthly reason for not allowing the said benefits to the opposite parties for the period they have worked at Sunei Irrigation Project. The learned Tribunal has rightly held that though the office memorandum under Annexure-2 allowed Project Allowance/Special Construction Allowance to the employees of Major Irrigation Project on the ground that such a scheme was intended not only to compensate the staff for lack of amenities such as housing, schools, market, dispensaries but also to provide incentive for arduous work, such considerations are all the more applicable to the staff of Medium Projects because where Major Projects are undertaken, as a larger number of employees are engaged, practically new townships develop at the project sites and various staff amenities like hospital, dispensary, school, market

etc. come up, but in case of Medium Projects, which are of relatively smaller dimensions, engaging lesser number of staff though not taking less time for completion, no such townships develop. The employees of the Medium Project like Sunei Irrigation Project, which is inside dense forest, were not provided with proper accommodation as per the evidence of opposite party no.1. In his evidence opposite party no.1 has also made it clear that there existed no facility for treatment of ailing workers or even for first aid treatment. There existed no medicine shop. Most of the workers suffered from malaria. No regular school was provided by the authorities. Though the villagers started a High School, there was no teacher there. Therefore, the learned Tribunal correctly held that the Project Allowance/Special Construction Allowance is all the more required for the staff of Medium Irrigation Project as an incentive for arduous work.

7. Considering all the above noted things, this Court is of the opinion that there exists no error apparent on the face of the impugned order and that the learned Tribunal has not acted beyond its jurisdiction by allowing the Original Application, and as such, we are not inclined to issue a writ of certiorari for quashing the impugned order. Accordingly, the writ application is dismissed. The order of stay dated 4.5.2001 stands vacated. The petitioners are directed to comply with the impugned order dated 28.6.1999 within three months. No costs. Send back the L.C.R. Forthwith.