
(2006) 04 OHC CK 0030
In the Orissa High Court
Case No : O.J.C. No. 13008 of 2001

State of Orissa and Others	Vs	APPELLANT
Kambhupani Mohapatra		RESPONDENT

Date of Decision : 11-04-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (2006) 1 OLR 784

Hon'ble Judges : N. Prusty, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : Devasis Das, Addl. Government Advocate, for the Appellant;
Sudhansu Mohan Mishra, B.P. Das, S.J. Pradhan, P.K. Patnaik and B. Sahoo, for
the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—This writ application has been filed against the orders dated 20.10.1998 and 7.5.2001 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 2088 of 1996 and M.P. No. 1290 of 1998 respectively.

2. At the very outset, we feel it necessary to mention that the State Government vide their order dated 10.11.1995 had already conceded the demand of the opposite party who was working as Worksarkar Grade-I in Hirakud Dam Circle, Burla and directed the Superintending Engineer of that circle that he is entitled to the Central Government pay scale of Rs. 150-3207- (with effect from 29.3.63), Rs. 380-640/-(with effect from 1.1.73) and Rs. 1400-23007- (with effect from 1.1.86) in the post of Worksarkar Grade-I and it was directed by the Government to the Superintending Engineer to prepare revised computation statement without further delay and take steps to make payment of the same. It was specifically mentioned in the said order of the State Government that direction to make payment as mentioned above, were passed with the concurrence of the Finance Department.

3. The Superintending Engineer as well as the Executive Engineer concerned, did not make compliance of the above directions of the Government and ultimately opposite party approached the Orissa Administrative Tribunal by filing the above mentioned O.A. which was disposed of vide order dated 20.10.1998 with the following directions:

4. We direct Superintending Engineer (Respondent No. 2) that the salary of the applicant as directed in the said letter No. IRC-57/93/27708 dated 10.11.1995 issued by the Water Resources Department be disbursed to the applicant within one month from the date of receipt of a copy of this order, failing which he shall be held personally liable to pay interest at the rate of 12 per cent per annum on the amount which is due to the with effect from the date when it was due. Since he has already retired from service, all consequential service and retiral benefits should also be paid to him within one month from the date of receipt of a copy of this order, failing which he shall be liable to pay 12 per cent as well on the arrears of pay and pension.

5. With the above observations, the Original Application is disposed of. Send copies.

Sd/- B.N. Patnaik Sd/- J.N. Poddar Member (Admn.) Chairman.

4. The brief facts of the case are that the Hirakud Dam Project was earlier under the direct management of the Central Public Works Department. The employees working under that project were receiving their salary in, the pay scale prevalent for the Central Government employees. But on 1.4.1960 the management of the Hirakud Dam Project was taken over by the State of Orissa with the understanding that the employees working under CPWD as on 1.4.1960 would be allowed to continue in the same terms and conditions including the scale of pay which they were entitled to get immediately preceding day of taking over of the project by the State Government, i.e., 31.3.1960. The said conditions of service were also applicable in the case of the opposite party. Ultimately, on denial of fulfilling the above condition by the Superintending Engineer, the opposite party had earlier travelled twice to the Industrial Tribunal, Orissa vide I.D. Case No. 3/64, once to this Court and twice to the Hon''ble apex Court. In Civil Appeal No. 348-349 of 1974 Hon''ble apex Court while allowing the appeal made the award declaring that the workmen working in the work charged establishments of the Hirakud Dam Project from before 01.04.1960 are entitled to the same scales of pay and other conditions of service as before as if they were employees of the work-charged establishments of the Central Public Works Department. The order was passed by the Hon''ble Supreme Court on 13.8.1985. Thereafter on 9.2.1988 the Hon''ble Supreme Court issued direction to the Presiding Officer, Labour Court, Sambalpur to pass appropriate orders for implementing their Lordships'' order dated 13.8.1985 with 10% interest per annum. Thereafter on 29.2.1988 the opposite party filed an application u/s 33(c)(2) of the Industrial Dispute Act, 1977 for identifying as one of the beneficiaries of the award. On 2.8.1989 the Presiding Officer, Labour Court, Sambalpur identified the opposite

party with the following order:

In view of it I find that the workman has fulfilled all the norms fixed by this Court in its order dt. 25.5.89 passed in M.C. No. 1/88 and therefore he is entitled to get the benefits of the order of the Hon"ble Supreme Court.

5. But when in spite of the above, the petitioners did not pay any heed towards the directions mentioned above, he approached this Court by filing a writ application registered as O.J.C. No. 481/92 which was disposed of vide order dated 6.2.1992 on the basis of the statement given by the then learned Standing Counsel of the instant petitioners to the effect that necessary orders were already passed and only the orders were to be implemented for which he had prayed for sometime. The relevant portion of the aforesaid order dated 6.2.1992 is reproduced as under:

Shri Patra appearing for the opposite parties states that in so far as the petitioner is concerned, to his information necessary order has already been passed and the order remains to be implemented for which some time has been prayed by the State. The learned Presiding Officer shall look into this matter and if order has not been passed, as stated by Shri Bose, he shall pass necessary order relating to the petitioner within 29.2.1992 as far as possible and necessary payment shall also be made by the State without delay. The petitioner would receive the amount without prejudice.

xx xx xx xx Sd/- B.L. Hansaria, Chief Justice. Sd/-B. N, Dash, Judge.

Thereafter the Presiding Officer of the Labour Court had passed an order on which the State Government reacted and issued an order wide IRC-57/93/27708 dated 10.11.1995 for compliance by the Superintending Engineer, which is quoted as under:

I am directed to invite reference to Memo No. 276 dt. 6.1.95 from Executive Engineer, Main Dam Division, Burla to your address on the above subject and to say that Sri K.P. Mohapatra, Worksarkar Grade-I (Retired) is entitled to Central Government pay scale of Rs. 150-3207- (with effect from 29.3.63), Rs. 380-.640/- (with effect from 1.1.73) and Rs. 1400-2300/- (with effect from 1.1.86) in the post of Worksarkar Grade-I.

2. Revised computation statement may please be prepared immediately and steps taken to make payment of the same under intimation to this Department along with pensionary and other benefits.

3. This has been concurred in by Finance Department in their U.O.R. No. 466 PCC dt. 30.10.95.

Yours faithfully, Sd/- Joint Secretary to Government.

6. In spite of the above directions of the State Government, when the Superintending Engineer did not take any action, on 30.5.1996 a telegram was sent by the Joint Secretary to the Government of Orissa in Water Resources

Department to the Executive Engineer with a copy to the Superintending Engineer, which is also quoted as under:

No. 17974 ----- 30.5.96 STATE TELEGRAM EXPRESS EX ENGINEER MAIN DAM DIVN BURLA PLEASE REFER MEMO NO. 5901 OF NINETH APRIL LAST REGARDING PENSION CASE OF SRI K.P. MOHAPATRA(.) PENDING CLARIFICATIONS REGARDING HIS FIXATION OF PAY, RETIREMENT BENEFITS BE PAID TO HIM BASING ON THE LAST PAY(.) PENSION CASE AS TIME KEEPER IF SENT TO A.G. BE GOT BACK TILL ISSUE OF CLARIFICATION(.) COMPLIANCE REPORTED (.) LAPSES WILL BE SERIOUSLY VIEWED(.)

WATER RESOURCES

Not to be telegraphed. Sd/- (P.N. MOHANTY) JOINT SECRETARY TO GOVERNMENT DEPARTMENT OF WATER RESOURCES

7. It appears from all above that it was very unfortunate on the part of the Superintending Engineer, Hirakud Dam Circle, Burla as well as Executive Engineer, Main Dam Division, Burla for not implementing the directions of the State Government after a lapse of long litigation and ultimately the State Government had to send another telegram on 10.6.1996 addressed to the Executive Engineer with a copy to the Superintending Engineer; which is also quoted as under:

STATE TELEGRAM EXPRESS EX ENGINEER MAIN DAM DIVN BURLA "REOLET NO. 2180 OF SIXTEENTH FEBRUARY LAST REGARDING FIXATION OF PAY OF SRI K.P. MOHAPATRA (.) IMMEDIATE STEPS BE TAKEN TO IMPLEMENT THIS DEPARTMENT ORDER No. 27708 DATED 10.11.95 AND COMPLIANCE REPORTED

WATER RESOURCES

Not to be telegraphed. Sd/-

(P.N. MOHANTY) JOINT SECRETARY TO GOVERNMENT DEPARTMENT OF WATER RESOURCES

8. In spite of the above mentioned repeated directions of the State Government, the Superintending Engineer who was personally responsible to implement the directions of the State Government, did not act accordingly. Thereafter it appears that instead of taking action against the Executive Engineer and the Superintending Engineer concerned the State Government preferred to direct the Chief Engineer and Basin Manager, Upper Mahanadi Basin, Burla to issue instructions to the concerned Executive Engineer and Superintending Engineer to implement the Government order to avoid any unpleasant situation. In the said letter it was specifically mentioned that after considering the representation of the instant opposite party by the Government, instructions to allow him Central Government scale of pay in the post of Worksarkar duly concurred in by Finance

Department, was conveyed to the concerned Superintending Engineer for implementation in this Department letter No. 27708 dated 10.11.95 and it appeared that the concerned Executive Engineer instead of implementing the Govt. orders raised uncalled for objections and consulted the Special Counsel *suomotu* without routing through Government and all those aspects were taken into consideration and necessary instructions were again issued in this Deptt. Telegram No. 19272 dated 10.6.96 to Executive Engineer, Main Dam Division and in view of the aforesaid premises, the State Government directed to forthwith issue instructions to the concerned E.E./S.E. to implement the Government orders to avoid any unpleasant situations. Copies of the aforesaid letter was forwarded to the S.E., Hirakud Dam Circle, Burla and Executive Engineer concerned.

9. When the Executive Engineer still did not implement the orders, opposite party approached the Tribunal by filing the above mentioned O.A. No. 2088 of 1-996 which was disposed of vide order dated 20.10.1988 as already mentioned above. Thereafter an application for modification/review was moved on behalf of the instant petitioners. The same was registered as M.P. No. 1290/1996 and was rejected by the Tribunal vide order dated 7.5.2001. Thereafter it appears that the above mentioned M.P. was filed due to the reason that the opposite party had already filed contempt petition before the Tribunal registered as C.P.(C) No. 133/99 which was filed in the year 1999. It appears that after the O.P. filed the above mentioned M.P., contempt petition was filed by the O.P. which was registered as C.P.(C) No. 133/99. But as the M.P. was pending it appears that the Tribunal did not take any action and only vacate the order dated 9.7.2001."The Tribunal passed the order mentioning that its order has not been implemented till that date as submitted by the counsel for the petitioner of the contempt petition, despite dismissal of the review application filed on behalf of the State. It was ordered that the case be listed on 14.8.2001 for implementation of the order of the Tribunal and on failure to do so, the possibility of appearance of the Superintending Engineer in the Tribunal cannot be ruled out. Thereafter vide order dated 24.8.2001 Tribunal held that it appears from the record that the Superintending Engineer during his stay at Hirakud did not implement the order of the Tribunal on one plea or the other and in the meantime had left the place on promotion as Chief Engineer. The Superintending Engineer who received the order was primarily responsible to implement the order of the Tribunal and the Tribunal found that it would be proper to issue notice to him in his present address and it was ordered that he would appear in person subject to filing of the correct address. But as the correct address was not available, notice could not be served upon him. However, Mr. B.P. Ray, learned Counsel for the petitioner has submitted that the contempt petition is still pending.

10. After rejection of the M.P. by the Tribunal vide order dated 7.5.2001, filed by the State for review of the order dated 20.10.98, the State took a decision not to file any writ application challenging the order of the Tribunal and decision of the Government was communicated vide order No. 13886 dated 27.8.2001.

11. When the Superintending Engineer and Executive Engineer saw the above situation and ultimately they had seen that they had to implement the orders of the State Government, they filed the instant writ application even without obtaining the prior approval from the State Government.

12. In spite of the above directions, since the Superintending Engineer filed the instant writ application without obtaining prior permission of the State Government resulting which the State Government vide letter No. IV-ILR-T-36/2001 17669/L dated 3rd November, 2001 specifically objecting to file writ application had asked the Advocate General to intimate to the Department as to under what circumstances the writ application was filed in anticipation of the Government order. A copy of that letter was forwarded to the Water Resources Department in reference to their letter dated 21.9.2001 addressed to the Advocate General and they were also required to intimate as to under what circumstances, they had requested the Advocate General for filing of a writ application in anticipation of the Government order when the Government had earlier decided not to file writ application which was intimated to the G.A. Department vide Law Department's letter dated 27.8.2001.

13. Opposite party had retired from service on 30.9.1994, i.e. about more than 1.1 years before. He is struggling for his claim continuously since 1961. The Government conceded his request but the subordinates, i.e., Superintending Engineer and Executive Engineer concerned in spite of the repeated directions, did not implement the Court's order as well as directions of the Government which amounts to gross misconduct on the part of the then Superintending Engineer, Hirakud Dam, Burla circle and the then Executive Engineer, Main Dam Division, Burla.

14. Therefore, considering the facts and circumstances of the case, as mentioned above, we are of the opinion that this writ application has no merit and should be dismissed with cost.

15. In the result this writ application is dismissed. We uphold the impugned orders dated 20.10.1998 and 7.5.2001 passed by the Tribunal in O.A. No. 2088 of 1996 and M.P. No. 1290 of 1998 respectively. The opposite party was involved in unnecessary litigation even after 11 years of his retirement when the matter has already been settled by the Government long before in the year 1995. Therefore, we impose a cost of Rs. 10,000/- (Rupees ten thousand) which shall be paid to the opposite party by the petitioners. The arrears of salary along with all the consequential benefits including the post retiral benefits as directed by the Tribunal in its order passed in O.A. No. 2088 of 1996 and the cost imposed by this Court today shall be paid to the opposite party within a period of three months from today.

16. However, it will be open to the petitioner No. 1 to realize the amount of cost as well as, interest part of the order of the Tribunal from the then Superintending Engineer, Hirakud Dam Project, Burla Circle and the Executive Engineer, Main

Dam Division, Burla and also to take appropriate action for the lapses and disobedience of the Government directions made by them after providing opportunity to them as provided under the law.

17. We also make it clear that in case the payment of the arrears, consequential benefits and the interest as directed by the Tribunal in its impugned order and the cost imposed by us, are not paid to the opposite party within the time stipulated above it will amount to deliberate disobedience of this order and in that case it will be open for the opposite party to file a contempt before this Court.

18. However, the Tribunal may proceed with the contempt petition already pending before it and dispose of the same in accordance with law expeditiously.

19. Consequent upon dismissal of the writ application, the pending Misc. Cases are also dismissed.

A free copy of this order shall be supplied to the learned Additional Government Advocate within ten days from today.

N. Prusty, J.

20. I agree.