

**(1998) 11 OHC CK 0018**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 2040 of 1995**

Supad Haldar and Others

APPELLANT

Vs

The Orissa Small Industries Corporation Ltd.

RESPONDENT

**Date of Decision :** 18-11-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (1999) 87 CLT 192 : (1999) 1 OLR 459

**Hon'ble Judges :** S. Chatterji, J; R.K. Dash, J

**Bench :** Division Bench

**Advocate :** Srikanta Ku. Sahoo, B.R. Dash, M. Mohapatra, J. Mohapatra, S. Mishra, K.C. Pradhan and R.K. Sahoo and N.C. Mohanty, for the Appellant; G. Ananda Rao Dora, for the Respondent

**Final Decision :** Allowed

## Judgement

R.K. Dash, J.—The petitioners, employees of Orissa Timber and Engineering Works, Sunabeda, a unit under the management of Orissa Small Industries Corporation Limited, by filing the present writ application under Articles 226 and 227 of the Constitution of India have prayed, inter alia, for the following reliefs :

"xxx it is prayed that this Hon"ble Court be graciously pleased to issue a Rule Nisi in the nature of writ of mandamus/certiorati commanding the opposite party to pay the arrear wages of the petitioners, w.e.f. 1.1.1974 as per the revised Pay Rules, 1974 and w.e.f. 1.1.1981 to 24.9.1984 as per the revised Pay Rules, 1981;"

2. Shortly stated the case of the petitioners is that Orissa Small Industries Corporation Limited, a wholly Government owned company, is an instrumentality of State and thus a "State" within the meaning of Article 12 of the Constitution of India. The petitioners joined the Rehabilitation Industries which was initially a unit under the management of the Orissa Agro Industries Corporation Limited. The said unit subsequently was re-named as Orissa Timber and Engineering

Works and its management was transferred to Orissa Small Industries Corporation Limited by Government Resolution dated 1.7.1974. Government of Orissa revised the pay scales of all its employees with effect from 1.1.1974 as per Finance Department Notification No. 652/1974 dated 2.4.1974. The opposite party-Corporation implemented the revised pay scales and extended the benefit to all its employees from 1.1.1974 except to the employees of the Orissa Timber and Engineering Works. So, the employees made a representation to the authorities of the Corporation to extend the benefit of revised wages to them but the latter paid a deaf ear. State Government again revised the pay scales of its employees with effect from 1.1.1981 and consequently the opposite party Corporation implemented the revised pay scales to all the employees from the said date, but in the case of the employees of Orissa Timber and Engineering Works it extended the benefit from 25.9.1984 and not from 1.1.1981. Their further case is that employees of General Engineering and Scientific Works, Berhampur, which is one of the units under the management of the opposite party-Corporation were not given the benefit of revised pay scales. So, they approached the Labour Court u/s 33C(2) of the Industrial Disputes Act and upon hearing the Presiding Officer, Labour Court, Bhubaneswar passed an award directing the management of the Corporation to extend the financial benefit as per the Revised Pay Rules of 1974. Aggrieved by the award the authorities of the Corporation approached this Court by filing a number of writ petitions where the award passed by the Labour Court was affirmed. In the above back drop, the petitioners "demanded to extend similar benefits to them with effect from 1.1.1974. The third pay revision was made and given effect to by the State Government from 1.1.1985 and the opposite party-Corporation has implemented and given the benefit thereof to all its employees including the petitioners. In the circumstances, the grievance of the petitioners is that since their pay scales have been revised as per the third revision, Revised Pay Rules, 1974 and 1981 should be given effect to and benefit thereof should be extended to them as had been given to the employees of other units of the opposite party-Corporation.

3. On being noticed, opposite party entered appearance and countered the claim as advanced by the petitioners. It is stated that Rehabilitation Industries under which the petitioners were appointed was one of the units under the Orissa Agro Industries Corporation. This unit having been transferred to Orissa Small Industries Corporation on 6.8.1975, the latter is not liable to give the financial benefit as per the Revised Pay Rules of 1974 with effect from 1.1.1974 till 5.8.1975. Besides, by the time the unit merged by way of transfer, the opposite party-Corporation has suffered huge loss. So, when the petitioners made representation to increase their pay and other allowances, an agreement was made on 8.12.1977 according to which it was decided to give benefit of the revised pay scales with effect from 1.7.1977. Accordingly pay and other allowances were revised and given effect to from the said date. So far as 1981 Revised Pay Rules is concerned pursuant to the decision taken in the meeting of the Board of the Corporation the benefit of the said Rules was extended to the

employees of Orissa Timber and Engineering Works from 25.9.1984 as per Annexure-4. In that view of the matter, it is urged, the petitioners are not entitled to arrear wages for the periods as claimed by them. Moreover, there has been inordinate delay in approaching this Court by filing the present writ petition, inasmuch as the petitioners made a representation (Annexure-5) for the first time in 1990, i.e. about 16 years after the 1974 Revised Pay Rules came into force and the present writ petition has been filed 5 years thereafter, and therefore, on the ground of delay and laches the petitioners are not entitled to the relief as claimed.

4. While not disputing the factual position as stated above, opposite party-Corporation has challenged the petitioners' claim on two grounds; namely :

(i) That pursuant to the agreement between the opposite party- Corporation and the employees of the unit in question namely the Orissa Timber and Engineering Works, Sunabeda, 1971 Pay Rules has been given effect to from 1.1.1977 and therefore, the petitioners are not entitled to go back from the agreement and claim benefits from 1.1.1974;

(ii) That there has been long delay in filing writ application and on that ground the petitioners are not entitled to the relief as sought for;

5. Accepting what has been pleaded by the opposite party- Corporation that pursuant to the settlement between the Corporation and the employees of the unit in question it was agreed to by the petitioners that they would get the benefit of the revised Pay Rules of 1974 from 1.7.1977, it cannot be said that such agreement being legally valid is enforceable in law and without going to the question whether, it has adversely affected the petitioners, the Court will put seal of approval to it. Nothing is borne out either from Annexure-A or from the pleadings of the opposite party-Corporation as to why unequal treatment has been meted out to the petitioners in the matter of salary and other emoluments in comparison to their counter-parts working in other units of the Corporation. In our considered opinion, the agreement so reached by the parties being result of unconscionable bargain has to be held to be illegal and as such is not binding on the petitioners. Since the petitioners had no equal bargaining power, they cannot be blamed for agreeing to have benefit of the revised pay scales from 1.7.1977. In this context, it is apposite to refer to the decision of the Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, where the Court has lucidly stated the law as to what value should be attached to a contract entered into between a strong and weak which does not stand the test of reasonableness and fairness. In paragraph 90 of the judgment the Court observed :

"xxxx Should the strong be permitted to push the weak to the wall ? Should they be allowed to ride roughshod over the weak ? Should the Courts sit back and watch supinely while the strong trample under foot the rights of the weak ? We have a Constitution for our country. Our judges are bound by their oath to

"uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties.

xxxx. "

6. In view of the aforesaid dictum of the apex Court and keeping in mind the admitted facts of the case, the agreement so reached between the Corporation and the employees of the unit in question will not stand on the way of the petitioners to get the benefit of the 1974 Pay Rules from 1.1.1974 since the same has been extended to similarly situated employees of the Corporation.

7. Now coming to the second submission about the delay in approaching this Court, it may be stated that the rule which says that the Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. (See Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, ). The principle on which the Court proceeds to refuse to grant the relief on the ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. (See Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, ).

8. In the case in hand, admittedly there has been inordinate delay in approaching this Court seeking implementation of the 1974 and 1981 Pay Rules. But merely on the ground of delay the petitioners cannot be denied of the relief as sought for since it would not in any way affect the rights of other employees working under the Corporation.

9. From the facts, circumstances and materials on record, we are satisfied that the petitioners have been treated differently in the matter of implementation of the 1974 and 1981 Pay Rules and they have been denied of the benefit thereof from the dates of commencement i.e. 1.1.1974 and 1.1.1981 respectively which benefit has been extended to other employees working in the Corporation. This unequal treatment, in our considered opinion, offends the equality clause as enshrined in Article 14 of the Constitution.

10. In the result, the writ petition is allowed. We command the opposite party-Corporation to revise the pay scales of the petitioners as per the Pay Rules of 1974 and 1981 with effect from 1.1.1974 and 1.1.1981 respectively and pay the arrears within four months hence. No cost.

S. Chatterji, J.

I agree.