

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.15201 of 2008

Sanjay Memorial Institute of Technology, Ganjam ***Petitioner***

Mr. S.S. Rao, Senior Advocate

-Versus-

Rajendra Behera and another ***Opposite Parties***
Mr. D. Routray, Advocate

W.A. No.430 of 2014

The Management of Sanjay Memorial Institute of Technology, Berhampur, Ganjam ***Petitioner***

Mr. Lalatendu Samantaray, Advocate

-Versus-

Rajendra Behera and others ***Opposite Parties***
Mr. D. Routray, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK

ORDER
10.08.2022

Order No.

R.K. Pattanaik, J

21. 1. Both the matters are disposed of by the following order since the parties are same and there is a common cause of action involved.
2. The writ petition in W.P.(C) No.15201 of 2008 is filed by the Petitioner challenging order dated 4th December, 2007 passed in

I.D. Misc. Case No.44 of 2003 by the learned Presiding Officer, Labour Court, Jeypore (Labour Court) under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') on the ground that the same is liable to be quashed since because the claim of O.P.No.1 was not held to be an anticipated right. In so far as W.A. No.430 of 2014 is concerned, it has been filed at the behest of the Management, namely, the Appellant questioning the legality of the order dated 12th November, 2014 passed by the learned Single Judge in OJC No.2424 of 1999, whereby, the writ petition was dismissed due to non-compliance of order dated 25th February, 1999 in M.C. No.2139 of 1999 vis-à-vis entitlement of the Workmen (except O.P.No.2 therein) under Section 17-B of the I.D. Act on the ground that it is not sustainable in the eye of law and thus, deserves to be set aside.

3. Heard learned counsel for the parties.

4. Mr. S.S. Rao, learned Senior Advocate appearing for the Management contended that the Labour Court had no jurisdiction to pass any such order when the entitlement of O.P.No.1 was specifically denied and it cannot be adjudicated in a proceeding under Section 33(C)(2) of the I.D. Act which is in the nature of an execution and furthermore, the claim was barred by laches. It is further contended that the decision by resolution dated 14th August, 1990 (Annexure-6) was taken under duress which was later recalled on 15th October, 1990, however, the Labour Court based its decision by placing reliance on Annexure-6 dismissing the plea that the entitlement is not an anticipated right and allowed the claim of O.P.No.1 for an amount of Rs.38,339.85/-

towards differential wages with a direction to the Management to pay the amount which is clearly untenable in law. Per contra, Mr. D. Routray, learned counsel for O.P.No.1 submitted that the decision of the Labour Court is absolutely justified and therefore, does not call for any interference since because it has taken cognizance of the resolution under Anenxure-6 which was a decision arrived at by the Executive Committee in presence of representative of the Union of teaching and non-teaching staff.

5. The contention of the Petitioner is that the entitlement of O.P.No.1 since was an anticipated right could not have been entertained by the Labour Court in a proceeding under Section 33(C)(2) of the I.D. Act. Admittedly, the Management had a resolution on 15th October, 1990 vide Anenxure-6 which was considered to be a settlement effected between the parties. However, as per the Petitioner, said decision was recalled under Annexure-7. But then, the impugned order (Annexure-3) does not reveal that the Management ever disclosed recall of the decision taken under Annexure-6 on 15th October, 1990 by Annexure-7. Rather, it appears that the Labour Court in view of Anenxure-6 concluded that the employees of the Petitioner have accrued interest instead which cannot therefore be claimed as an anticipated or future right. As far as Anneuxre-6 is concerned, the Petitioner does not deny about the resolution but claimed that it was reached at under coercion. No such contention was ever made before the Labour Court by referring to Annexure-7. Rather, Annexure-6 indicates that the Management after having lengthy discussions with the representative of the teaching and non-teaching staff arrived at a decision which does not appear to be a product of coercion. Since there was an agreement between

both the sides under Annexure-6, the Labour Court did not commit any wrong to hold that the right of the employees said to have accrued no sooner it was passed. Hence, the conclusion of the Labour Court that claim of O.P.No.1 is not an anticipated or future right cannot be faulted with.

6. Mr. L. Samantaray, learned counsel appearing in W.A.No.430 of 2014 for the Appellant contends that the learned Single Judge should not have dismissed the writ petition for non-compliance of Section 17-B of the I.D. Act which was dependent on the filing of the affidavits by the Workmen, namely, Respondent Nos.1,3&4 since the Management learnt about their gainful employment elsewhere which is, however, objected to by Mr. D. Routray, learned counsel for the other side on the ground that the impugned order dated 12th November, 2014 should not to be disturbed since the earlier order dated 25th April, 1999 vis-à-vis Section 17-B of the I.D. Act was not complied with.

7. In fact, the Labour Court passed an award in I.D. Case No.16 of 1991 by which the Management was directed to reinstate Respondent Nos.1to4 with 50% back wages and the same was challenged in OJC No.2424 of 1999 and in that, order dated 25th February, 1999 was passed in M.C. No.2139 of 1999 for compliance of Section 17-B of the I.D. Act. The Management filed M.C. No.511 of 2007 for modification of the order dated 25th February, 1999 but the same was dismissed on 22nd April, 2013 against which, as contended by the Petitioner, W.A. No.114 of 2013 was preferred which is currently pending disposal. It also appears that the Management vide M.C. No.123 of 2013 sought for a direction against Respondent Nos.1,3& 4 to file affidavits to

the effect that they are not gainfully employed elsewhere but it was also dismissed, whereafter, M.C. No.116 of 2013 was filed with a prayer to keep the order dated 22nd April, 2013 in abeyance but in the meanwhile, the impugned order dated 12th November, 2014 was passed. It further appears that Respondent No.2 has been engaged in the establishment of the Petitioner since 7th September, 2007. That apart, in the impugned order under Annexure-1, the learned Single Judge remarked that Respondent Nos.1,3&4 had filed such affidavits before while disposing of M.C. No.123 of 2013. In that view of the matter, when the Respondents stated to have filed such affidavits earlier and there was no material produced to the contrary, the learned Single Judge held that there was non-compliance of Section 17-B of the I.D. Act and then dismissed the writ petition. In the aforesaid backdrop and on the anvil of engagement of one of the Respondents by the Management and keeping in view the peculiar facts and circumstances of the case, the Court is not inclined to indulge itself further and interfere with the impugned order under Annexure-1 at this distant point of time.

8. Accordingly, it is ordered.

9. In the result, the writ petition and the appeal stand dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice