

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.738 of 2008

Shree Dharma Pada Bhuyan.

....

Petitioner

M/s. Sujata Jena, J.B. Jena, P. Dash,
S. Mohanty, Advocates

-versus-

State of Odisha & another.

....

Opposite Parties

Addl. Standing Counsel

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
19.01.2022**

**Order
No.**

11. **1.** This matter was directed to be listed on 13th of January, 2022 under the heading of “Delivery of Orders”. But, since this Court did not function on that date, this matter is listed today under the same heading.

- 2.** The petitioner seeks to invoke the power of this Court under Section 482 of Cr.P.C. to quash the order dated 21.01.2008 passed by the learned S.D.J.M., Panposh, Rourkela in 2(C) C.C. No.272 of 2005, a proceeding under Section 29 of the Industrial Disputes

Act, 1947 (for short, "the Act"), rejecting the petition filed by the petitioner to delete his name on the ground that he has already retired from service.

3. I have heard the learned counsel for both the sides.

4. Admittedly, by the date of the award passed by the Labour Court, Sambalpur, the petitioner was in such an official position as to implement the award dated 30.09.2002 passed by the learned Labour Court, Rourkela in I.D. Case No.40 of 2000 and it was also his statutory obligation to do so, in absence of any order of stay passed by the competent higher Court, or any other legal impediment. The sole ground on which the petitioner appears to be seeking for setting aside the impugned order dated 21.01.2008 is that, he has in the meantime retired from service on superannuation as Project Manager under the Orissa Small Scale Industries Corporation Limited (OSIC), and thereby his liability, if any, under the aforesaid award has ceased. Section 29 of the Act provides for punishment against any person who commits a breach of any term of any

settlement or award passed under the Act. Where the breach continues, Section 29 of the Act provides for imposition of further fine extending to Rs.200/- for every day during which the breach continues, after the conviction.

5. There may be a possible plea from the side of the petitioner that in the event of an order of conviction under Section 29 of the Act, the provision made under the said Section for imposition of fine for continuance of the breach at post-conviction stage will go ineffective or repugnant, inasmuch as he is no more in service to own any liability for any such continuous breach.

6. Although retirement of a defaulting employee / officer does not always affords him a good ground to seek for exoneration from criminal liability provided under a statute or for discharge from a prosecution launched for the dereliction of duty or breach of statutory obligation, in the facts and circumstances depicted from record, this Court is inclined to accept the prayer of the petitioner. Admittedly, the petitioner took retirement from service on 30.06.2007 on attaining

the age of superannuation. The award passed by the learned Labour Court by then was already under challenge before this Court in W.P.(C) No.2036 of 2007, and an application had been moved for stay of the operation of the aforesaid award. The writ petition was listed before this Court on 07.03.2007 and notice of the same as well as the stay petition was directed to be issued on the same date. It be also mentioned here that the award under challenge had been passed ex-parte, and vide the order dated 17.06.2008, this Court set-aside the said award subject to payment of Rs.40,000/- by the Management to the Workman-opposite party within a period of thirty days. It was further directed vide the said order that in the event of payment of the said amount, the Presiding Officer shall take up the I.D. Case and proceed with the same afresh in accordance with law. As per the report received from the Presiding Officer, Labour Court, Sambalpur vide his Office Letter No.153 dated 14.07.2021, the aforesaid order of this Court was duly complied with by the Management by making payment of Rs.40,000/- to the Workman on

15.07.2008. It is further reported that the I.D. Case on being heard afresh has been disposed of on contest on 15.04.2010 with passing of final award. In that view of the factual position, this Court hardly finds any good reason to allow continuance of the prosecution under Section 29 of the Act against the present petitioner.

7. Hence, the CRLMC stands allowed quashing the order dated 21.01.2008 passed by the learned S.D.J.M., Panposh, Rourkela in 2(C) C.C. No.272 of 2005, qua the present petitioner.

8. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout copy of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 & 515 dated 7th January, 2022.

(S.Pujahari)
Judge

MRS