

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.3548 of 2013

*Birtunga Service Co-operative
Society Ltd.*

.....

Petitioner
Mr. B.K. Nayak. Adv.

-Versus-

Sindhu Charan Behera

.....

Opp. Party
Mr. S. Mishra, Adv.

CORAM:
JUSTICE S. TALAPATRA
JUSTICE M.S. SAHOO

ORDER
15.09.2022

Order No.

- 13.
1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
 2. Heard Mr. S. Satapathy, learned counsel appearing on instruction of Mr. B.K. Nayak, learned counsel for the petitioner as well as Mr. S. Mishra, learned counsel appearing for the Opposite Party.
 3. This petition has a chequered history. It appears from the records that having due notice from the Labour Court, Bhubaneswar, the petitioner appeared and sought time for filing their statement. Thereafter, they did not appear. Even no statement was filed. Consequently, the proceeding was carried out ex parte against the petitioner. It may be noted that the opposite Party, the workman as the second party in the said proceeding being Industrial Dispute Case No.04 of 2003 filed his statement and based on the statement, he adduced evidence.

4. On appreciation of the said evidence, by the award dated 16.04.2011 the Labour Court declared the action of the petitioner i.e. M/S. Biratunga Service Co-operative Society Ltd. by dismissing the Opposite Party as the Cashier-cum-Clerk with effect from 18.02.2004 as illegal and unjustified.

5. As consequence of said declaration, the petitioner was further directed to reinstate the Opposite Party in the said post with a lump sum amount of Rs.30,000/- in lieu of back wages.

6. It was further directed that the said award shall be implemented within a period of one month from the date of its publication, failing which the amount shall carry interest at the rate of 9% per annum till realization.

7. It is on record that the petitioner thereafter filed an application for setting aside the said ex parte award being Restoration Misc. Case No.10 of 2011. But the said Misc. Case also got dismissed for non-prosecution by the order dated 26.09.2012 (Annexure-4 to the writ petition).

8. For purpose of reference, relevant part of the said order dated 26.09.2012 is gainfully reproduced hereunder:

“26.09.2012 Both parties are absent. No Steps taken. Perused the case record and all connected papers. On perusal of the case record it appears that neither the petitioner management nor the witness in favour of whose affidavit evidence was filed is present today in the court. In the circumstances the affidavit evidence filed in favour of Sri Pradyumn Kumar Biswal is not taken into consideration as he found absent on repeated calls. Since the management petitioner has not taken any steps today despite direction and sufficient opportunities given by this court, it is presumed that he is no more

interested to proceed with this case. Hence, the restoration Misc. Case is dismissed for default of the petitioner-management.”

9. Mr. Satapathy, learned counsel filed today some communications as made on behalf of the counsel who are representing the petitioner in this case. As the counsel has helplessly submitted that he does not have any instruction we can pass any order on merit, in absence of representation from the petitioner.

10. We have heard Mr. S. Mishra, learned counsel who has also filed a short resume of facts as borne in the records to show that the petitioner's conduct is as such that he cannot get any benefit from this court in as much as his diligence is under serious question. That apart the non-action amounts to serious negligence in participation in the proceeding.

10. Moreover, there is no tenable reason to explain those gaps as is required under law. Mr. Mishra, learned counsel has submitted that this court had allowed scope for conciliation and referred this matter to the High Court Mediation Centre, but in the said process, none appeared for the petitioner. As a result, the process of mediation failed.

11. According to Mr. Mishra, which is more serious is that the action of the petitioner appears to be ploy to avoid compliance of Section 17 B of the Industrial Disputes Act.

12. A cumulative reading of the records in respect of the conduct of the petitioner does not inspire confidence in this court to believe that the petitioner has really any intention to act for justice.

13. Having observed thus, this petition stands dismissed as we do not find any tenable reason to condone the conduct of the petitioner-management. The order dated 26.09.2012 stands affirmed.

14. However, there shall be no order as to costs.

15. The interim order dated 05.03.2013 staying the proceeding being Crl. Misc. Case No.309 of 2012 stands vacated.

(S. Talapatra)
Judge

Rati Ranjan



(M.S. Sahoo)
Judge