

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 9641 of 2014

*M/s. Ruchika Social Service
Organization, Bhubaneswar*

.....

Petitioner

Mr. P.K. Rath, Adv.

Vs.

Binaya Kumar Suar

.....

Opposite Party

CORAM:

**JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO**

**ORDER
21.12.2022**

**Order No.
07.**

1. This matter is taken up through hybrid mode.
2. Heard Mr. P.K. Rath, learned counsel appearing for the petitioner.
3. By this writ petition, the order dated 10.04.2014 delivered in Criminal Misc. Case No. 44 of 2013 (Annexure-1 to this petition) by the S.D.J.M., Bhubaneswar has been called in question. It may be noted that the workman-Opposite Party instituted the said proceeding being Criminal Misc. Case No. 44 of 2013 under Section 15(2) of the Payment of Wages Act, 1936. The petitioner herein, challenged the maintainability of the proceeding by filing a special application in the Court of the S.D.J.M., Bhubaneswar. The contention of the petitioner was turned down by the impugned order.

4. Ex-parte award, has been passed directing reinstatement of the workman, the Opposite Party No.1 herein, with all back wages in I.D. Case No.43 of 2010. Mr. Rath, learned counsel has contended that the said award has been challenged by the petitioner-employer in W.P.(C) No.2285 of 2013, which is pending and awaiting for decision in this Court. Mr. Rath, learned counsel has fairly submitted that the petitioner has failed to obtain any stay order against the operation of the said award dated 22.11.2011 delivered in I.D. Case No. 43 of 2010, by the Labour Court, Bhubaneswar.

5. Mr. Rath, learned counsel has quite emphatically submitted that if the award is not satisfied, for realization of such award, remedies are not available under Section 15(2) of the Payment of Wages Act, 1936. Comprehensive remedy is available under Section 29 of the Industrial Disputes Act, 1947.

For purpose of reference, Section 29 of the Industrial Disputes Act is reproduced herein:

“Penalty for breach of settlement or award.- Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day

during which the breach continues after the conviction for the first] and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.”

Section 15(2) of the Payment of Wages Act, 1936 is for different purpose. It provides that if the wages are not paid in full, or are paid after deduction, or paid after much delay (i), The Workman may apply to such authority for a direction under sub-section (3): provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be paid, as the case may be: provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

6. If the petitioner is guilty of non-compliance of the award, the provision, which is relevant, is Section 29 of the Industrial Disputes Act, 1947. The provision under Section 15(2) of the Payment of Wages Act, 1936 is not humane. In the ordinary course of transaction, if any undue deduction is made or undue delay is committed by the employer while making payment, Section 15(2) of

the Payment of Wages Act, 1936 would attract. If it is claimed that since the delay occurred in making payment of the award, the same can attract Section 15(2) of the Payment of Wages Act, 1936.

7. A bare reading of the said provisions would make it amply clear that the proceeding as drawn up by the S.D.J.M., Bhubaneswar, Dist. Khurda under Section 15(2) of the Payment of Wages Act, 1936 is not sustainable. Accordingly, we quash the said proceeding but, reserving the right of the workman i.e. the Opposite Party No.1, to proceed under Section 29 of the Industrial Disputes Act, 1947, as the petitioner has failed to obtain any order of stay against the operation of the said award.

8. In terms of the above, this writ petition stands disposed of. There shall be no order as to costs.

Urgent certified copy of this order be granted as per rules.

(S. Talapatra)
Judge

Sukanta

(Savitri Ratho)
Judge