

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 5623 of 2018

Melaka Nilaswamy

....

Petitioner

Ms. M.K. Das, Advocate

-versus-

State of Odisha & others

....

Opp. Parties

Mr. P.K. Mohanty, Sr. Advocate along with Mr. S.N.,

Dash. Advocate for O.P. No.2

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

ORDER

27.09.2022

Order No.

- 04.** 1. This matter is taken up through hybrid mode.
2. Heard Ms. M.K. Das, learned counsel appearing for the petitioner. Mr. P.K. Mohanty, learned Sr. Counsel assisted by Mr. S.N. Dash, learned counsel appears for the opposite party no.2.
3. By means of this writ petition, the petitioner has urged this Court for directing the opposite party no.2 to implement the award [Annexure-1 to the writ petition] by reinstating the petitioner in service with 50% back wages and with other benefits.
4. The brief facts leading to filing of this writ petition are s that the opposite party no.2 has been directed by the award dated 28.12.1995 passed in I.D. Case No.46 of 1994 (Annexure-1 to the writ petition) to pay back-wages to the workman for the period that he worked, but by excluding the period of unauthorized absence and that to, to the extent of 50% of the said wage even

though the said order has been passed on 28.12.1995. The opposite party no.2 has not implemented the said order. In the result, by means of this writ petition, the petitioner-workman urges us to issue mandamus.

5. Mr. P.K. Mohanty, learned Sr. Counsel assisted by Mr. S.N. Dash, learned counsel for the opposite party no.2 has apprised us there are instances of the petition, the proceeding U/s. 29 of the I.D. Act, 1947 has been launched but no record is before us. In this regard, he has referred the judgment dated 12.04.2017 passed by the JMFC, Rayagada. By the said judgment dated 12.04.2017, the court of the JMFC, Rayagada has hold that the opposite party no.2 is guilty of committing for the offence U/s.29 of the Industrial Disputes Act, 1947 and he was also convicted U/s.255(2) of the Cr.P.C., but the award is not implemented as yet.

6. Section 33C of the Industrial Disputes Act, 1947 clearly provides *“where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it*

shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue: Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer: Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period."

7. Here, the workman is extremely poor and not literate. However, expenses of the litigation cannot be afforded by him. Without taking recourse to the provision of Section 33C of the I.D. Act as the stipulated period of limitation of one year has long elapsed, this writ petition has been filed for the direction, as noted above.

8. Accordingly, the delay is condoned to ensure substantial justice to the petitioner. But we hold that the writ petition is not maintainable for availability of statutory prescription of execution. In the result, the writ petition is dismissed.

9. However, the petitioner is given liberty to unleash the appropriate action for recovery of the awarded sum. If such action is set in within a period of 30 days from today to the appropriate Government for having a

certificate for realization of the money as claimed from the opposite party no.2, no question relating to the limitation be allowed to be raised.

10. There shall be no order as to costs.

11. No order is required in CMAPL No.149 of 2010, in view of the order dated 28.02.2011.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



RRJena/Gs