

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C). No.27605 of 2011

The Management of the Executive Petitioner
Engineer, Rairangpur Electrical
Division, Rairangpur,
Mayurbhanj

Mr. P.K.Mohanty, Advocate

-versus-

Geda Majhi & others Opp. Parties

THE CHIEF JUSTICE
JUSTICE R.K.PATTANAİK

Order No.

ORDER
25.04.2022

07. 1.Except Opposite Party Nos. 53 & 56 service of notice has been effected upon all the other Opposite Parties, despite which none appears on behalf of the Opposite Parties. The service of notice is therefore completed in respect of a substantial number of Opposite Parties.
2. At the oral request of the Petitioner, the Petitioner is substituted by the Tata Power North Orissa Distribution Ltd. (TPNODL). The cause title shall stand amended accordingly.
3. The challenge in the present petition is to an Award dated 2nd April, 2011 passed by the Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No. 07 of 2007. The following dispute was referred to the Tribunal for adjudication:

“Whether the termination of services of Sri Danduram Hembram and 56 others represented through the Secretary, O.S.E.B. Workers Union, Union Office, Thermal Colony, Balasore as per the Annexure-B by the Executive Engineer, Rairangpur Electrical Division, Rairangpur is legal and/or justified? If not to what, relief the workers are entitled?”

4. One of the defences taken by the Petitioner before the Tribunal was that the claim raised by the Opposite Parties-Workmen was belated. In Para-5 in the written statement before the Labour Court, it was stated as under :

“5. That the disputes claimed to have been employed under the abovenamed 1st party Management during the period 1984-1995 and alleged to have been retrenched with effect from 01.07.1995. As reveals from the conciliation report they raised the dispute before the District Labour Officer, Balasore vide Union’s letter dated 03.08.2004 i.e. after lapse of about more than 9 years of alleged retrenchment. Hence, the reference is liable to be dismissed on the ground of belated claim and waiver of right.”

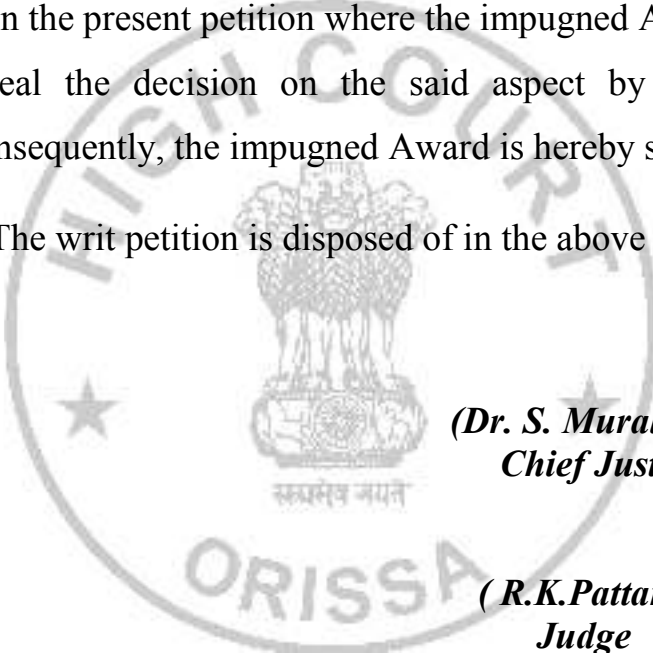
5. In the impugned Award, the Tribunal does not appear to have discussed the above aspect or given a decision thereon. Indeed, the claim by the Opposite Parties-Workmen in the first place was belated i.e. it is filed 9 years after the alleged dates of termination. Clearly, the burden was on the workman to show the reasons for the inordinate delay in approaching the Labour Court. However, a perusal of the impugned

Award reveals that the said aspect was not examined at all by the Tribunal.

6. In a similar petition, this Court by an order dated 9th March, 2022 in Writ Petition (Civil) No. 3604 of 2007 (***The Management of WESCO, Bolangir Electrical Division –vrs. Sri Kunja Bihari Mallick***) set aside the impugned Award in that case on the ground of the delay in filing the claim not being satisfactorily explained by the workman.

7. In the present petition where the impugned Award does not reveal the decision on the said aspect by the Tribunal. Consequently, the impugned Award is hereby set aside.

8. The writ petition is disposed of in the above terms.

The seal of the Orissa High Court is a circular emblem. It features the State Emblem of India at the top center, which is a four-lion capital of an abacus. Below the emblem is the motto 'Satyameva Jayate' in Devanagari script. The word 'ORISSA' is written in a large, bold, sans-serif font across the bottom of the seal. Two five-pointed stars are positioned on either side of the central emblem.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge