HIGH COURT OF ORISSA: CUTTACK.

W.P.(C) No. 12419 of 2006

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Divisional Manager,
Boudh Commercial Division,
Orissa Forest Development
Corporation Ltd.
At/Po/Dist.- Boudh ... Petitioner.

-Versus-

Sri Godabarish Badajena
and another ... Opposite Parties

For Petitioner : M/s. S.K.Pattanaik, U.C.Mohanty, D.Pattnaik and N.Satpathy.

For Opp. Parties : M/s. Sri S.Mohanty, S.Ku. Das, and S.S.Mohapatra(for O.P.1)

PRESENT:

THE HONOURABLE SHRI JUSTICE B.K. PATEL

Date of hearing – 7.4.2010 : Date of judgment -21.5.2010

B.K. PATEL,J. The legality of award dated 30.3.2006 passed by learned Presiding Officer, Labour Court, Bhubaneswar (hereinafter referred to as the 'Labour Court') in I.D. Case No. 185 of 1994 holding the termination of service of opposite party no. 1-workman with effect from 1.7.1984 by the petitioner-management to be neither legal nor justified and further holding the workman to be entitled to

reinstatement of service without any back wages has been assailed in this writ application.

2. The impugned award was passed on receipt of the following reference from the State Government under Section 12 (5) read with Section 10(1) of the Industrial Disputes Act, 1947 (for short 'the Act') for adjudication:-

> "Whether the termination of services of Sri Godabarish Badajena, Mate with effect from 2.7.84 by the management of Divisional Manager, O.F.D.C.Ltd., Boudh Commercial Division, Boudh is legal and/or justified? If not to what relief Sri Badajena is entitled?

3. Opposite party no. 1 was engaged in the establishment of the petitioner with effect from 1.12.1981 as a Mate on daily wages and continued with the employment till 30.6.1984. It was averred by the opposite party no. 1 in his statement of claim that when he claimed for regularization, his service was terminated by the management with effect from 30.6.1984 without any notice or notice pay or compensation. He kept on approaching the authorities for reinstatement. As there was no response, the opposite party no. 1 approached the Labour machinery. Conciliation proceedings having failed, on the basis of failure report submitted to the State Government, the reference was made for adjudication. As the opposite party no. 1's service was terminated illegally, he claimed for regularization of service with full back wages and other service benefits.

In the written statement filed by the petitioner, the opposite party no. 1's claim was resisted on the ground that he voluntarily abandoned his job with effect from 1.7.1984. The petitioner took the stand that opposite party no. 1's service was never terminated and that he voluntarily abandoned the employment. The opposite party no. 1, being a casual worker, in view of voluntary abandonment of his service, is not entitled to any relief. The petitioner resisted the proceeding also on the ground of delay contending that opposite party no. 1 raised the dispute in the year 1992 after lapse of eight years from the date of alleged termination of service. It was further averred that due to ban of felling of timber, the work load of the management has decreased considerably and there was no sufficient work for the regular employees in the Corporation for which the opposite party no. 1's claim could not be considered.

In order to substantiate his claim opposite party no.1 examined himself as W.W.1 and relied upon documents marked Exts. 1 to 4. Petitioner also examined one witness M.W. 1 but did not adduce any documentary evidence.

On appraisal of materials on record learned Labour Court recorded the finding that the termination of service of opposite party no. 1 with effect from 1.7.1984 by the petitioner was illegal and unjustified and against the mandate of Section 25-F of the I.D. Act for which the opposite party no. 1 is entitled to be reinstated. However, in view of delay in raising the dispute and in the absence of assertion

on the part of opposite party no. 1 that he had not been gainfully employed after his service was terminated, his claim for back wages was held to be not acceptable.

4. Learned counsel for the petitioner would submit that engagement of opposite party no. 1 from 1.12.1981 to 30.6.1984 is not disputed and that admittedly neither any appointment order nor any termination order was issued by the petitioner. However, in assailing the order it was strenuously contended that the opposite party no. 1 voluntarily abandoned his job and did not report for duty since 1.7.1984. It was contended that the opposite party no. 1 had raised the Industrial Dispute as late in the year 1992 after remaining silent for long 8 years rendering his claim stale due to delay and laches. In such circumstances, the learned Labour Court should not have entertained opposite party no.1's claim. In support of his contentions learned counsel for the petitioner relied upon decisions of the Hon'ble Supreme Court in ***The Nedungadi Bank Ltd. vs. K.P.Madhavankutty and others*** : AIR 2000 SC 839, ***Ratan Chandra Sammanta and others vs. Union of India & others*** : AIR 1993 SC 2276 and ***Chief Engineer, Ranjit Sagar Dam & Another vs. Sham Lal*** :AIR 2006 SC 2682.

5. In reply, learned counsel for the opposite party no. 1 contended that there is no scope to find fault with the finding recorded by learned Labour Court to the effect that the petitioner was retrenched from services illegally without complying with the

requirements under Section 25-F of the Act. Evidence adduced by the petitioner in this regard is clear, cogent and unreproachable. The opposite party no. 1 kept on approaching the authorities for reemployment till he approached the Labour Officer. Documents marked Exts. 1 to 4 substantiate the assertion of opposite party no. 1 in this regard. In the letter marked Ext. 4, Chairman of the Orissa Forest Development Corporation Ltd. directed reengagement of opposite party no. 1 and two other employees stating that termination of their services was illegal. It was further contended that delay by itself is not a ground to refuse the claim of workman under the Act. In this context learned counsel for the opposite party no. 1 relied upon decision of the Hon'ble Supreme Court in ***Ajaib Singh vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd. & Another:*** 1999 I CLR 1068 and of this Court in ***Benudhar Swain vs. Presiding Officer, Labour Court, Bhubaneswar and another*** : (OJC No. 10611 of 1999).

6. Having perused the L.C.R., upon reference to the rival contentions, it is observed that the management does not dispute employment of opposite party no.1 from 1.12.1981 to 30.6.1984. M.W. 1 in his cross-examination categorically admitted that opposite party no.1 was working continuously till 30.6.1984, but he was not terminated from service. The stand of the management is that the opposite party no.1 abandoned the service. However, no evidence has been adduced to substantiate the stand. Learned Labour Court has

referred to the decision of this Court in ***Divisional Manager, Orissa Forest Development Corporation Ltd., Boudh, Commercial Division –v- Kanista Bisoi and another :*** 2004(Supp.) OLR 694, wherein it has been held that onus lies on the management to substantiate the plea of abandonment by adducing cogent evidence. Retrenchment of an employee without following the mandatory provisions under Section 25-F of the Act is not only unsustainable but also illegal. No evidence has also been adduced from the side of the management to indicate that any notice directing the opposite party no.1 to join in his duty or to show cause for unauthorized absence was issued. Evidence of W.W.1, the workman himself to the effect that he submitted a series of representations to the management for re-employment remained unassailed. Exts. 2 to 4, which are copies of official letters, have not been disputed. Ext.2 reveals that copy of the representation dated 16.9.1991 submitted by the opposite party no.1 was sent from the office of the Managing Director, Orissa Forest Development Corporation Ltd., Bhubaneswar (for short 'O.F.D.C., Bhubaneswar') to the Divisional Manager, Orissa Forest Development Corporation Ltd., Boudh (C Division) (for short 'O.F.D.C., Boudh) for report and particulars. In reply thereto, Ext.3 was sent stating that no engagement or disengagement order was issued to opposite party no.1. In Ext.4 issued from the office of the Chairman of O.F.D.C. , Bhubaneswar, it has been specifically observed that mandatory provision of Section 25-F of the Act had not

been followed while terminating the service of opposite party no.1 and two other employees and the Divisional Manager, O.F.D.C., Boudh was requested to engage them. Therefore, there is absolutely no scope to entertain the management's plea of abandonment. There appears no infirmity in the finding that opposite party no.1's service was terminated illegally and the termination amounts to retrenchment without compliance of the provision under Section 25-F of the Act.

7. Also the contention relating to bar of limitation to the dispute raised by opposite party no.1 is factually unacceptable and legally unsustainable. As has been stated earlier, opposite party no.1 appears to have submitted representations. There was a direction under Ext.4 from the office of the Chairman of the Corporation for re-employment of opposite party no.1 as late as on 26.9.1992. It is evident that opposite party no.1 made all endeavours for his re-employment by approaching the authorities of the Corporation. Therefore, there is no basis to urge that opposite party no.1 allowed his claim to become stale by remaining silent till he approached the Labour Officer in the year 1992. That apart, it also negates the plea that the opposite party no.1 had abandoned the service. Moreover, it is well-settled that law of limitation is not applicable to the proceedings under the Act and the relief under the Act cannot be denied solely on the ground of delay.

8. In ***The Nedungadi Bank Ltd. vs. K.P.Madhavankutty and others*** (supra) relied upon by thepetitioner, it has been held by the Hon'ble Supreme Court that law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. Similarly, in ***Chief Engineer, Ranjit Sagar Dam & Another vs. Sham Lal*** (supra), also relied upon by the petitioner, it was observed that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

9. In ***Benudhar Swain vs. Presiding Officer, Labour Court, Bhubaneswar and another :*** (supra), it has been observed:

> "4. Learned counsel for the petitioner submits that the Presiding Officer has relied upon the decision in the case of ***Ratan Chandra Sammanta and others v. The Union of India and others***, (SC) 1993 (67) FLR 70 in support of his finding that the claim is barred by law of limitation and in holding that the Presiding Officer is incompetent to adjudicate the same. He further submits that the Supreme Court in the case of ***Ajaib Singh v. Sirhind Co.op. Marketing-cum-Processing Service Society Ltd. and another***, 1999 1 CRL 1068 categorically held that considering the objectives in enacting the Industrial Disputes Act, 1947 where limitation act has not been made applicable to the I.D. Act, relief under the Act cannot be denied to the workman solely on the ground of delay as Limitation Act is not applicable and in case delay is established, the Labour Court or Tribunal can mould the relief with regard to back wages etc. In the case of ***Ajaib Singh*** (Supra), the Supreme Court has categorically held that the provision under Article 137 of the schedule to the Limitation Act, 1983 is not applicable to the proceeding under the I.D. Act and the relief under the said Act cannot be denied to the workmen merely on the ground of delay. The plea of

delay if raised by the employer is required to be proved, as a matter of fact, by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case, where delay is shown to be existing, the Tribunal, Labour Court or Board dealing with the case can appropriately mould the relief by declining to grant wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal.

5. In the case of ***Workmen of Karnatak Government Insurance Department (KGID) Employees Union v. Presiding Officer, Principal Industrial Tribunal and others***, 1999 LAB I.C. 2553, the Karnataka High Court was considering the rejection of reference of the dispute regarding payment of bonus on the ground of delay in raising the dispute. While considering the said question, the Karnataka High Court observed that the Tribunal while dealing with the question of delay in raising the Industrial Dispute, which was referred to it for adjudication, should bear in mind that the delay by itself is not a ground to reject the reference.

6. In the case of ***A. Singh v. Sirhind Co-op. Mktg.-cum-Processing Service Society Ltd.***, (1999(82) FLR 137, the Supreme Court reiterated the above position of law referring to the decisions in the case of ***Bombay Gas Co. Ltd. v. Gopal Bhiva and others***, 1963 (7) FLR 304 (SC) and ***Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubili and others***, 1969 (18) 373 (SC), ***Sakura v. Tanaji***, AIR 1985 SC 1279, ***Jai Bhagwan v. Management of the Ambala Central Co-operative Bank Ltd and another***, 1983(47) FLR 532 (SC) and ***H.M.T. Ltd. v. Labour Court, Ernakulam and others***, 1994 LLR 720 (SC). The decisions relied upon by the labour court in the case of ***Ratan Chandra Sammanta and others*** (supra) was a writ petition filed before the Supreme Court under Article 32 of the Constitution, where the Supreme Court was considering a prayer made by the petitioners therein for reemployment and for restraining the opp. parties therein from filling up the vacancies from open market. Considering the facts of the said case, the Supreme Court, finding that the petitioners have approached the Court at a belated stage, i.e., after lapse of a period of 15 years, came to the conclusion that a writ cannot be issued in favour of the petitioners as prayed for by entertaining the

> application which sought for a roving enquiry leaving scope of manoeuvring. Nothing appears in the said decision to indicate that the law oflimitation would be applicable to a reference whilebeing answered by a Labour Court and the workman will be denied the right solely on the ground of delay."

10. In view of the above discussion, there appears no infirmity in the impugned award so as to warrant interference by invoking writ jurisdiction. The writ petition is, therefore, dismissed.

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B.K. Patel, J.

Orissa High Court, Cuttack,
Dated 21st May,2010/Aswini.