

**A.F.R.**

**HIGH COURT OF ORISSA: CUTTACK**  
**W.P.(C) Nos.11324 of 2010 & 12103 of 2009**

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

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**In W.P.(C) No.11324 of 2010**

Talcher Angul Meramundali Development Authority,  
represented through its Secretary,  
Sri Uddhaba Chandra Majhi,  
At/P.O./P.S./Dist. Angul ... Petitioner

-Versus-

Ritarani Mohapatra,  
D/o. Sibaprasad Mohapatra,  
At/P.O. Hukurisingha,  
Dist: Angul ... Opp. Party

For Petitioner : M/s. Srinivas Mohanty,  
S. Moharana, S. Routray &  
R. Pattnaik

For Opp. Party : Mr. D.K. Pani

AND

**In W.P.(C) No.12103 of 2009**

Management of M/s. Talcher Angul Development Authority,  
represented through its Secretary,  
Mr. Nirod Kumar Mishra,  
S/o. Late Nabakishore Mishra,  
At/P.O./P.S./Dist. Angul ... Petitioner

-Versus-

Presiding Officer, Labour Court,  
Bhubaneswar, Dist: Khurda and another ... Opp. Parties

For Petitioner : M/s. Srinivas Mohanty,  
S. Routray, N.K. Sahoo,  
N. Tripathy & D. Barik

For Opp. Party : Mr. D.K. Pani &  
S.K. Tripathy  
[For Caveator]

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P R E S E N T:

**THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Date of Judgement : 30.11.2012

**B.N. Mahapatra, J.** In writ petition bearing W.P.(C) No.11324 of 2010 challenge has been made to the award dated 28.06.2007 (Annexure-5) passed by the Presiding Officer, Labour Court, Bhubaneswar in Industrial Dispute Case No.22 of 2002 and the order dated 19.03.2010 (Annexure-6) passed by the Presiding Officer, Labour Court, Bhubaneswar in Restoration Misc. Case No.6 of 2007 arising out of I.D. Case No.22 of 2002.

2. Similarly, in writ petition bearing W.P.(C) No.12103 of 2009 challenge has been made to the award dated 28.06.2007 (Annexure-1) passed by the Presiding Officer, Labour Court, Bhubaneswar in Industrial Dispute Case No.21 of 2002 and the order dated 17.03.2009 (Annexure-2) passed by the Presiding Officer, Labour Court, Bhubaneswar in Restoration Misc. Case No.7 of 2007 arising out of I.D. Case No.21 of 2002.

3. Both the writ petitions have been filed by the Management of Talcher Angul Meramundali Development Authority (for short, "TAMDA") challenging the legality and validity of the awards dated 28.06.2007 and the restoration orders dated 19.03.2010 and 17.03.2009 rejecting the petition for restoration of ex parte award dated 28.06.2007.

4. Since the issues involved and the grounds of challenge in both the writ petitions are similar, they are dealt with together by this common judgment.

5. For the purpose of convenience, the submissions made by Mr. S. Mohanty, learned counsel for the petitioner in W.P.(C) No.11324 of 2010 are taken for consideration to adjudicate the issues involved in both the cases. According to Mr. Mohanty, TAMDA is one of the Development Authorities of the Government under the Department of Housing and Urban Development and as per guidelines issued by the Government, it has to meet its sustenance out of its own source of income. While struggling for its sustenance without any justification and without any workload and in contravention of the guidelines and/or instruction of the Government as many as 17 nos. of outsiders were engaged on adhoc basis for a span of 44 days and that had been continuing periodically. But on account of such appointments, the Authority has suffered from acute financial crisis which being accumulated over a period of time has become Rs.48 lakh and as a matter of fact, for the year 1998-99, the Authority (TAMDA) has received a grant of Rs.8,37,668/- whereas the expenditure against the said purpose was Rs.20,44,377/- causing a deficit of about Rs.12 lakh. Because of financial crisis TAMDA has reviewed its position and found out that the extra appointments made in the department without any

financial provisions has been a recurring threat to it and this being the situation, the further engagement of the said ad hoc employees including the opposite parties was refused. In the process, 17 nos. of ad hoc employees were refused engagement. Being dissatisfied, some of them, approached this Court and some of them approached the Labour Court, Bhubaneswar in industrial dispute and in both categories of cases they have all prayed for reinstatement into service. This Court vide order dated 04.08.2008 in O.J.C. No.11686 of 2000 directed the TAMDA authority that in the event any recruitment in future for the post of Junior Accountant or post commensurate with the qualification of the applicants, the applicants shall be given preference, if they apply for the same and if they would be over-aged, relaxation of his age shall be considered. It was further directed that in the meantime, if any adhoc employee is required by TMADA, the opposite party-Ritarani Mohapatra shall be given preference first. However, the Labour Court, Bhubaneswar in its *ex parte* order dated 28.06.2007 directed the petitioner for reinstatement into service inasmuch as the compliance under Section 25 F of the Industrial Disputes Act, 1948 (for short, "I.D. Act") has not been followed while terminating the service of the workman. The said order was notified in the Official Gazette on 05.10.2007. Against the *ex parte* order, the petitioner-TAMDA filed a petition dated 12.11.2007 praying for setting aside the *ex parte* order

for adjudication upon hearing both the sides, but since filing of such petition was barred by limitation of about 6 days as per the statutory limit, the said petition was rejected by the Labour Court, Bhubaneswar. The learned Labour Court, Bhubaneswar should have extended the period of limitation of 30 days in exercise of its incidental and ancillary power, when there is a financial crunch and the matter should be remanded to the Labour Court, Bhubaneswar for fresh adjudication.

6. Mr. Mohanty further submitted that the reference is bad in law. The Government in the Department of Finance have imposed ban on such appointments vide Circular No.17815(45)/F dated 12.04.1993. It is further submitted that out of 41 staffs, total regular employees are 15, adhoc employees are 17 (for the period of 44 days) and D.L.R. employees are 9. The Government has also issued another Circular vide No.14445 dated 04.05.2000 directing the TAMDA not to entertain temporary engagement without prior approval.

It was further submitted that the workman had not challenged the action of the management who kept in abeyance the order of appointment dated 25.02.1995 for which they are not entitled to the relief they claim.

7. Mr. D.K. Pani, learned counsel appearing for opposite party-Ritarani Mohapatra submitted that the petitioner has filed the

aforesaid two writ petitions with a prayer to set aside the ex parte award dated 28.06.2007 and the order dated 19.03.2010 but no ground has been taken in the writ petition for challenging the same. It is further submitted that without taking any ground in the writ petition, various submissions made during the course of hearing may be ignored. Referring to Rule 3(1) of the Odisha High Court Rules under Chapter XV, Mr. Pani, submitted that application under Articles 226 and 227 of the Constitution must be accompanied by a statement inter alia stating the grounds on which the proceeding is sought to be challenged. The word 'shall' in the rules indicates that the provision is mandatory. Learned counsel for the petitioner has urged many points which are not part of the pleadings nor the opposite party was notified about the points sought to be urged before this Court.

8. Further, placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *V.K. Majotra vs. Union of India and others*, AIR 2003 SC 3909, Mr. Pani, submitted that the Court should decide the points raised in the petition and the parties cannot be taken by surprise. Neither the petitioner challenged the reference on earliest opportunity nor in the present writ petition but made a submission without pleading that no appointment order was issued after 25.02.1995 for which the reference showing the date of termination on 04.03.2000 is bad. The said submission is contrary

to its own pleadings in paragraph-8 where it was admitted that the workman was in service till 04.03.2000. The learned Labour Court, Bhubaneswar has also given a clear finding basing on Ext.1 series that the workman was in service till 04.03.2000. Neither the reference is bad nor such submission can be considered being beyond the pleadings.

9. Further placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *Sangham Tape Co. vs. Hans Raj*, AIR 2004 SC 4776, Mr. Pani submitted that after 30 days of publication of Award, the Award becomes enforceable and labour Court becomes functus officio. Therefore, the Labour Court, Bhubaneswar has no jurisdiction to entertain any application to set aside the award. The petitioner has failed to point out any procedural irregularity for interference of this Court. Annexures-1 and 2 of the writ petition clearly reveal that the ban is on the further recruitment and there was no direction for termination of the existing staff or reduction of staff. Further placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *Gammon India Ltd. vs. Niranjan Dass*, AIR 1984 SC 500, Mr. Pani, submitted that termination of service on account of recession amounts retrenchment and non-compliance of the provision of Section 25-F makes the retrenchment void ab initio and the workman is entitled to full back wages and reinstatement in service. The workmen have

completed 240 days in the preceding year prior to the date of termination and they are entitled to benefits of Section 25-F of the Act which has not been complied with by the Management. Therefore, the present writ petitions have nothing to do in the facts and circumstances of the case. In support of his contentions, Mr. Pani, relied upon the decision of the Hon'ble Supreme Court in the case of *M/s. United India Insurance Co. Ltd. V. Davinder Singh*, 2007 AIR SCW 6866. As per Section 11(3), the Labour Court has the power of Civil Court vested under CPC to the limited extent only and the provisions of Order 9, Rule 13 CPC has no application. The appropriate rule applicable to the instant case is Rule 10-B of the Orissa Industrial Disputes Rules, 1959 which requires the application for setting aside ex parte order is to be filed before the award is passed. It is also well settled that no order can be passed dehors the Statute and rules framed thereunder. There is no error on the face of the record pointed out by the petitioner for invocation of the power under Article 226 of the Constitution. The workmen have completed more than 240 days service preceding the date of termination. Thus, they were in continuous service and no notice to pay any compensation was given before refusal of employment/termination. Thus, the opposite party-Ritarani Mohapatra is entitled to reinstatement with full back wages.



10. On the rival contentions advanced by the parties, the following questions fall for consideration by this Court:

- (i) Whether the petitioner-Management can urge any point(s) without any pleadings to that effect in the writ petition ?
- (ii) Whether the Labour Court, Bhubaneswar is justified in passing the ex parte award dated 28.06.2007 ?
- (iii) Whether the Labour Court, Bhubaneswar is justified in passing the order dated 19.3.2010 (Annexure-6) by rejecting the application filed by the petitioner to set aside the ex parte award dated 28.06.2007, which was filed after the statutory period of limitation of 30 days provided under Section 17A of the I.D. Act ?
- (iv) Whether the relief claimed in the writ petition can be granted to the petitioner ?
- (v) What order ?

11. So far question No.(i) is concerned, law is no more res integra that a party is to plead its case and produce/adduce sufficient evidence to substantiate his submission made in the petition. In case, the pleadings are not complete, the Court is under no obligation to entertain the pleadings.

12. In ***Bharat Singh & Ors. Vs. State of Harayana & Ors,*** ***AIR 1988 SC 2181***, the Hon'ble Supreme Court has held as under:

“... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the

point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.”

13. The Hon’ble Supreme Court in the case of **V.K. Majotra** (*supra*), held as under:

“8. ....With respect to the learned Judges of the High Court, we would say that the learned Judges have overstepped their jurisdiction in giving a direction beyond the pleadings or the points raised by the parties during the course of the arguments. The writ courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to notice on the additional points to satisfy the principles of natural justice. Parties cannot be taken by surprise. We leave the discussion here.”

14. Rule 3(1) of the Odisha High Court Rules under Chapter XV provides that the application shall be accompanied by a statement stating the name and description of the applicant against whom the relief is sought and the particulars of

proceeding/proceedings which are sought to be challenged on the grounds on which the proceeding is sought. The rule also provides that the material documents referred to or relied upon in the application shall also be filed in the application.

15. In the instant case, challenging the correctness of the orders impugned in the writ petition, the petitioner *inter alia* argued that the reference in question is bad in law; the workman having not challenged the action of the management, who kept in abeyance the order of appointment dated 25.02.1995 they are not entitled to the relief claimed by them; and that the Tribunal exercising its incidental and ancillary power should have extended the period of limitation provided under Section 17-A of the I.D. Act and set aside the impugned award.

In view of the above settled legal proposition, the above argument of Mr. Mohanty, learned counsel for the petitioner which have not been pleaded in the writ petition, cannot be taken into consideration while examining the correctness of impugned orders.

16. Question No.(ii) is as whether the Labour Court, Bhubaneswar is justified in passing the ex parte award dated 28.06.2007.

The basic stand of the petitioner is that due to financial crunch, opposite party-Ritarani Mohapatra was disengaged from service, and this Court should remand the matter to the Labour

Court, Bhubaneswar. This cannot be a ground to set aside the ex parte Award dated 28.06.2007. The petitioner has to plead and prove why it remained absent on the date the case was fixed for hearing. From the impugned Award dated 28.06.2007 (Annexure-5), it reveals that the petitioner-Management has been set ex parte vide order dated 11.11.2002. In the entire writ petition, the petitioner has not explained as to why it remained absent on 11.11.2002. In absence of any such pleadings in the writ petition, the relief claimed and/or prayer made to set aside the Award dated 28.06.2007 cannot be granted on the ground that the petitioner was suffering from financial crunch.

17. Question No.(iii) is as to whether the Labour Court, Bhubaneswar is justified in passing order dated 19.3.2010 (Annexure-6) by rejecting the application filed by the petitioner to set aside the ex parte award dated 28.06.2007, which was filed after the statutory period of limitation of 30 days provided under Section 17A of the I.D. Act.

18. As held above, the argument of Mr. Mohanty that the learned Labour Court, Bhubaneswar by exercising his incidental and ancillary power should have extended the period of limitation beyond 30 days as prescribed under Section 17A of the I.D. Act and should have allowed the petitioner's prayer made in its petition dated 12.11.2007 cannot be taken into consideration to examine the

correctness of the order dated 19.03.2010 as there is no such pleading in the writ petition.

19. Apart from above, Section 17-A(1) of the I.D. Act specifically provides that an award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 17 of the I.D. Act.

20. The Presiding Officer, Labour Court, Bhubaneswar being a creature of the Statute cannot travel beyond the statutory provisions. Law is well settled that Court cannot derive jurisdiction apart from the Statute (Vide *United Commercial Bank Ltd. Vs. Their Workmen* AIR 1951 SC 230; *Smt. Nai Bahu Vs. Lala Ramarayan & Ors.*, AIR 1978 SC 22; *Natraj Studios (P) Ltd. Vs. Navrang Studio & Anr.*, AIR 1981 SC 537; *Union of India & Anr. Vs. Deoki Nandan Aggarwal*, AIR 1992 SC 96; *Karnal Improvement Trust Vs. Prakash Wanti (Smt.) (Dead) & Anr.*, (1995) 5 SCC 159; and *Collector of Central Excise, Kanpur Vs. Flock (India) (Pvt.) Ltd., Kanpur*, AIR 2000 SC 2484).

21. At this juncture, it is necessary to extract here the relevant paragraph of order dated 19.03.2010 passed in Restoration Misc. Case No.6 of 2007 arising out of I.D. Case No.22 of 2002, wherein reason has been given by the Labour Court for not entertaining petition filed by the petitioner-Management on 12.11.2007 praying for setting aside the ex parte Award dated 28.06.2007.

“5. On perusal of the case record, I found that on 11.11.2002 the case was posted for hearing of the case and consideration of the petition of the workman for engagement of the advocate and when no step was taken on behalf of the management, the management was set ex-parte and after number of adjournments the evidence was taken up and lastly an Award was passed on 28.6.2007 and was published in the official Gazette on 5.10.2007 vide Notification No.11328 of the Government of Orissa, Labour and Employment Department. In view of the authority reported in 2004 LLR 1098 Supreme Court of India in M/s. Sangham Tape Company vs. Hans Raj, it has been held that once an award become enforceable in terms Section 17-A of the Industrial Disputes Act, the Labour Court or the Tribunal does not retain any jurisdiction for setting aside of an ex parte award after the expiry of 30 days from the date of its publication in the Gazette e.g., the same having functus officio. The Labour Court can exercise its jurisdiction to set aside an ex parte award only when application is moved within 30 days of publication of award. But in the instant case the petitioner-management was moved for setting aside the ex parte award on 12.11.2007 which is beyond 30 days of publication of Award. So this Court becomes functus officio. Hence, the Misc. Case is liable to be dismissed accordingly.”

22. The Hon'ble Supreme Court in the case of **Sangham Tape Co.** (*supra*), held as under:

“8. The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award, but having regard to the provision contained in Section 17-A of the Act, an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication, and

only up to that date, it has the power to entertain an application in connection with such dispute.”

23. In view of the above, the Labour Court, Bhubaneswar is fully justified in rejecting the application of the petitioner filed on 12.11.2007 i.e. beyond the period of limitation of 30 days prescribed under Section 17-A of the I.D. Act with a prayer for setting aside the impugned Award dated 28.06.2007.

24. Question No.(iv) is whether relief claimed in writ petition can be granted to the petitioner. For the reasons stated above, the relief claimed in the writ petitions cannot be granted to the petitioner.

25. On perusal of the impugned Award dated 28.06.2007 passed under both the Industrial Dispute Cases reveals that the Labour Court, Bhubaneswar has given valid and cogent reasons to hold that termination of service of opposite party-Ritarani Mohapatra in W.P.(C) No.11324 of 2010 and opposite party No.2-Debasis Mishra in W.P.(C) No.12103 of 2009 with effect from 04.03.2000 is illegal and the said workmen are entitled to the relief of reinstatement in service and not to the relief of any back wages.

In W.P.(C) No.11324 of 2010, the Labour Court inter alia observed/held as under:-

“.....It is now to be examined from the evidence on record as to whether the workman was in continuous service within the meaning of Section 25-B of the I.D. Act in 12 calendar months preceding to the date of her termination from service on 4.3.2000 i.e. between the period 5.3.99

to 4.3.2000. Ext.1 series are the xerox copies of letters of appointment of the workman under the management. From these documents it is seen that between the period 5.3.99 to 4.3.2000 the workman had worked for 358 days under the management and therefore, it is clear that the workman was in continuous service within the meaning of Section 25-B(2)(a)(ii) of the I.D. Act. The specific evidence of the workman W.W.1 is that the management did not comply the provisions under Section 25-F of the I.D. Act while terminating her service. The provision under Section 25-F of the I.D. Act lays down certain pre-conditions for the management in the event of retrenchment of a workman who is in continuous service within the meaning of Section 25-B of the I.D. Act. In the decision *Shyam Sundar Rout v. Orissa State Road Transport Corporation and others* reported in 69(1990) C.L.T. 357 it has been held by the Hon'ble Division Bench of the Orissa High Court that the compliance of the provisions under Section 25-F of the I.D. Act is mandatory even if employment is contractual or for specific term. In the instant case there had been no compliance of the provisions under Section 25-F of the I.D. Act by the management by giving one month's prior notice or one month's wages in lieu of notice or retrenchment benefits as required under the I.D. Act simultaneously with the retrenchment order and therefore the retrenchment order of the workman from her service is invalid in the eye of law. Similar view has been taken by the Hon'ble Apex Court in the case *General Manager, Haryana Roadways v. Rudhan Singh* reported in AIR 2005 SUPREME COURT 3966. In the said Judgment the Hon'ble Apex Court have hold that the benefit of 240 days of continuous service is necessary and not one year of complete service. Thus the non-compliance of the provision of Section 25-F of the I.D. Act renders the termination of service of the workman with effect from 4.3.2000 illegal and therefore unjustified. Since the terminator of service is illegal, the workman is entitled to the benefit of reinstatement in service."



Similar reasons are given in W.P.(C) No.12103 of 2009 to hold that the workman in that case is entitled to the benefit of reinstatement in service.

26. In the result, the writ petitions are dismissed.

No order as to costs.

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**B.N. Mahapatra,J.**

*Orissa High Court, Cuttack  
The 30<sup>th</sup> November, 2012/ss/skj.*