

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No. 3330 of 2017
(I.A. no.12445 of 2023)*****State Social Welfare Board, Khurda* *Petitioner******-versus-******Sanjubala Sahoo and others* *Opposite Parties*****Advocates appeared in the case:**

For petitioner - Mr. Manas Chand, Advocate

For Opp. Parties - Mr. A.K. Nanda, AGA
Mr. S.K. Das, Advocate
Mr. P.K. Das, Advocate
Mr. S. Mohanty, Advocate**CORAM:****JUSTICE ARINDAM SINHA
JUSTICE MRUGANKA SEKHAR SAHOO****J U D G M E N T**

**Dates of Hearing: 3rd January, 2024 and 16th January, 2024
Date of Judgment: 16th January, 2024**

ARINDAM SINHA, J.

1. Mr. Chand, learned advocate appears on behalf of petitioner-management and presses for hearing of the writ petition. Mr. Das,

learned advocate appears on behalf of opposite party no.1 (workman) and submits, there have been several directions for compliance with provision in section 17-B in Industrial Disputes Act, 1947. Lastly, his client made application (I.A. no.12445 of 2023) with prayer for relief to his client by payment at the rate of minimum wages prescribed by the Government from time to time with effect from 31st December, 2016 (date of award) till date, deducting ₹1,60,113/- already paid.

2. Mr. Mohanty, learned advocate appears on behalf of opposite party no.2 (contractor) and Mr. Nanda, learned advocate, Additional Government Advocate for opposite party no.4.

3. Mr. Das relies on **order dated 10th April, 2000** made by the Supreme Court in **Civil Appeal no.2578 of 2000 (Workmen Represented by Hindustan Vegetable Oils Corporation Ltd. v. Hindustan Vegetable Oils Corporation Ltd. and others)**. We reproduce below paragraphs-2 and 3 from the order.

“2. The order under challenge has been passed by a Division Bench of the High Court at Calcutta. Its operative portion states that the writ petition filed by the present appellants and their application under Section 17B of the Industrial Disputes Act should be disposed of together, expeditiously. We are of the view that an application under Section 17B should be disposed of

before the principal petition and it should be disposed of most expeditiously.

3. We, therefore, set aside the order under challenge to the extent that it requires the disposal of the writ petition and the Section 17B application together and we direct that the Section 17B application should be disposed of with great promptitude and before disposal of the writ petition.”

He submits, there first be order on his client's said application before proceeding to hear the writ petition. Mr. Das submits further, his client has other remedy under section 11(10).

4. Section 17-B is reproduced below.

“17B. [Payment of full wages to workman pending proceedings in higher Courts. - Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]”

There is no inbuilt mechanism in the provision for enforcement, relating to adjudication of the writ petition being a proceeding against such award. Question before the Supreme Court was whether the section 17-B application and the writ petition should be disposed of together as directed by the High Court. The Supreme Court answered the question saying the section 17-B application should be disposed of with great promptitude and before disposal of the writ petition. This is what Mr. Das is asking for.

5. Question before us is, in the circumstances of no inbuilt mechanism in the provision, how is the application to be disposed of? To answer the question it is to be carefully seen what stands provided by the section. It is clear that where a workman has been successful before, inter alia, a labour Court in getting an award directing reinstatement, pendency of any proceeding preferred against such award by the employer, makes it liable to pay the workman during the period of pendency, full wages last drawn by him, inclusive of any

admissible maintenance allowance with the proviso of mitigation on satisfaction that the workman had been employed in the meantime receiving adequate remuneration. Nothing has been demonstrated before us by petitioner or opposite party no.2 for our obtaining satisfaction that the workman got employment in the meantime. Likewise there is nothing in the provision for negating its effect, in event the employer is successful in the proceeding and has the award set aside. In the circumstances, it is a mounting claim for relief. Ordinarily the workman has a liquidated claim as added to month by month for length of pendency of the proceeding.

6. It is not that the workman is remediless in the situation where the employer does not pay or give relief to the workman, on it having filed a proceeding challenging such award. In this particular case, the workman has asked for relief at the effective minimum wage rate notified from time to time. She must first approach the labour Court under section 33-C(2) for computation of her entitlement. We however are not taking view regarding what all remedies for enforcement of this relief the workman has. We have only indicated as above.

7. The workman may find her remedy also in accordance with our above view. The application is disposed of.

8. List the writ petition for hearing on 2nd February, 2024.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Sks

