

**State of Orissa and anr. Vs. Sri Niranjan Lenka and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/536753](http://sooperkanoon.com/536753)

**Court :** Orissa

**Decided On :** Sep-15-2009

**Reported in :** 109(2010)CLT298

**Judge :** B.K. Patel, J.

**Appellant :** State of Orissa and anr.

**Respondent :** Sri Niranjan Lenka and anr.

**Disposition :** Application allowed

**Judgement :**

**B.K. Patel, J.**

1. In this writ application the Petitioners have assailed the legality of Order Dated 29.07.2002 passed by the Presiding Officer, Labour Court, Jeypore in Industrial Dispute Misc. Case No. 70 of 2001 ' directing the Petitioner No. 2 to pay to the Opposite Party No. 1-workman interest at the rate of 18 per cent per annum for the period from 25.10.1990 to 08.01.1999 on the amount of back wages of Rs. 21,611 within a period of three months with further stipulation that in case of default of payment of the interest amount within the stipulated period interest at the rate of 9.05 per cent per annum on the total sum of interest calculated till the date of actual payment shall be payable to the Opp. Party No. 1.

2. Opposite Party No. 1 was appointed as Dumper Operator Grade-III with the Balimela Dam Project on 01.01.1969. His service was terminated on 11.06.1970. On a reference under Sub-section (5) of Section 12 read with Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') made by the State Government for adjudication of the legality of termination, I.D. Misc. Case No. 85 of 1977 was initiated. In the award, published in Official Gazette on 6th February 1982, Learned Labour Court, Orissa, Bhubaneswar, held that the termination of services of Opposite Party No. 1 by the management of Balimela Dam Project was illegal & not justified & that Opposite Party No. 1 was entitled to be reinstated in service with full back wages. Pursuant to the award Opposite Party No. 1 was reinstated in service on 25.10.1990. However, he resigned from service on 07.01.1991. Opposite Party No. 1 was paid back wages amounting to Rs. 26,611 for the period from 10.06.1970 to 05.02.1976 on 08.01.1999. Being dissatisfied, Opposite Party No. 1 instituted I.D. Misc. Case No. 70 of 2001 claiming interest on back wages from 11.06.1970 till payment in response to which the impugned order was passed exparte in the absence of the Petitioners.

3. Petitioners' case is that after termination from service as Dumper Driver of the Balimela Dam Project, Opp. Party No. 1 was employed with South Eastern Coalfields Limited as Dumper Operator w.e.f. 06.02.1976. Suppressing the fact of such employment with South Eastern Coalfields Limited the Opposite Party No. 1 could manage to obtain the award for reinstatement & back wages in I.D. Misc. Case No. 85 of 1977. After passing of the award Opposite Party No. 1 joined in his job in the Balimela Dam Project solely with the intention of getting back wages including for the period during which he was employed with South Eastern Coalfields Limited. When such fraudulent motive of Opposite Party No. 1 to get double benefit was detected, decision was taken to stop payment of back wages. Ultimately, the Opp. Party No. 1 was paid back wages for the period from 11.06.1970 to 05.02.1976. Due to conduct of Opposite Party No. 1 in suppressing the fact of his employment with the South Eastern Coalfields Limited & inquiry made in that connection, there was delay in payment of back wages in time. However, Learned Court below without taking note of the conduct of Opp. Party No. 1 passed the impugned order directing payment of interest.

4. In the counter affidavit the Opposite Party No. 1 does not dispute & rather admits regarding his employment with South Eastern Coalfields limited. It is averred that in view of such employment he did not claim back wages from 06.02.1976 to 25.10.1990 & rather claimed back wages from 11.06.1970 to 05.02.1976. It is categorically pleaded that Opposite Party No. i did not claim back wages for the period during which he was employed with Coalfields Limited. However, he claimed interest on the amount of back wages of Rs. 21,611 for the period from 06.02.1982 to 08.01.1999 in view of the fact that despite publication, of award passed on 01.12.1981 in I.D. Misc. Case No. 85 of 1977 in the Official Gazette on 06.02.1982, he was reinstated in service on 25. 10. 1990 & paid back wages on 08.01.1999.

5. Sri M.P. Rath, Learned Additional Government Advocate appearing for the Petitioners submitted that though I.D. Misc. Case No. 85 of 1977 was initiated & disposed of when Opposite Party No. 1 was employed with South Eastern Coalfields Limited, he suppressed the fact of such employment. Award for reinstatement & payment of back wages was obtained by practising fraud on the Learned Labour Court. When steps were being taken for payment of Opposite Party No. 1 's back wages from the date of termination, i.e., 11.06.1970 to the date of reinstatement, i.e., 25.10.1990, information was received that the Opposite Party No. 1 was employed with South Eastern Coalfields Limited. In course of enquiry conducted to ascertain the veracity of such information communications were made with South Eastern Coalfields Limited. Efforts were also made to ensure that Opp. Party No. 1 did not get double wage benefits from the Petitioners as well as South Eastern Coalfields Limited. In the process there was delay in payment of back ages computed for the period prior to Opposite Party No. 's employment with South Eastern Colliery Limited. Opposite Party No. 1 not only suppressed the fact of employment in course of the proceeding in I.D. Misc. Case No. 85 of 1977 but also in course of the proceeding in I.D. Misc. Case No. 70 of 2001. Thereby, Learned Labour Court was misled by Opp. Party No. 1 to pass the impugned order directing payment of interest.

6. Sri N. Lenka, Learned Counsel appearing for the Opposite Party No. 1 contended that Opposite Party No. 1 did not make any attempt to cancel his

employment with South Eastern Coalfields Limited. Rather, he voluntarily accepted back wages for the period from the date of termination to the date of reemployment. Petitioners, without sufficient cause, delayed payment & deprived Opposite Party No. 1 of his back wages, which he was entitled to receive in terms of award passed in I.D. Misc. Case No. 85 of 1977.

7. Perusal of award passed in I.D. Misc. Case No. 85 of 1977 as well as the impugned order in I.D. Misc. Case No. 70 of 2001 does not reveal any reference to employment of Opposite Party No. 1 with South Eastern Coalfields Limited. Petitioners have filed letter dated 12.04.1991 of South Eastern Coalfields Limited, which is at Annexure-1 to the writ application, confirming that Opposite Party No. 1 was employed with the Coalfields with effect from 06.02.1976. In the letter it has been mentioned that Opposite Party No. 1 never informed the authorities of South Eastern Coalfields Limited regarding his previous employment with & dismissal from Balimela Dam Project. It also appears from the letter that Opposite Party No. 1 did not inform the authorities of South Eastern Coalfields Limited regarding his reinstatement & reemployment with Balimela Dam Project. Thus, it is apparent that Opposite Party No. 1 not only suppressed the authorities of South Eastern Coalfields Limited regarding his previous appointment & re-employment with the Petitioners but also suppressed the Petitioners regarding his employment with South Eastern Coalfields Limited. Therefore, the contention made on behalf of the Petitioners that Opposite Party No. 1 resigned when enquiry was initiated regarding his fraudulent conduct does not appear to be unfounded. Therefore, it is obvious that the impugned order directing the Petitioners to pay interest on the amount of back wages was passed by the Learned Labour Court without being informed that the Opposite Party No. 1 had been employed with South Eastern Coalfields Limited during the period of his dismissal. It is found that the Opp. Party No. 1 did not approach the Labour Court with clean hands. In such circumstances, the order obtained by practising fraud on the Labour Court cannot be countenanced & is liable to be quashed.

Hence, the writ application is allowed & the impugned order is also quashed.