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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 12498 OF 2018

(An application under Articles 226 and 227 of the Constitution of India)

M/s. Orient Paper Mills,
Bidyut Marg, Bhubaneswar *Petitioner*

-Versus-

Abhimanyu Behera *Opp. Party*

Advocates appeared:

For Petitioner : *Mr. Deepak Kumar Pani,*
Advocate

For Opp. Party : *Mr. Susanta Dash,*
Advocate

CORAM:

MR. JUSTICE K.R. MOHAPATRA

MR. JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 18.02.2026 Date of Judgment:18.03.2026

JUDGMENT

S.K.Mishra, J;

1. The present writ petition has been preferred by the Management of Orient Paper Mills, Bhubaneswar, under Article 226 and 227 of the Constitution of India challenging the award dated 31.03.2018, passed by the learned Labour Court, Bhubaneswar in I.D. Case No.104 of 2000.



2. Vide the said award, learned Labour Court, Bhubaneswar, answered issue no.1 regarding termination of service of the Opposite Party-Workman by way of refusal of employment w.e.f 14.02.1999 to be illegal and unjustified. Accordingly, so far as issue No.2 regarding relief, it granted the relief of a lump sum compensation of Rs.4,00,000/- (Rupees Four Lakhs only), to be paid to the Opposite Party-Workman within a period of three months from the date of publication of the said award, with an observation that if the Management fails to pay such compensation awarded in favour of the Opposite Party-Workman, the same shall carry a simple interest of 6% per annum till it is paid to the Opposite Party-Workman.

3. As is revealed from the record so also impugned award, passed in I.D. Case No.104 of 2000, the case of the Opposite Party-Workman (Second Party-Workman before the Court below) is that he was initially engaged under the Resident Officer of the Management at Bhubaneswar since 1984 on a daily wage of Rs.25/-. Subsequently, he was appointed as a Watchman vide office order dated 02.09.1993 on a consolidated salary of Rs.885/- per month w.e.f 01.08.1993. Thereafter, the workman approached the District Labour Officer (DLO), Khordha vide his petition dated 23.02.1999 alleging non-payment of arrear wages, statutory bonus and minimum wages etc. During joint enquiry, the Management contended that his service has already been terminated. It was the case of the Opposite Party-Workman that



the Management abruptly terminated his service without observing any formalities and without affording any opportunity of hearing and thereby violating the principles of natural justice.

4. It was further case of the Opposite Party-Workman before the Labour Court that neither he had been served with any notice nor paid with notice pay and compensation before termination of his service by way of refusal of employment. Hence, being aggrieved, he approached the Labour Authority, who started a conciliation proceeding, which failed.

5. Consequently, the reference was made to the Labour Court, Bhubaneswar for adjudication of the dispute regarding termination of service of the Opposite Party-Workman as Watchman w.e.f. 14.02.1999 by way of refusal of employment.

6. Being noticed, the Petitioner-Management (the First Party-Management before the Court below) appeared and filed its written statement, questioning the maintainability of reference on the ground that the Opposite Party-Workman is not coming under the definition of "Workman", as defined under Section 2(s) of the Industrial Disputes Act, 1947, shortly, the I.D. Act.

7. A further stand was taken before the Court below that all the documents relied upon by the Opposite Party-Workman are forged and created for the purpose of the said case. It was further contended that at no point of time, there was any relationship of employer and employee between the Management



and the Opposite Party-Workman. Hence, the question of reinstatement, payment of back wages and other service benefits does not arise. Accordingly, a prayer was made to reject the prayer of the Workman with costs.

8. As is further revealed from the record, the Opposite Party-Workman filed a Rejoinder in response to the said written statement filed by the Management, reiterating his plea already taken in the claim statement. It was further contended in the Rejoinder that as the First Party- Management disputes the status of the Second Party to be a Workman, the burden lies on the First Party-Management to prove the same. It was further contended that the stand of the First Party-Management that the Second Party-Workman was not an employee under the First Party at any point of time is false and concocted.

9. As is revealed from the Trial Court Record (TCR), the Opposite Party-Workman examined himself as the sole AW/WW, through whom documents were marked as Exhibits-1 to 6 with objection, excepting Exhibit 6.

10. It is further revealed from the TCR that though the Management examined its Factory Manager as the sole MW to negate the claim of the Workman, but no document was exhibited from the side of the Management to substantiate the said stand taken in its written statement.



11. Based on the said pleadings and evidence on record (both oral as well as documentary), the learned Labour Court held that there exists employer and employee relationship between the Management and the Workman. That apart, it was further held that the Opposite Party-Workman was initially engaged as Watchman under the Management on the daily wage basis w.e.f 01.11.1984 and subsequently, he was appointed on consolidated salary basis w.e.f 01.08.1993 and he had rendered continuous service under the management from 01.11.1984 till he was refused employment w.e.f 14.02.1999 illegally and he is a Workman as defined under Section 2(s) of the I.D. Act.

12. It is further revealed from the impugned award that, while answering issue no.1 regarding existence of employer and employee relationship so also legality and justifiability of the action of the Management in refusing the employment of the Workman w.e.f 14.02.1999, the learned Labour Court, apart from dealing with the documentary as well as oral evidence on record exhaustively, also relied on various judgments of the Supreme Court reported in AIR 2006 SC 3229 : (2006) 12 SCC 233 (*Steel Authority of India Ltd. Vs. Union of India & ors., Sita Ram & ors. Vs. Moti Lal*, reported in (2008) LLR SC and in *Director Fisheries and Terminal Division Vs. Bhikubhai*, reported in AIR 2010 SC 1236.

13. So far as issue no.2 regarding what relief the Workman is entitled to, while answering the said issue, the



learned Labour Court, taking into consideration that the production activity of the Management of Orient Paper Mills at Brajaraj Nagar has been stopped since January, 1999 and the Workman has already attained the age of 60 years and taking a view that relief of reinstatement and back wages would not be appropriate to be awarded in favour of the Second Party, instead, it awarded a lump sum compensation of Rs.4,00,000/- (Rupees Four Lakhs only) to be payable to the Second Party-Workman within a period of three months from the date of production of the award, failing which the management would be liable to pay 6% interest per annum on the said awarded amount till it is paid to the Workman.

14. The said award passed in I.D. Case No.104 of 2000 has been challenged basically on the ground that when it was disputed by the Management as to existence of employer and employee relationship, the burden of proof lies on the Opposite Party to establish his claim that he was a Workman under the Petitioner-Management. The initial burden being not discharged by the Opposite Party-Workman, his claim ought to have been rejected by the Labour Court without granting any relief to the Workman.

15. The award has also been challenged on the ground that though a dispute was raised by the Opposite Party on 23.02.1999 before the DLO, Bhubaneswar, wherein there was no allegation of termination or refusal of employment by the



Petitioner-Management w.e.f. 14.02.1999, without any conciliation proceeding with regard to alleged termination or refusal of employment, the appropriate Government had no jurisdiction to refer the matter for adjudication to the Labour Court.

16. The award of the learned Labour Court has also been challenged on the ground that the said award is perverse, as the same is allegedly based on evidence led by the Opposite Party-Workman beyond his pleadings. That apart, the learned Labour Court, while passing the impugned award, has relied upon the photocopies of the documents, which are marked as exhibits with objection and none of the other witnesses, who are conversant with the said documents, excepting the disputant Workman, were examined to prove the documents marked as Exhibits 1 to 5.

17. Mr. Pani, learned Counsel for the Petitioner, drawing attention of this Court to the complaint dated 23.02.1999 of the Opposite Party-Workman as at Annexure-1, submitted that though the Opposite Party raised an industrial dispute with regard to non-issuance of appointment order, regularization of his service, promotion, non-payment of minimum wages, so also bonus, however, he never raised any dispute regarding alleged refusal of employment w.e.f 14.02.1999, the reference dated 17.07.2000, as at Annexure-2, made by the appropriate Government, which is bad. Consequently, the award passed by



the learned Labour Court, Bhubaneswar based on such faulty reference is also bad, as vide the said award the learned Labour Court has adjudicated and passed the impugned award pertaining to a non-existent dispute.

17.1. Mr. Pani, learned Counsel for the Petitioner-Management, drawing attention of this Court to para 14 of the judgment of the Supreme Court in ***Director Fisheries Terminal Division (supra)***, further submitted that learned Labour Court mis-read and mis-applied the said judgment while passing the impugned award and drew adverse inference against the Management with a presumption that had the registers/ records been produced by the Management, it could have gone against it.

17.2. Mr. Pani, further submitted that as per the settled position of law, as held in ***Director Fisheries Terminal Division (supra)***, had the Opposite Party-Workman moved any application before the learned Labour Court calling for the records and had there been any direction to produce the said records, for non-production of such documents/ records, the learned Labour Court would have been justified in drawing adverse inference against the Management for non-production of such records/registers so also coming to a conclusion regarding shifting of burden of proof, relying on the said judgment .

17.3. Relying on the judgment in ***R.M. Yellatti Vs. Assistant Executive Engineer*** reported in AIR (2006) SC 355, learned Counsel for the Petitioner further submitted that even



though the provisions of Evidence Act do not apply to the proceedings under the I.D. Act, when there was a denial of existence of employer and employee relationship, the burden of proof lies on the Claimant/Workman regarding existence of such relationship so also working for 240 days in a given year. Such burden is discharged only upon the Workman stepping into the witness box and moving an application calling upon the Employer to produce before the Court the nominal muster rolls for the relevant period and other documents, including wage register and attendance register. In the given facts and circumstances, the Labour Court was not justified in drawing adverse inference against the Petitioner-Management for non-production of attendance register by the Management.

18. Per contra, Mr. Dash, learned Counsel for the Opposite Party-Workman, drawing attention of this Court to the Objection/Written Statement filed by the Management before the Court below in I.D. Case No.104 of 2000 as at Annexure-4, submitted that such a plea regarding not raising any dispute regarding refusal of employment has been taken for the first time before this Court. The Petitioner-Management never raised the issue regarding maintainability of the reference before the learned Labour Court, Bhubaneswar.

18.1. Drawing attention of this Court to the Failure Report dated 31.01.2000 as at Annexure-B to the Counter Affidavit, Mr. Dash further submitted that though the Opposite Party-Workman



filed a complaint petition dated 23.02.1999 before the DLO (Khordha) Bhubaneswar making an allegation regarding non-payment of arrear wages, statutory minimum wages, bonus etc., as the Management Representative took a stand before the Conciliation Officer that the Opposite Party-Workman is no more working with the Management w.e.f 14.02.1999, knowing so, the Workman filed another petition on 19.04.1999 addressed to the DLO (Khordha), Bhubaneswar alleging that the Management of Orient Paper Mills had refused the employment w.e.f 14.02.1999. The Management, in addition to its earlier view dated 03.04.1999, again submitted an additional written view on 15.07.1999 taking a stand therein that the workman used to be engaged occasionally on daily wage basis prior to 1995. As the Management did not agree for payment of legal dues of the workman and reinstatement so also payment of back wages, the Conciliation failed. A report was submitted by the Conciliation Officer-cum-Assistant Labour Officer, Bhubaneswar, based on which the reference was made by the State Government on 17.07.2000 to the learned Labour Court, Bhubaneswar for adjudication of the dispute regarding legality and justifiability of the action of the Management in refusing employment to the Opposite Party-Workman w.e.f 14.02.1999, who was working as a Watchman in Bhubaneswar office of the Management.

18.2. Mr. Dash, learned Counsel further submitted that since no such point was ever raised by the Management in its



WS before the learned Labour Court, Bhubaneswar regarding legality and validity of the reference dated 17.07.2000 so also allegedly not raising any dispute by the workman regarding refusal of employment, there was no occasion on the part of the workman to deal with such issue in his Rejoinder. That apart, in the present writ petition, impugned is the award passed in I.D. Case NO.104 of 2000, not the reference made by the State Government, as at Annexure-2.

18.3. Mr. Dash submitted that in view of the settled position of law, the Management ought to have challenged the said reference dated 17.07.2000 in a writ petition. The Labour Court, being creature of statute, could not have adjudicated the issue regarding the legality and validity of the said reference, even if it would have been raised before it by the Management.

18.4. Mr. Dash, further submitted that such an issue not being raised before the learned Labour Court, Bhubaneswar in I.D. Case No.104 of 2000, it is no more open for the Petitioner-Management to be raised for the first time before this Court. The sole intention of the Management is to mislead this Court and annul the impugned award on technical ground, which is otherwise legal and justified.

18.5. Mr. Dash, learned Counsel for the Opposite Party-Workman, drawing attention of this Court to the deposition of MW.1, what he deposed during his further cross-examination on SA on 08.03.2018, submitted that because of non-production of



the attendance register and not proving the said alleged register in existence before the Court below, the learned Labour Court was justified in drawing adverse inference against the Management for non-production of registers/records relying on the judgment of Supreme Court in *Sita Ram & ors. (supra)*. The learned Labour Court also drew adverse inference for not consulting with the officers, who were working under the pay roll of the Management and had endorsed on the documents marked as Exhibits-2 and 3 from the side of workman to ascertain the genuineness of such documents, so also non-examination of the said officers as Management Witnesses to disprove the said documents.

18.6. Relying on the observation made in internal page 6 & 7 of the impugned award, it was further argued by Mr. Dash, learned Counsel for the Opposite Party-Workman that so far as stand of the Management regarding non-existence of employer - employee relationship, in view of the divergent stand of the Management in its written statement vis-a-vis in the pleadings made in the RMC No.04 of 2007, so also the Failure Report, which formed part of the Reference, the learned Labour Court was justified in observing that the Management cannot be permitted to blow hot and cold in the same breath. It can never be allowed to say at one time that certain relationship exists and thereby obtain some advantage and then turn around and say it never existed, for the purpose of securing some other advantage.



18.7. Relying on the constitution bench judgment of Supreme Court in *Sayed Yakub Vs. K.S. Radha Krishna and others*, reported in AIR 1964 SC 477, learned Counsel for the Opposite Party-Workman argued that finding of facts reached by the Labour Court, as a result of appreciation of evidence on record, cannot be reopened or questioned in writ proceedings. An error of law, which is apparent from the face of the record, can be corrected by a writ, but not an error of facts, however grave it may appear to be. With regard to a finding of facts recorded by the Labour Court, a writ of certiorari can be issued if it is shown that in recording the said findings, the Court has erroneously refused to admit admissible and material evidences or has erroneously admitted inadmissible evidence, which has influenced the impugned findings. Similarly, if a finding of fact is based on no evidence, which would be regarded as an error of law, can be corrected by a writ of certiorari.

18.8. Mr. Dash, submitted that as none of the grounds urged in the writ petition, based on which the award has been impugned, is in conformity with the settled position of law, the present writ petition deserves to be dismissed in limine with costs.

18.9. Mr. Dash further argued that though the reference was made in the year 2000 to the Labour Court and the Petitioner-Management, being noticed, appeared in I.D. Case No.104 of 2000 and filed its written statement on 28.08.2001,



thereafter took repeated adjournments in the said case. Subsequently, to the reason best known, it did not appear and contest the said case on merit, for which an ex-parte award was passed on 02.02.2007. The Petitioner-Management filed an application for restoration, which was registered as R.M.C. No.04 of 2007, for setting aside the ex-parte award, which was ultimately dismissed on 07.11.2007. Being aggrieved, W.P.(C) No.133 of 2008 was preferred by the Petitioner-Management, which was ultimately disposed of on 24.01.2017, setting aside the ex-parte award so also the order passed in R.M.C. No.04 of 2007 and remitting the matter back to the Labour Court for re-hearing of Restoration Misc. Case No.04 of 2007.

18.10. On being so directed, the Restoration Misc. Case No.04 of 2007 was allowed. Ultimately, after giving ample opportunity to the parties, the learned Labour Court has passed the impugned award in I.D. Case No.104 of 2000. There being no infirmity in the said award, the writ petition deserves to be dismissed in limine with exemplary costs, as the conduct of the Petitioner-Management itself deserves so, wherefrom it can be well established that to harass and humiliate the Workman, the Petitioner-Management indulged into series of litigations thereby delayed final adjudication in I.D. Case No.104 of 2000 . Due to delay in adjudication of dispute, during pendency of the said I.D. Case before the learned Labour Court, the Workman attained the age of superannuation, for which no direction could be given by



the Labour Court to reinstate him with all consequential benefits in terms of the settled position of law.

18.11. Mr. Dash further submitted that the Petitioner-Management intentionally dragged the litigation to harass the Poor-Workman, who was illegally disengaged in the year 1999. He further submitted that, as per the instruction received, the present age of the Opposite Party-Workman is 72 years and he is having several old age ailments and at present bedridden. The poor workman, who is out of employment since 1999, to mitigate his financial hardship, is eagerly waiting to get the financial benefits which would be flowing out of the impugned award.

19. From the pleadings, documents on record (including TCR) and the case laws relied upon by the learned Counsel for the Parties, the only issue which emerges to be answered in the present writ petition is whether there is any perversity in the impugned award dated 31.03.2018 passed in I.D. Case No.104 of 2000.

20. As has been detailed above, the Workman, to prove his case adduced evidence as the sole WW and documents were also exhibited as Exhibits-1 to 6 through him to substantiate the existence of employer and employee relationship so also continuous working under the Management till the date of refusal of employment w.e.f 14.02.1999.



21. It is revealed from the impugned award that the Petitioner-Management took a specific stand in its written statement that the Opposite Party never served under it as a Workman. Thus, while dealing with issue no.1, the issue regarding existence of Employer-Employee relationship was discussed and decided first. Apart from relying on the evidence of P.W. No.1, so also the documents marked as Exhibits 1 to 3, in internal page 7 of the award, the learned Labour Court observed as follows:-

“The management emphatically urged that all the documents exhibited by the 2nd party are forged and manufactured. MW.1 during his cross-examination at para-15 categorically admitted that separate records and registers were being maintained for the employees working under Bhubaneswar Orient Paper Mills Office and the same would disclose whether the employee was actually working under the management during the relevant period or not. He also deposed under para-15 of his cross-examination that after going through the attendance register maintained from the year 1993 till date he was confirmed that the workman was never working in the concerned establishment and further admitted that the said register was not produced before this Court. The reason being best known to the management, what prevented it to file the above records/registers which are best piece of evidence for adjudication of the subject matter before this Court. So, there is every reason to presume that had the registers/records been produced, it could have gone against the management. Therefore, for withholding such best evidence within the special knowledge of the employer, adverse inference can safely be drawn against the management. It may be useful to refer a decision of the Hon'ble Apex Court in the case of Sita



Ram & Ors. Vs. Moti Lal (2008-LLR-S.C) wherein the Hon'ble Apex Court held that when certain records under exclusive custody of the employer and the employer withholds those records, adverse inference may be drawn. Whatever it may be stated above, MW.1 during his cross-examination at para-16 categorically admitted that after filing of the documents by the workman before this Court, they came to know about the existence of such documents and P.B.Gupta and D.M.Bhandari were alive by that time i.e. in the year, 2000. In the said para, he further stated that he could not say whether the management has taken any step to ascertain the genuineness of issuance of Exts.2 to 4 either from P.B.Gupta and D.M.Bhandari. He also could not say whether the management had lodged any FIR regarding the alleged above forged documents prepared by the workman or not."

(Emphasis Supplied)

22. Since in the aforesaid para there is a reference to paragraphs 15 & 16 of the deposition of MW No.1, which he deposed during his cross-examination, so also alleged admission, it would be apt to reproduce below para 15 & 16 of deposition of MW No.1 from the TCR for ready reference:

"15. It is a fact that separate records and registers were being maintained for the employees working under Bhubaneswar Orient Paper Mills Office and the same will disclose about the employee actually working there under during the relevant period. After going through the Attendance Register maintained for the period 1993 till date I got confirm that the present workman was never working in the above said establishment. It is a fact that the said register was not produced before this Court by the management. It is not a fact that knowingly we are not submitting the said register along with the wage



register before this Court as they will reveal regarding the engagement of the workman.

16- Bhubaneswar Orient Paper Mills Office has been registered under Shops and Commercial Establishment Act. It is a fact that after filing of the documents by the workman before this Court we came to know about the existence of such documents and P.B. Gupta and D.M. Bhandari were alive by that time i.e. in the year, 2000. I cannot say whether management has taken any step to ascertain the genuineness of issuance of Exts.2, 3 and 4 either from P.B.Gupta and D.M.Bhandari or not. I cannot say whether the management had lodged any FIR regarding the alleged above forged documents prepared by the workman or not.”

(Emphasis supplied)

23. It is further revealed from the internal page 8 of the impugned award that, taking note of the said statement of MW No.1 in para 15 & 16 during his cross-examination so also relying on the judgment cited by the Management in *Shalimar Chemicals Works Ltd. Vs. Surendra Oil & Dal*, reported in (2010) 8 SCC 423, the learned Labour Court held that the said judgment is not applicable to the present case as the provision of the Evidence Act is not strictly applicable to the cases under the I.D. Act.

24. It was further observed in the impugned Award that merely disputing the genuineness of the documents, out of which Exhibits 2 & 3 were rather prepared by the office of the Management, without any supporting documents, is not acceptable. Further, relying on the judgment of Supreme Court in



Director Fisheries Terminal Division (supra), learned Labour Court categorically came to a conclusion that the Opposite Party-Workman was initially working as Watchman under the Management on the daily wages basis w.e.f 01.11.1984 and he had rendered continuous service under the Management from 01.11.1984, till he was refused employment w.e.f. 14.02.1999 and he is a Workman as defined under Section 2(s) of the I.D.Act.

25. So far as scope of interference under Article 227 of the Constitution of India, as held by the Constitution Bench of Supreme Court in *Sayed Yakub (supra)*, paragraph no.7 of the said judgment, being relevant, are reproduced below:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the



jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104: ((S) AIR 1955 SC 233): Nagendra Nath v. Commr. of Hills Division, 1958 SCR



1240: (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168.”

(Emphasis Supplied)

26. Similarly, in ***Ranjeet Singh Vs. Ravi Prakash***, reported in AIR 2004 SC 3892 : (2004) 3 SCC 682, it was held by the Supreme Court that power under Article 226 of the Constitution is not available to the exercise for indulging re-appreciation or re-evaluation of evidence like a Court of appeal. It was further held that the writ Court should not exercise its supervisory power under Article 226 of the Constitution of India and interfere with an order, if it is possible to form two opinions on the materials available on record and the Tribunal/Authority/Court below has formed one opinion.

27. It was further held in ***Ranjeet Singh (supra)*** that the scope of interference with findings of fact of the lower Tribunal is limited, while exercising jurisdiction under Article 226 of the Constitution in a writ of certiorari and such findings can only be interfered with, if gross illegality or perversity is shown on the face of the order of the Court below.

28. Though the award of the learned Labour Court has also been challenged on the ground that the said award is perverse, as the same is allegedly based on evidence led by the Opposite Party-Workman beyond his pleadings, but it has not been specifically pleaded or argued before this Court as to which



part of evidence are beyond pleadings, which material evidence were not taken into consideration in the impugned Award.

29. After taking note of the pleadings on record, TCR and arguments advanced by the learned Counsel for the Parties so also contents of the impugned award passed in I.D. Case No.104 of 2000, we are of the view that findings of the learned Labour Court as at Annexure-8, more particularly findings under issue no.1, at running page 43 to 47 of the writ petition (internal page 4 to 8 of the Award) are based on the pleadings and oral as well as documentary evidences on record so also in conformity with the legal provisions and the settled position of law and do not warrant any interference by the writ court, exercising the supervisory jurisdiction under Article 227 of the Constitution of India.

30. So far as argument advanced before this Court regarding legality and validity of the reference made by the State Government dated 17.07.2000, as is revealed from the objection/written statement filed by the Petitioner-Management in I.D. Case No.104 of 2000 (Annexure-4), admittedly, no such stand was taken before the learned Labour Court, Bhubaneswar. Rather a stand was taken therein that the said proceeding is not maintainable, as the disputant is not a workman, as defined under Section 2(s) of the I.D.Act.

31. That apart, in the present writ petition also, the Management has not challenged the reference made by the



appropriate Government. In addition to the above, as held by the Supreme Court in *National Engineering Industries Ltd. Vs. State of Rajasthan & Ors.*, reported in (2000) 1 SCC 371 the Industrial Adjudicator, being a creature of statute, is incompetent to adjudicate an issue regarding legality and /or validity of a reference made by the appropriate Government.

32. Further, as is revealed from the Failure Report available in the TCR, which has also been annexed to the Counter Affidavit filed by the Opposite Party-Workman as at Annexure-B, admittedly, during conciliation /joint discussion before the Conciliation Officer pertaining to complaint petition dated 23.02.1999, the Workman filed another petition on 19.04.1999, which was addressed to the District Labour Officer (Khordha) Bhubaneswar, alleging refusal of employment by the Petitioner-Management w.e.f 14.02.1999.

33. Hence, this Court is of the view that such a ground urged before this Court for the first time is to mislead this Court, with desperate intention to nullify a well discussed and reasoned award passed by the learned Labour Court, Bhubaneswar on a technical ground, which is not permissible under law.

34. Accordingly, the writ petition, being devoid of merit, stands dismissed.

35. Since the writ petition has been dismissed, even though there are provisions under the I.D. Act for execution of an



Award passed by the industrial adjudicator, keeping in mind the peculiar facts and circumstances of the present case, so also the admitted facts on record that the poor workman is fighting out the litigation for the last 26 years to get justice, so also the present age of the Workman, who is around 72 years old, and is suffering from various ailments and bedridden and adjudication of I.D. Case No.104/2000 got delayed due to laches on the part of Petitioner-Management, it is directed that the Petitioner-Management shall implement the Award dated 31.03.2018 passed in I.D. Case No.104 of 2000 within one month hence. The Petitioner-Management is directed to pay the awarded compensation amount of Rs. 4,00,000/- (Rupees Four Lakhs only) with accrued interest thereon till the said amount is actually paid to the Opposite Party-Workman, in terms of the said Award dated 31.03.2018, passed in I.D. Case No.104 of 2000.

36. No order as to costs.

(S.K. Mishra)
Judge

I agree

(K.R. Mohapatra)
Judge

*Orissa High Court, Cuttack,
Dated 18th March, 2026/Banita*