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Order dated 6.11.2001

Learned counsel of both sides have abstained themselves from attending Court work in protest against the law and order incident at Puri involving Lawyers and Constables. In this 1998 matter pleadings have been completed long ago. In view of this it is not possible to drag on the matter indefinitely. Hon'ble Supreme Court in the case of Raman Services(P)Ltd. vs. Subhas Kapoor reported in J.T. 2000(Supp.II) SC 546 have strongly deprecated the practice of Courts adjourning the cases on the ground of strike by the Advocates. Their Lordships have also observed as follows :

"The defaulting Courts may also contributory to the Contempt of this Court".

From this it is clear that Hon'ble Supreme Court have held that the Courts granting adjournments of cases on the grounds of strike by the Lawyers will be ^{contempt of} contributing to the Apex Court. In this view of the matter it is not desirable to adjourn the matter any further. I have, therefore, perused the pleadings.

In this Original Application the applicants 27 in number have prayed for grant of Night Duty Allowances at the prescribed rates w.e.f. 1.1.1986 and also from 1.1.1993.

The case of the applicants is that they are working in Central Cattle Breeding Farm, Sunabeda under the Ministry of Animal Husbandry and Dairying Department. Their duties are to protect, preserve and watchover the properties of the Farm and they were also assigned the designation as Chowkidars from the dates of their respective appointments. Applicants have stated that they are performing the same duties and jobs as that of the regular employees/Chowkidars of the Farms. They have stated that they attend duties during day and night on shift basis and therefore, they are entitled to avail Night Duty Allowances for the duties between 22 hrs. and 6 hrs. in accordance with the guidelines contained in O.M. dated 4.10.1989, issued by the D.O.P.T.(Annexure-A/1). This ~~record~~ order according to applicants came into force w.e.f. 1.1.1986 and therefore, they are entitled

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to Night Duty Allowance. It is further stated that the Union of the applicants had pursued the matter with the Director C.C.B.F., Sunabeda (Res.2) and from time to time they have been assured by Res.2 that necessary action would be taken in the matter. They have stated that Night Duty Allowances for three months, i.e. from July to September, 1995 were paid to those applicants working in Dairy Section and prior to that and subsequent claims were not paid. The applicants filed P.W.C.C. No.1/86 before the Deputy Labour Commissioner, Jeypore. But even then their grievances have not been redressed. In the context of the above the applicants have come up in this O.A. with the prayers referred to earlier.

Respondents in their counter have opposed the prayer of the applicants. They have stated that the application is ^{barred by limitation and} not maintainable as the applicants have come up in 1998 claiming Night Duty Allowance from 1.1.1986 and even from 1.1.1993. It is further stated that the same ~~dispute~~ dispute had been raised by ~~the~~ some of the applicants before the Court of Authority under Payment of Wages Act and the Asst. Labour Commissioner, Jeypore directed the applicants to file a fresh statement in that case vide Annexure-A/II. Thirdly it is stated that in accordance with the rules and instructions, the applicants are not entitled to payment of Night Duty Allowance. It is further stated that mistakenly Night Duty Allowance was paid to some of the employees from June/95 to August/95 which was subsequently stopped. This payment of Night Duty Allowance has been objected by the Audit. The Ministry of Agriculture in consultation with the D.O.P.T. has clarified in letter dated 24.2.1997 at Annexure-A/5 that Night Duty Allowance is not payable. It is also stated that in no other sister organisation under the Ministry of Agriculture, Department of Animal Husbandry and Diaring, this specific Night Duty Allowance is being paid. On the basis of ~~this~~ the above averments respondents have opposed the prayer of the applicants.

S. Sum.

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<p>Order dt. 6.11.2001</p> <p>copy of order may be given to both the counsels.</p> <p>16/11/2001</p> <p>S.O. (J)</p>	<p>From the above recital of the pleadings of the parties it is clear that with regard to same dispute, which is the subject matter of this O.A., a case has been filed under the Payment of Wages Act before the appropriate Labour Court. As regards the averment of the respondents that the dispute before the Labour Court is still pending, applicants have mentioned in their rejoinder that the claims made by them before the Labour Court in P.W.C.C. 1/96 was dropped by the authority on 28.8.1997. As the applicants themselves have raised the dispute against the order of the Labour Court dropping their case it is open for them to approach the higher Appellate Forum or take further action under the Labour law. Under Section 28 of the A.T. Act, 1985, the disputes which are the subject matters of Industrial Dispute Act or the authority constituted under the Industrial Dispute Act or any other corresponding law for the time being in force, cannot be adjudicated by the Tribunal. In view of this I hold that this O.A. for payment of Night Duty Allowance is not maintainable before the Tribunal. In view of the above, it is not necessary to go into the question of entitlement of the applicants to Night Duty Allowance covered under Circular dated 4.10.1989 and the question of limitation.</p> <p>The O.A. is rejected on the above ground but without any order as to costs.</p> <p><i>[Signature]</i> VICE-CHAIRMAN 6/11/2001</p>