

(2014) 09 JH CK 0026
In the Jharkhand High Court
Case No : WP(L) No. 4211 of 2011

Hazaribagh Mines Board

APPELLANT

Vs

Ajay Kumar

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2015) 1 AJR 372 : (2015) 146 FLR 114 : (2014) 4 JLJR 245

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : P.R. Bhagat, Advocate for the Appellant; Indrajit Sinha and Raunak Sahay, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 13.10.2010 in M.J. Case No. 1 of 2009 passed by the Presiding Officer, Labour Court, Hazaribagh, the petitioner-Mines Board has approached this Court by filing the present writ petition. One Ajay Kumar and 29 other persons claiming themselves to be workmen of Mines Board, Hazaribagh, filed M.J. Case No. 1 of 2009 in the Labour Court seeking a direction to the opposite party-Mines Board for payment of wages with 18% interest per annum. The workmen claimed that they were appointed on temporary basis as daily wage workers and their services were regularised on 27.8.2008 by the Mines Board. Since the applicants were not paid wages for the period October, 1996 to December, 2004 and January, 2007 to December, 2008 they filed application under Section 33-C(2) of the Industrial Disputes Act stating that their claim is well recognised and admitted by the Mines Board.

2. A show-cause reply on behalf of opposite party Nos. 1 to 4 was filed denying the claim of the applicants however, it was admitted that the applicants were working as casual labourer on temporary basis and their service was regularised on. 27.8.2008. It is stated that the payment of wages to daily wage employees or whose services have been regularised was withheld on account of audit objection. A plea of financial difficulty of the Mines Board was also taken in the

show-cause.

3. The learned Labour Court considered the oral as well as the documentary evidence led by both the parties and allowed the application filed by the workmen and directed the opposite party Nos. 1 to 4 to ensure payment of the recognised wages to the applicants within a period of two months.

4. The learned counsel appearing for the petitioner Mines Board submitted that the provisions of Section 33-C(2) is attracted only when there is an award. In the present case admittedly there is no award and therefore, the Labour Court had no jurisdiction to pass an order under Section 33-C(2). It is further submitted that the respondents are not workmen of the Mines Board and Mines Board is not an industry as defined in the Industrial Disputes Act.

5. The learned counsel appearing for the respondents submitted that it is not denied by the petitioner that the respondents were working in the Mines Board, Hazaribagh rather, it has been admitted in the show-cause filed on behalf of opposite party Nos. 1 to 4 that the respondents were working as casual workers and their services were regularised on 27.8.2008.

6. Referring to various paragraphs in the application under Section 33-C(2) of the Industrial Disputes Act and the show-cause reply filed by the opposite party Nos. 1 to 4 before the Labour Court, the learned counsel appearing for the respondents has submitted that the claim for payment of wages raised by the applicant-workmen has been admitted by the opposite parties and therefore, the learned Labour Court has rightly issued direction to the opposite parties for payment of wages to the applicant-workmen. It is further submitted that the petitioner-Mines Board has itself admitted in its show-cause filed before the Labour Court that the applicants are workmen and therefore, it is not open to the petitioner to contend that the provisions of the Industrial Disputes Act is not applicable and consequently, the Labour Court had no jurisdiction to entertain the application of the applicant-workmen.

7. I have considered the submission of the learned counsel for the parties and perused the documents on record.

8. In the application filed under Section 33-C(2), the applicants have claimed themselves as workmen and it is further averred that they have not been paid wages from October, 1996 to December, 2004 and January, 2007 to December, 2008. As rightly pointed out by the learned counsel for the respondents in the show-cause filed by the opposite party Nos. 1 to 4 the statement made in paragraph Nos. 1 and 4 of the application of the applicants, have not been denied by the opposite parties. It also appears from the materials on record that awaiting the allotment of necessary fund the petitioner-Mines Board could not make payment of wages to the applicant-workmen.

9. Referring to contention of the learned counsel for the petitioner that since there is no award made in favour of the respondents, the Labour Court had no

jurisdiction under Section 33-C(2) to pass order dated 13.10.2010, I find that the employment of the respondents with the petitioner-Mines Board confers a pre-existing right in the respondents to claim wages from the Mines-Board.

10. In *State Bank of India Vs. Ram Chandra Dubey and Others*, , the Hon''ble Supreme Court has held that, the jurisdiction of Labour Court under Section 33-C(2) extends to computation of a pre-existing benefit or one flowing from a pre-existing right.

11. In *U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari*, , the Hon''ble Supreme Court has reiterated that "the benefit which can be enforced under Section 33-C(2) is a pre-existing benefit or one flowing from a pre-existing right".

12. In the present case as noticed hereinabove it has been admitted by the petitioner-Mines Board that the respondents were working as casual employees and their services were regularised on 27.8.2008 and thus, there is no dispute with respect to employment of the respondents. It is also not in dispute that the respondents were not paid wages for the period as claimed in application under Section 33-C(2). In these facts, I am of the considered opinion that the petitioner-Mines Board has admitted the pre-existing benefit to the respondents flowing from a pre-existing right. I find no substance in the contention of the learned counsel for the petitioner that in the absence of an award, the impugned order dated 13.10.2010 could not have been passed by the Labour Court. In the result, I find no merit in the writ petition and accordingly, it is dismissed.