

(2023) 12 UK CK 0073

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3065 Of 2023

Indian Projects Constructions Cooperative Limited And
Another

APPELLANT

Vs

Shyam Dutt Joshi & Others

RESPONDENT

Date of Decision : 12-12-2023

Acts Referred:

Industrial Dispute Act, 1947 — Section 3, 7, 33C(2)
Payment Of Wages Act, 1936 — Section 15(3), 15(5)
Code On Wages, 2019 — Section 45

Citation : (2023) 12 UK CK 0073

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Bhuwan Bhatt, Nagesh Aggarwal, Yogesh Chandra Tiwari, Sudhir Kumar Nailwal, Devesh Ghildiyal

Final Decision : Dismissed

Judgement

Pankaj Purohit, J

1. Supplementary affidavit filed by petitioners, is taken on record. Miscellaneous application (IA/2/2023) made therefor, stands disposed of.

2. It is the case of the petitioners that the application under Section 33-C(2) of the Industrial Dispute Act, 1947 was filed by the respondent no.1 before the Labour Court, Dehradun with the averment that respondent nos. 1 to 12 are workmen of M/s Indian Projects Constructions Cooperative Limited and raised claim against the petitioners to pay wages to the tune of Rs.8,42,900/-, Rs.3,98,100/-, Rs.2,52,800/- and Rs.2,57,200/-, total Rs.17,51,000/- and other payments.

3. The said application was contested by the petitioners-employer by filing objection to the said application, mainly contending therein that the respondent nos.1 to 12 are not the workmen of the petitioners-employer and submitted that

before any adjudication case, being decided between the parties regarding the employee-employer relation, the application under Section 33-C(2) of the Industrial Dispute Act 1947 would not be maintainable and therefore, requested to decide this issue first, as preliminary issue.

4. By the impugned order, learned labour court, having heard the parties, has decided that all the issues would be disposed of together and directed the respondents to file their written statement to the said application moved by the respondents-workmen.

5. It is submitted by the learned counsel for the petitioners that unless and until, this fact is not adjudicated as to whether respondent nos.1 to 12 are the employee of the petitioners-employer or not, the application under Section 33 C(2) of the Industrial Dispute Act 1947 would not be maintainable and the petitioners should first move a reference for adjudication to the State Government. It is only adjudication of the reference, the application under Section 33 C(2) of the Industrial Dispute Act 1947 would be maintainable.

6. A reliance has been placed by the learned counsel for the petitioners to the judgment of Hon'ble Apex Court in the case of M/s Bombay Chemical Industries Vs. Deputy Labour Commissioner & another reported in 2022 0 Supreme (SC) 114, where, in the similar set of facts, Hon'ble Apex Court has set aside the order passed by the Labour Court under Section application under Section 33 C(2) of the Industrial Dispute Act 1947 and relegated the employees to the remedy available under the Industrial Dispute Act 1947 and to adjudicate their right as employee of the appellant as claimed by him. Para 7 of the said judgment is quoted herein below:

"Para 7: Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, when there was no prior adjudication on the issue whether respondent No.2 herein was in employment as a salesman as claimed by respondent No.2 herein and there was a serious dispute raised that respondent No.2 was never in employment as a salesman and the documents relied upon by respondent No.2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court ought not to have proceeded further with the application under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court ought to have relegated respondent No.2 to initiate appropriate proceedings by way of reference and get his right crystalized and/or adjudicate upon. Therefore, the order passed by the Labour Court was beyond the jurisdiction conferred under Section 33(C)(2) of the Industrial Disputes Act. The High Court has not appreciated the aforesaid facts and has confirmed the same without adverting to the scope and ambit of the jurisdiction of the Labour Court under Section 33(C) (2) of the Industrial Disputes Act."

7. Learned counsel for the respondent no.1-workman has stated that the application moved by respondent no.1 is not only under Section 33 C(2) of the

Industrial Dispute Act 1947, but it is also moved under various other Sections such as 3/7 Uttarakhand Industrial Dispute Act, Section 15(3) of Payment of Wages Act and sub-Section-5, Section 45 of Wages Code 2019.

8. It is submitted by learned counsel for the respondent no.1-workman that there is no provision in the Industrial Dispute Act, which enjoins the learned labour court to decide any issue as a preliminary issue rather labour court enjoins to decide all the issues together.

9. Learned counsel for the respondent no.1 has placed a reliance upon a judgment of High Court of judicature Allahabad in the case of Dwarikesh Sugar Industries Ltd. Vs. Presiding Officer, Labour Court, Rampur and another reported in 2010 0 Supreme (All.) 1089. The reliance is placed in particular para 14 of the said judgment, which is quoted herein below:

"Para 14: There is no provision under the Act atleast none was pointed out to this Court by the petitioners' counsel which may command an Industrial Tribunal to decide preliminary issue first. On the contrary the Apex Court has consistently held that in labour disputes, the High Court should not interfere against an order passed at the interlocutory stage of a proceeding."

10. Having heard learned counsel for the parties and having gone through the judgments supplied by the respective counsel for the parties, this Court is of the opinion that the Hon'ble Apex Court was cognizant of the matter in which the application under Section 33 C(2) of the Industrial Dispute Act 1947 has been finally disposed of. Therefore, the case law cited by petitioners' counsel is of no help to the petitioners. Secondly, the impugned order, by which only this much has been stated by the learned labour court that all the issues will be decided together, this is not against the interest in any manner of the petitioners and is yet to be decided before the labour court.

11. It is agreeable to this Court that there is nothing in the Industrial Dispute Act 1947 and Rules thereunder, which enjoins the labour court to decide any issue as a preliminary issue and when, it has been observed by the learned labour court that all the issues will be decided together, it will not create any embargo against the petitioners and the matter can be decided expeditiously by the labour court itself. All points which are available to the petitioners can be raised there at the time of the decision of the application moved by the respondent no.1 under Section 33 C(2) and other provisions of the Industrial Dispute Act 1947 together with the Payment of Wages Act. It would not be appropriate to interfere in the interlocutory stage of the proceeding of labour court.

12. Thus, I do not find any force in the writ petition. The same is accordingly dismissed. However, keeping in view the controversy involved in the present writ petition, it is expected that the labour court, Dehradun shall decide the matter expeditiously without any further delay, within a period of one year from the date of production of certified copy of this order

13. All pending applications, if any, stand disposed of accordingly.