
(2016) 11 OHC CK 0045
In the Orissa High Court
Case No : O.J.C. No. 11954 of 2001

Kartik Samal

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

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

Citation : (2017) 152 FLR 542 : (2017) LIC 555

Hon'ble Judges : Kumari Sanju Panda and Sri. Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. A. K. Dalai and N. N. Mohapatra, Advocates, for the Petitioner;
None, for the Opposite Party

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—In this writ petition the order dated 22nd March, 2000 passed in Industrial Dispute Misc. Case No.3 of 1993(C) is under challenge whereby and where under the claim of the petitioner regarding computation of his dues from 01.10.1985 to 15.08.1992 to the tune of Rs.18,225/- from the opposite party has been rejected.

2. The case of the petitioner is that he has worked from 01.10.1985 to 15.08.1992 as a cook under opposite party no.2 in its Canteen at Naroda. In view of implementation of minimum wages applicable to a workman in the State, the services of the petitioner was dispensed with w.e.f. 15.08.1992. The petitioner has initiated proceeding U/s.33-C(2) of the by the Industrial Disputes Act, 1947 to compute his dues from 1.10.1985 to 15.08.1992 @ Rs.750/- per month and to direct payment minus the payment already made to the petitioner @ Rs.150/- and Rs.350/- per month.

The opposite party no.2 had appeared and contested the claim of the petitioner alleging inter alia therein that the claim of the petitioner is not maintainable, the minimum wages were not applicable to the petitioner, the petitioner was not an

employee of the Bank, rather an employee of the Canteen run by local implementation committee, the minimum wages payable as determined by the State Government is not applicable.

The Labour Court has initiated proceeding but however, set ex parte vide order dated.28.09.1996 and the Labour Court has rejected the claim of the petitioner by holding that there is no prior settlement or agreement and earlier adjudication and as the opposite party has disputed the claim of the applicant and in absence of any clear and cogent material in support of the claim of the applicant, the amount claimed by the applicant is not computable, accordingly the claim application was dismissed which is under challenge in this writ petition on the ground that the Labour Court has not appreciated the facts in right perspective.

The other ground taken that when minimum wages is applicable to be paid to the daily wagers according to the notice issued by the State Government, the petitioner is entitled to get it and on that very ground the application U/s.33-C(2) was filed but without appreciating this aspect of the matter the claim of the petitioner has been rejected which is not legally sustainable.

3. None appears for the opposite party no.2 although notice has been issued which has been found to be sufficiently served and as such the case has been heard on the basis of submission advanced on behalf of learned counsel for the petitioner and the materials available on record.

4. There is no dispute about the legal proposition that proceeding U/s.33-C (2) is an execution proceeding and if claim has already been adjudicated but not disbursed then an application U/s.33-C(2) is maintainable before the Labour Court for its disbursement after making it computable in terms of money. Wherein in the instant case we have found that the claim of the petitioner has seriously been disputed by opposite party no.2 by saying that the petitioner is not entitled to get as per the Minimum Wages Act, taking into consideration the bone of contention the Labour Court has decided the issue after recording evidence of the witnesses and the documents produced before it.

5. We have found that the Labour Court has recorded the statement of opposite party witnesses No.1 who has stated that the Minimum Wages Act is not applicable to the present case, but however the same has been discarded by the Labour Court in view of the circular issued in the year 1997-98 wherein instructions have been issued to the branch offices to pay minimum wages at least at the rate fixed by the appropriate Government under the Minimum Wages Act to the Canteen Boy and their services are to be used exclusively for canteen. The Labour Court from going through the circular of 1997-98 has found that the same does not contain a condition that it would be applicable with retrospective effect.

6. The claim relates to the year 1985 to 1998, and the circular was issued in the year 1997-98, hence the Labour Court has come to conclusion that the petitioner cannot be given the benefit of that circular by making its retrospective

application. The Labour Court has further gone into the Ext.A which indicates that prior to October 1990 consolidated wages was fixed at Rs.150/- per month and thereafter it was enhanced to Rs.350/- per month. The petitioner has not filed any document to the effect that during the claim period the Canteen Boys were paid wages at the higher rate according to the Minimum Wages Act beyond the rate fixed under Ext.A. No document has been produced to show that the appropriate Government had fixed the minimum rates of wages as provided U/s.3 of the Minimum wages Act, 1948, no prior settlement or agreement regarding payment of wages at the enhanced rate.

7. The Labour Court after taking into consideration this disputed aspect of the matter and after relying upon the judgment rendered in the case of Bishnu Charan Ojha and Others v. Presiding Officer, Labour Court, Bhubaneswar and Others, reported in 1997 (II) O.L.R. 460 has passed the order stating therein that the claim of the petitioner is not maintainable under the provision of Section 33 C(2) for the reason that no prior settlement or agreement and earlier adjudication is available on record and since the opposite party has disputed the claim of the applicant and in absence of any clear and cogent material in support of the claim of the applicant, the claim has been found to be not computable in terms of money.

8. The Labour Court after taking into consideration the fact that the claim of the petitioner has seriously been disputed and without adjudication the claimed amount cannot be disbursed in favour of the workman, accordingly rejected the claim of the petitioner filed U/s.33 C(2) of the Industrial Disputes Act.

9. We after going through the reasoning given in the order and the statutory provision, are of the considered view that the Labour Court has committed no error in passing the order rejecting the claim of the petitioner. Accordingly the writ petition is dismissed.