
(1999) 03 OHC CK 0043
In the Orissa High Court
Case No : O.J.C. No. 9976 of 1996

Kodanda Meher

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2A, 33C

Citation : (1999) 88 CLT 219

Hon'ble Judges : P. Ray, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.K. Padhi, S. Parida and S.K. Mohapatra, for the Appellant; S. Ch. Mohanty, J.K. Bastia, R.K. Nayak, D.P. Mohanty and R.N. Debata, for the Respondent

Judgement

A. Pasayat, J.

1. Heard learned Counsel for the parties.

2. The controversy in the present writ petition lies in a very narrow compass. A dispute was raised by the Petitioner against opposite party No. 3 alleging illegal termination. Failure report was submitted by the Conciliation Officer-cum-District Labor Officer, Bargarh. On consideration of the said report, the State Government refused to refer the dispute for adjudication being satisfied that there existed no case for reference. The basis for such conclusion was that the workman had admitted the fact of misappropriation and failed to substantiate his claim. It is further stated in the impugned, order that legal remedies are available u/s 33C of the Industrial Disputes Act, 1947 (in short the "Act") for payment of arrear dues.

3. Grievance of the Petitioner is that the approach of the State Government is erroneous because the merits of the case and whether the Petitioner would ultimately succeed and the question of severity of the punishment of dismissal have to be adjudicated by the adjudicating authority on a reference being made.

On behalf of the employer it was submitted that Petitioner having admitted misappropriation, no reference is necessary.

4. As observed by the Apex Court in the case of *Goa Sampling Employees Association v. General Superintendence Company of India Pvt. Ltd.* A.I. Rule 1985 S.C. 357 while conceding a very limited jurisdiction of the State Government to examine patent frivolousness of demand, it is to be understood as a rule that adjudication of demand by workman should be left to be decided by the Tribunal. In this context also the provision of Section 2A of the Act has to be taken note of.

5. The course to be adopted in matters of dispute between employer and employee and the jurisdiction of the Civil Courts in that regard has been elaborately dealt with by the Supreme Court in *Rajasthan State Road Transport Corporation v. Krishna Kant* A.I. Rule 1995 S.C. 1715. The principles were summarized in para 32 of the judgment as follows:

1. Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2A of the Industrial Disputes Act, 1947.

2. Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

3. Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing) Orders) Act, 1946 - which can be called "sister enactments" to Industrial Disputes Act and which do not, provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise recourse to Civil Court is open.

4. It is not correct to say that the remedies provided by the Industrial disputes Act are not equally effective for the reason that access to the forum depends upon a reference "being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

5. Consistent with the policy of law aforesaid, we command to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labor Court/Industrial Tribunal directly i. e., without the requirement of a reference by the Government - in case of industrial disputes covered by Section 2A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provide by the Industrial Disputes Act.

6. The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

7. The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes. Act are far more extensive" in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

6. Keeping in view the aforesaid principles, we direct the State Government to re-consider the matter within two months of the date of receipt of the order. Requisites shall be filed for communication to opposite party No. 1 within two weeks. Learned Counsel for opposite party No. 3 has stated that the Petitioner undertook supervisory work and, therefore was not a workman. This submission is disputed by the counsel for the Petitioner. This aspect can be considered at the appropriate forum.

The writ petition is disposed of with the above direction and observations. No costs.

P. Ray, J.

I agree.

Writ petition disposed of.