
(2023) 12 OHC CK 0036

In the Orissa High Court

Case No : Writ Petition (C) No. 39063 Of 2021

Koraput Central Cooperative Bank Ltd.

APPELLANT

Vs

Umakanta Rath And Another

RESPONDENT

Date of Decision : 05-12-2023

Acts Referred:

Constitution of India, 1950 — Article 300A

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2)

Citation : (2023) 12 OHC CK 0036

Hon'ble Judges : Arindam Sinha, J;S.S. Mishra, J

Bench : Division Bench

Advocate : Baidhar Sahoo, Shakti Datta Tripathy

Final Decision : Disposed Of

Judgement

Arindam Sinha, J.

1. Petitioner-management has challenged order dated 9th September, 2021 passed by the labour Court on application made under section 33-C(2) of Industrial Disputes Act, 1947. The application was made by opposite party no.1, who when making the application had retired. His claim before the labour Court was for computation of his benefit of leave encashment, the leave accrued to him during subsistence of his suspension. Petitioner-management contended before us, a retired workman cannot maintain a claim under section 33-C(2). Without prejudice secondly, the workman stood suspended for a period during his service. Punishment order was made and upon his retirement, pursuant to the order of punishment there was calculation made of his retirement benefits and disbursed. The workman got leave encashment. No leave accrued to him during his period of suspension. Hence, the claim was disputed. The dispute being undetermined, the labour Court committed illegality in making impugned order directing payment of 80 days leave encashment.

2. Mr. Sahoo, learned advocate appears on behalf of petitioner and relies on two

judgments of this Court respectively in support of each of his contentions.

(i) The Executive Engineer v. Aswini, reported in 2015

(1) OLR-1064, by which a learned single Judge took view as would appear from a passage from paragraph 8, reproduced below.

"8. Present is a suit where the plaintiff has sought for the back pensions when admittedly he is no more the employee and as such as already discussed is not coming as a 'workman' on the date of the institution of the suit and thus his dispute cannot be termed to be an industrial dispute."

(ii) Divisional Manager v. Umamani, reported in 2020 (II) OLR 977, wherein a division Bench of this Court was of view that the labour Court has no jurisdiction to adjudicate an undetermined claim made by the workman by application under section 33-C(2), until such adjudication is made by the appropriate forum.

3. Mr. Tripathy, learned advocate appears on behalf of opposite party no.1 (workman). He relies on judgment dated 14th August, 2013 of the Supreme Court reported in (2013) 12 SCC 210 (State of Jharkhand v. Jitendra Kumar Srivastava). Paragraph 16 is reproduced below.

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A. Persons not to be deprived of property save by authority of law. –

No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

(emphasis supplied)

He submits, inter alia, leave encashment is a part of retiral benefits. It is property of the beneficiary having constitutional guarantee under article 300 A to not be deprived therefrom except by authority of law.

4. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of opposite party no.2.

5. We put query to Mr. Sahoo on whether leave encashment can be claimed during period of service. He submits, leave encashment can only be claimed after retirement.

6. We have perused punishment order dated 11th January, 2005. Entire order in respect of opposite party no.1 is reproduced below.

"Sri Umakanta Rath, Grade-VIA and Ex-Cadre MIC of Kundura LAMPS appeared before the Committee for personal hearing on the show cause notice issued to him. After going through the charges framed against the delinquent and provisional punishment was inflicted by the Appointment sub-committee held on dtd.15.5.04 it is decided to award the final punishment to the delinquent as follows:

1. The misappropriation amount of Rs.30688/- alongwith interest 14% from the date of occurrence i.e. from August-2001 is to be deposited within one month from the date of issue of the decision.
2. One increment be stopped with cumulative effect.
3. The suspension period from dated 16.9.97 to 3.8.2000 be treated as such.
4. Failure to deposit the above misappropriation amount with interest within the scheduled time, he will be dismissed from service of the Bank."

(emphasis supplied)

On query from Court we were not shown anything to give us illumination on what otherwise was meant by direction that 'the suspension period from dated 16th September, 1997 to 3rd August, 2000 be treated as such', except that it would be treated as period of suspension. We are clear in our mind that the punishment was direction for stopping one increment with cumulative effect. The other direction was regarding depositing the misappropriated amount, failing which dismissal. The workman continued in service thereafter and retired in year, 2019.

7. Petitioner has said that the claim was undetermined. We have already seen the punishment order and the punishment awarded to the workman. We do not find anything to suggest that there was impliedly a direction for disallowing leave during the period of suspension. The punishment order did not say period of suspension would be treated as 'dies non'. It is well-settled that suspension happens when disciplinary proceeding is contemplated or is pending. As such it cannot be seen as discontinuance of service or as a break for purposes of calculating the terminal benefits, particularly when the punishment order was for stoppage of one increment with cumulative effect and for the period of suspension to be as such. Said period to be anything more than suspension, as a period when no terminal benefit would accrue, was not said. This was found and said in impugned order as will appear from a passage extracted and reproduced below.

"7. xx xx xx Further Ext.B, the punishment order does not reveal that the period of suspension is treated as dismiss and further it also does not reveal if the applicant is not entitled for any future allowance.

From the above discussion it is established that the applicant is engaged as a workman under the O.P. and he has retired from his service on his superannuation and the suspension period is treated as he was in service during the said period and also he is entitled to get his full earned salary leave on his retirement. xx xx xx”

(emphasis supplied)

8. The Supreme Court in U.P. State Road Transport Corporation v. Shri Birendra Bhandari, had by judgment dated 28 th September, 2006, reported in (2006) 10 SCC 211 considered legality of judgment rendered by the High Court dismissing the writ petition with prayer to quash order of the labour Court made under section 33-C(2), for payment of arrears relating to difference of, inter alia, leave encashment arising out of implementation of recommendations made by the 5th Pay Commission. By the judgment the Supreme Court while setting aside order of the High Court and the labour Court said that benefit sought to be enforced under section 33-C(2) is necessarily a pre-existing benefit or one flowing from pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand, is vital. Case before the Supreme Court was claim of the retired workman for arrears based on recommendations by the 5th Pay Commission. Hence, there was interference by the Supreme Court because during his service the right had not to accrued to him. It accrued thereafter on recommendations made by the 5th Pay Commission. This, the Supreme Court said, could not be adjudicated under section 33-C(2). Our understanding of the judgment is, it was not for the labour Court to adjudicate under section 33-C(2) on whether it would be just and fair to confer upon the retired workman, the claimed benefit, based on the recommendations subsequently made. Nothing was said by the Supreme Court regarding maintainability of the application.

9. Clause (k) in section 2 gives meaning of industrial dispute. Involvement of persons for there being an industrial dispute, are the employers and workmen. There is no other, who can raise an issue for it to be termed an industrial dispute. However, dispute regarding non-employment or the terms of employment or with the conditions of labour of ‘any person’ is also included in the meaning. Thus, apart from employers and workmen stands included ‘any person’ in the definition. Why Parliament thought fit to include ‘any person’ has been explained by the Supreme Court in Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate, reported in AIR 1958 SC 353, paragraph 14. Three passages from the paragraph are reproduced below.

“14. xxx xxx xxx The reason for the use of the expression "any person" in the definition clause is, however, not far to seek. The word 'workman' as defined in the Act (before the amendments of 1956) included, for the purposes of any proceedings under the Act in relation to an industrial dispute, a workman discharged during the dispute.

xxx xxx xxx

If the expression "any person" in the third part of the definition clause were to be strictly equated with 'any workman', then there could be no industrial dispute, prior to 1956, with regard to a workman who had been discharged earlier than the dispute, even though the discharge itself had led to the dispute. That seems to be the reason why the legislature used the expression 'any person' in the third part of the definition clause so as to put it beyond any doubt that the non-employment of such a dismissed workman was also within the ambit of an industrial dispute.

xxx xxx xxx

The Act avowedly gives a restricted meaning to the word 'workman' and almost all the provisions of the Act are intended to confer benefits on that class of persons who generally answer to the description of workmen. xxx xxx xxx"

(emphasis supplied)

So far as this case is concerned, claim by opposite party no.1 made before the labour Court is for computing his benefit of leave encashment. It is a claim for computation in terms of money, a benefit that could be had only after the workman achieved age of superannuation.

10. In our view sub-section (2) in section 33-C does not bar claim for benefits accrued to the retired workman during his service. Power of the labour Court to compute such benefit in terms of money is a relief available to a retired workman. Such an interpretation is consistent with provision in sub-section (1) of the section. In case of any money due to a workman, section 33-C(1) enables the workman and after him his assignee or heirs to obtain recovery as provided in the Act. Sub-section (2) deals with, inter alia, answer to be given by the labour Court on a question raised regarding the amount of money or, the amount at which the benefit is to be computed. To restrict this relief to a person, who has been a workman and is entitled to the benefit thereby, as cannot be availed because he has retired is, in our view, an unacceptable interpretation of the provision for recovery of money due from an employer. In taking this view we rely on Dimakuchi (supra), where the Supreme Court said, the Act avowedly gives a restricted meaning to the word 'workman' and almost all the provisions of the Act are intended to confer benefits on that class of persons who generally answer to the description of workmen. It follows that later on in U.P. State Road Transport Corporation (supra) said Court in setting aside, inter alia, order made by the labour Court, did not do so on the ground of maintainability of the claim as made by a retired workman.

11. In this case, claim of the workman related to his right of having leave encashment accrued to him during his period of service, when he did not avail his leave. It was a claim from a pre-existing right or benefit. It could correctly be looked into by the labour Court for purpose of computation of the benefit in

terms of money. There could not have been any issue for determination, on whether or not the workman was entitled to the leave encashment since, as aforesaid, the punishment order did not make any otherwise direction. It was a case where the labour Court was called upon to compute the benefit of the superannuated worker, who had not availed 80 days leave in the period of suspension that was for three years.

12. On query from Court Mr. Tripathy submits, the management never took any step to enforce the direction for depositing alleged misappropriated amount. As there was no step taken by the management for recovery of alleged misappropriated amount, his client did not also take steps to challenge the punishment order. Claim of the management regarding deposit of the amount stood abandoned. They did not resort to any due process of recovery, while his client was in service. On the contrary, they contended that his client is not entitled for period of leave accrued during subsistence of his suspension. There was no claim for set off. On query from Court Mr. Sahoo submits, opposite party continued in service after passing of the punishment order but recovery was not made from his salary, nor steps taken to dismiss him from service.

13. In Aswini (supra) the learned single Judge expressed view that where the plaintiff had sought back pensions, when admittedly he is no more the employee on the date of institution of the suit, having retired, his dispute cannot be termed to be an industrial dispute. The view was taken in adjudicating a second appeal, where defendant management had unsuccessfully preferred appeal against the ex-parte decree and was appellant before the High Court. The substantial question of law framed for answer in the appeal is reproduced below.

"5. xx xx xx

(a) Whether the civil Court has jurisdiction to decide the present suit in view of the provision of Section 33(c)(2) of the I.D. Act; Section 24 of the Minimum Wages Act and Section 22 of the Payment of Wages Act?"

(b)

The learned single Judge found, on date of institution of the suit the workman had retired. In that context sub-section (2) in section 33-C was considered and view taken that benefit of the provision would be available only for those who were considered as workmen. In other words, it would not be available to those who are ex-employees and had availed all the benefits and full payments under the voluntary retirement scheme. Plaintiff had received his retiral benefits, subsequent to which by letter dated 3rd May, 2010 he was asked to refund the revised amount allegedly paid in excess while simultaneously intimating recovery of the same from his dues, in event of failure to refund. Plaintiff had moved the writ Court, whereby order passed by the respective employers cancelling revision of computed value of pension to the employees, to treat the difference amount as excess payment, was quashed. Subsequent thereto the retired workman filed suit claiming amounts, inter alia, as per pay revision of the wage board. View

taken, therefore, was on a different set of facts and does not come in aid of petitioner.

14. Umamani (supra) also has no application. It is trite the labour Court under section 33-C(2) cannot determine on an industrial dispute. It can only decide the question arisen on a workman's entitlement to receive from the employer, inter alia, any benefit which is capable of being computed in terms of money. Here, petitioner-management had raised the question on the amount of money saying, no money was payable. The question was answered by impugned order of the labour Court in favour of opposite party no.1.

15. We make no observation regarding recovery on the direction for deposit made in the punishment order. However, we also do not find any reason to interfere with impugned order. The computed amount remains due to the workman. It is part of his terminal dues. A retired employee depends for sustenance on his retirement benefits. Deprivation from receiving such dues in time must be suitably compensated. We direct petitioner to pay the computed benefit alongwith simple interest thereon at 6% per annum from date of retirement till the date directed by impugned order, i.e., 10th January, 2021 (4 months from date of the order) and thereafter at 10% per annum simple interest, till date of payment.

16. The writ petition is accordingly disposed of.

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