
(2011) 05 OHC CK 0029
In the Orissa High Court
Case No : W.A. No. 259 of 2011

M/s. Paradeep Phosphates Ltd.

APPELLANT

Vs

Sankar Das and Another

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

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

Citation : (2011) 2 ILR (Ori) 114

Hon'ble Judges : V. Gopala Gowda, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Gopala Gowda, C.J.—This appeal is directed against the order dated 4.3.2011 passed by the learned Single Judge in W.P.(C) No. 22852 of 2010 quashing the order dated 18.9.2010 passed by the learned Labour Court, Bhubaneswar in I.D. Misc. Case No. 58 of 2008 and directing the appellant to pay the entire amount claimed u/s. 33C(2) of the I.D. Act.

2. Mr. Misra, learned counsel for the appellant has urged various legal grounds placing reliance upon the judgment of the Hon"ble Supreme Court which will be adverted to at the later portion of the judgment and prayed for setting aside the impugned judgment of the learned Single Judge wherein he has erroneously quashed the order dated 18.9.2010 passed by the learned Labour Court, Bhubaneswar in I.D. Misc. Case No. 1 of 2006 u/s. 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred as "the Act" in short).

3. On 18.9.2010 learned Labour Court, Bhubaneswar rejected I.D. Misc. Case No. 58 of 2008 filed by the respondent-workman (arising out of I.D. Misc. Case No. 1 of 2006) praying for computation of his arrears of dues in terms of money payable to him. The impugned order of the learned Single Judge is sought to be annulled on the following grounds :

4. The detailed facts are not required to be adverted in the judgment as the

same are available in the orders of the Labour Court which have been referred to by the learned Single Judge in the impugned order.

5. Admittedly the applicant has not worked for the relevant period under the opposite party. Further more no documents had been filed in support of the claim of monetary benefits of salary and other consequential benefits in terms of money. According to the settled principle of law as reported in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, , the power of Labour Court is like that of an executing Court. It cannot determine the dispute or entitlement in the proceedings u/s 33(C)(2) of the Act as it is an executing court on the basis of claim in the absence of prior adjudication in the dispute or recognition by employer.

6. Learned Single Judge has failed to take into consideration of the fact that the Labour Court is only to act as an Executing Court on the basis of the pre-adjudicated right or entitlement in favour of the claimant-applicant, it can pass order computing the monetary benefits claimed by respondent-claimant. Such entitlement may be based upon any settlement, award or interpretation of any disputed claim. It is also further contended by the learned counsel for the appellant that where the very basis of the claim or entitlement of the workman to a certain monetary and consequential benefits is disputed, there being no earlier adjudication or recognition of such claim by the employer, the dispute for such entitlement is not incidental to the benefit or claim and therefore, it is clearly outside the scope of Section 33-C(2) of the I.D. Act proceeding. This important aspect of the matter has not been considered by the learned Single Judge while passing the impugned order. Hence the order impugned, is not only erroneous but also suffers from error in law. Thereafter placing reliance on the provision u/s 33-C(2) of the Act, it is contended by learned counsel for the appellant that the two questions material for consideration of the aforesaid provision pertain to decision on the entitlement of the workman which, in other words, mean maintainability of the claim and computation of the benefit in terms of money in case the claim is maintainable in law. Evidently, the oral and documentary evidence led by the respondent-workman and the arguments made before the Labour Court do not enable him to maintain his application u/s 33-C(2) of the I.D. Act. Therefore, the direction of the learned Single Judge to the Management to pay the amount as claimed by the workman, in the application filed before the Labour Court is bad in law and is liable to be quashed.

7. Another ground of attack of the impugned order is that the claim application coupled with the evidence of A.W. 1 reveals that the workman in the court below has deposed that he had neither any document in support of his claim nor he had exhibited any document in support of his claim. Hence his application is not maintainable in law and further on the basis of the liberty given in the order of this Court dated 17.3.2009 in W.A. No. 97 of 2008, the workman was dismissed from the post. The workman has also admitted in his cross-examination that after his dismissal w.e.f. 21.8.2006, he has never worked under the appellant-

Management. The Hon''ble Single Judge has lost sight of the findings of the Labour Court recorded on the contentious issue. Therefore, the questioning of the order of the Labour Court passed on the petition of the first respondent u/s 33-C(2) of the Act, by the learned Single Judge, is bad in law. Another ground urged is that a total reading of the entire facts and the material on record, and appreciation of the same leads to the inescapable conclusion that the workman has no pre-adjudicated right or entitlement to claim the amount as laid in Form-T(3) application for which, the order of the learned Labour Court could not have been interfered with by the Hon''ble Single Judge in the Writ Petition filed by the workman. Therefore, it is urged that the impugned order is bad in law and liable to be set aside. Further it is contended that a composite reading of the order of the learned Presiding Officer of the learned Labour Court and the concerned papers before the court leaves no room of doubt that the order dated 18.9.2010 passed by the learned Labour Court in dismissing the Misc. Case of the respondent-workman is strictly in terms of the law settled on the facts and circumstances of the case and evidence on record and the same is without any error of fact or law.

8. The respondent-workman placed reliance upon the decision of the constitution Bench of Hon''ble Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, keeping in view a deeming situation contending that the said decision was earlier placed before this Hon''ble Court in RVWPET No. 78 of 2009 decided on 11.9.2009, this Court dismissed the review sought for by the petitioner giving due credence to the peculiar facts and circumstances of the case. Therefore, the impugned judgment of the learned Single Judge with least consideration of the decision already rendered by the Division Bench of this Court as well as the Hon''ble Supreme Court, and, therefore, it is fallacious, erroneous and unsustainable in the eye of law.

9. Further it is contended that the constitution Bench judgment of the Hon''ble Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., at page 1092, it has been clearly held that the order of reinstatement with full back wages in all cases cannot be passed mechanically in favour of an employee and in appropriate cases, the order of payment of back wages can be passed if the order of dismissal is quashed on the ground of non-compliance with the principles of natural justice in not furnishing the enquiry report to the employee. In the instant case, no such order is passed by the learned Single Judge while considering the correctness of the order of rejection of the application u/s 33(2) (b) of the Act and, therefore, it is contended by the learned counsel for the appellant that the impugned judgment of the learned Single Judge needs to be set aside. Further in support of his aforesaid contention, he has placed reliance on another decision of the Hon''ble Supreme Court in Union of India (UOI) Vs. Y.S. Sadhu, Ex-Inspector, , wherein it has referring to the decision of the constitution Bench in Managing Director, ECIL (supra), observation is made with regard to the reinstatement or payment of back wages. Therefore, the order of the learned Single Judge in not considering the aforesaid judgments and the

decision of the constitutional Bench of the Hon"ble Supreme Court in the case Jaipur Zila Sahakari Bhumi Vikas Bank Ltd. (supra) should not have been applied to set aside the order of the learned Labour Court and grant relief u/s 33-C(2) of the Act in favour of the respondent is not only erroneous but also error in law. It is further contended that for the period between the earlier order of dismissal dated 21.8.2006 and the later order of dismissal dated 18.12.2009, the respondent-workman is not entitled to the monetary benefits. Since this factual aspect is not considered, the impugned order of the learned Single Judge is liable to be set aside by allowing this appeal.

10. Learned counsel for the respondent-workman in order to justify the order of the learned Single Judge placed strong reliance on the earlier order 21.8.2006 of the Industrial Tribunal passed u/s 33(2)(b) of the Act rejecting the approval application of the appellant, not approving the order of dismissal passed against him. It is contended by the learned counsel for the respondent-workman that the same is not required to be interfered with and further contended that the ratio of the judgment of the apex Court in Jaipur Zila Sahakari Bhumi Vikas Bank Ltd. (supra) would be applicable in the facts and circumstances of the case. It is also further contended that the observation of the learned Labour Court passed in Misc. Case No. 58 of 2006 with regard to the non-recognition of the workman by the employer, is unfounded because in view of the settled principle of law laid down in Jaipur Zila Sahakari Bhumi Vikas Bank Ltd. (supra), the workman is treated to be deemed workman under the employer from the earlier order of dismissal is approved and, therefore, he is entitled for wages and other consequential benefits for the period from the date of dismissal to the date of subsequent order of dismissal. Furthermore, the observation of the learned Labour Court that after the order dated 17.3.2009 passed in W.A. No. 97 of 2009 permitting the Management to restart the enquiry, the order of the Labour Court passed in Misc. Case No. 1 of 2006 has lost its force, the said contention is also baseless and not supported by law as the Hon"ble Single Judge has rightly quashed the order of the Labour Court rejecting the application in I.D. Misc. Case No. 58 of 2008.

11. With reference to the aforesaid rival legal contentions urged on behalf of the parties the questions that need consideration are :

(i) Whether the law laid down by the constitution Bench of the apex Court in Jaipur Zila Sahakari Bhumi Vikas Bank Ltd. (supra) having regard to the undisputed facts that approval to the earlier order of dismissal, was not granted vide order of the learned Labour Court dated 8.4.2008 and subsequent de novo enquiry was conducted and again another order of dismissal dated 18.12.2009 passed against the workman, therefore, the workman is entitled to salary or not ?

(ii) Whether the decision of the constitution Bench of the apex Court for granting relief in favour of the workman by the impugned order after quashing the order of the Labour Court is legal and valid ?

(iii) Whether there is substantial question of law involved in this appeal in view of the finding recorded by the learned Single Judge on the contentious issue based on aforesaid constitution Bench of the apex Court ? The aforesaid points are to be answered against the appellant for the following reasons:

12. It is an undisputed fact that on 21.8.2006 on the ground of certain misconduct the order of dismissal was passed by the appellant against the respondent. Since the respondent was one of the concerned workmen in the Industrial Dispute pending before the Industrial Tribunal in I.D. Case, the appellant-Management filed an application u/s 33(2)(b) of the I.D. Act before the Tribunal seeking approval of the order of dismissal after conducting an enquiry. The Tribunal rejected the said application vide order dated 8.4.2008 for the reason that the enquiry report was not supplied to the workman before passing the order of dismissal against the respondent-workman. The said order was confirmed by this Court in Writ Petition No. 6715 of 2008 disposed of on 9.5.2008. Against the said order Management preferred W.A. No. 97 of 2008 which was disposed of with a liberty to the appellant to restart the enquiry from the point it stood vitiated. On completion of enquiry conducted, again dismissal order dated 18.12.2009 was passed on the basis of the liberty given in the order dated 17.3.2009 passed in the above W.A. No. 97/2008. The appellant has sought for approval of its order by filing an application in Misc. Case No. 10/2009 before the Industrial Tribunal, Bhubaneswar u/s 33(2)(b) of the Act which is still pending.

13. Having regard to the aforesaid facts, the question for our consideration is as to whether the direction given by the learned Single Judge to pay the amount as claimed by the workman u/s 33(C)(2) of the I.D. Act in Misc. Case No. 58 of 2008 filed before the Labour Court, Bhubaneswar is sustainable in the eye of law. If subsequent dismissal order was passed by conducting de novo enquiry against the concerned workman, that action would be subject to approval of the Industrial Tribunal as he was one of the concerned workmen and the main dispute is still pending for adjudication before the Tribunal. The constitutional Bench decision of the Hon'ble Supreme Court in the case of Jeypore Zilla Sahakari Bhumi Vikas Bank Limited (supra) overruled its earlier decision in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, . Paragraph-14 of the constitutional Bench decision of the Hon'ble Supreme Court in the case of Jeypore Zilla Sahakari Bhumi Vikas Bank Limited (supra) is quoted hereunder:

14. Where an application is made u/s 33(2)(b), Proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimisation or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of

dismissal or discharge passed invoking Section 33(2) (b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint u/s 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint u/s 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside u/s 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

14. A careful reading of the said decision, makes it clear that the order of dismissal was once not approved u/s 33(2)(b) of the Act and the said order has been confirmed by this Court and the apex Court in the Special Leave to Appeal filed by the employer. Therefore, the law laid down in Jeypore Zilla Sahakari Bhumi Vikas Bank Limited (supra) is applicable to the fact situation and as a matter of right the workman is entitled to the salary and other consequential benefits as the order of dismissal was not approved, which is an undisputed fact. Hence, the constitutional Bench decision in respect of the claim of the workman is applicable and, therefore, the application u/s 33(C)(2) of the Act is maintainable. The Labour Court simply should have applied the law laid down in the said case and granted the relief to the workman. The fact situation of the decision of the apex Court in Managing Director, ECIL (supra) and another decision upon which reliance is also placed by the employer are not applicable both in facts and in law. It is an undisputed fact that the order of dismissal is still pending consideration in the Miscellaneous Application u/s 33(2) (b) of the Act

for approval. Therefore, the contention urged that he has applied leave, cannot be accepted and the same is contrary to the decision of the constitution Bench of the apex Court and further this aspect of the matter is not at all placed before the learned Single Judge. The said factual and legal contention is wholly untenable in law. Therefore, the contention urged in this regard need not be examined and considered by this Court in this appeal.

15. For the reason stated *supra*, we are of the view that applying the ratio in *Jaipur Zila Sahakari Bhumi Vikas Bank Ltd. (supra)*, a workman against whom the order of dismissal was passed and proceeding u/s 33(2)(b) of the Act was undisputedly rejected and the same became final, the same is entitled for payment of salary and other consequential monetary benefits. Therefore, the respondent-workman is entitled to salary for the period from 21.8.2006 to 18.12.2009, the date of first order of dismissal till the date of second order of dismissal, even though the second order of dismissal, still is required to be approved by the Tribunal in the subsequent proceeding stated on the application of the appellant. Therefore, grant of wages and other consequential benefits by the learned Single Judge to the respondent-workman is legal and valid. The workman who will be entitled for the wages and other consequential benefits in the form of money as per the provision of law and the law laid down by the apex Court in the case referred to in *Jaipur Zila Sahakari Bhumi Vikas Bank Ltd. (supra)* laid down in case the non-grant of approval of order of dismissal, the workman is entitled for salary and consequential benefits from the date of dismissal till the date of disapproval. Therefore, the legal contentions urged on behalf of the appellant that the workman has no existing right either in the settlement or pre-adjudication of the dispute are wholly untenable in law.

For the foregoing reasons, the appeal is liable to be dismissed. Accordingly the appeal is dismissed. Since we have affirmed the order of the learned Single Judge, salary for the period and other consequential benefits in the form of kind as claimed by the respondent, as granted by the learned Single Judge, shall be paid within a period of six weeks by the employer.

Otherwise that amount shall carry interest at 12% from the date of first order of dismissal till the date of payment of monetary benefits as directed in the impugned order.