

(2005) 06 OHC CK 0027

In the Orissa High Court

Orissa Forest Development Corporation and Others

APPELLANT

Vs

Dhirendra Kumar Mohapatra and Another

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

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

Citation : (2005) 106 FLR 1193

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The Orissa Forest Development Corporation has filed this writ application, inter alia, challenging the award dated 25th March, 1996 passed by the Labour Court, Bhubaneswar in Industrial Dispute Case No. 278 of 1990. The said Industrial Dispute Case was raised on the basis of a petition filed by opposite party No. 1 - workman u/s 33-C(2) of the Industrial Disputes Act, 1947 inter alia claiming for computation of his monetary dues payable by the petitioner-management amounting to Rs. 30,615/- as more fully described in the annexure.

2. According to opposite party No. 1 he was engaged as a workman under the petitioner-management and was discharging his work to the fullest satisfaction of all the authorities concerned. While matter stood thus, due to dissections which cropped up between the workman and the management, a departmental proceeding was initiated against him on certain allegations inter alia misappropriation of funds of the management. On the basis of an F.I.R. filed by the management a criminal case also instituted. After due enquiry the Investigating Officer as well as the Supervising Officer arrived at the conclusion that the allegation levelled against the workman that he had misappropriated funds of the Corporation was not correct and they submitted final report before the competent Criminal Court. On the basis of the final report and after observing all paraphernalia the aforesaid criminal case was dismissed. The management, however, in order to harass the workman suspended him from

service and denied the legitimate amounts legally payable to him. Having no other way out, the workman approached the Labour Court by filing a petition u/s 33-C(2) of the Act for computation of his monetary dues and payment of the same.

3. The Management, in its written statement filed before the Industrial Tribunal, took the stand that the opposite party-workman was holding the post of a Deputy Sub-Divisional Manager and was drawing a scale of Rs. 1,600.00 per month and as such he was not a workman as defined u/s 2(s) of the Industrial Disputes Act. The further plea taken by the Management was that the opposite party-workman having misappropriated huge amounts, a departmental proceeding was initiated against him in which he was found guilty and was dismissed. According to the petitioner, opposite party-workman was not entitled to any relief whatsoever. In order to substantiate his case during trial opposite party-workman got himself examined as a witness. At the other hand, the management got examined two witnesses. Opposite party-workman in his oral evidence corroborating the demands made by him stated that in O.J.C. No. 1411/1989 the Corporation had filed a counter affidavit taking a specific stand that the service of opposite party-workman would be guided under the Industrial Disputes Act and relief, if any, could be granted by a Conciliation Officer or Labour Court. In view of such clear stand taken by the Management before this Court, the stand that opposite party No. 1 was not a workman and the proceeding filed u/s 33-C(2) of the Industrial Disputes Act was not maintainable could not be sustained.

4. The Labour Court after discussing the evidence, both oral and documentary, and relying upon the affidavit filed by the Management before this Court in O.J.C. No. 1411/1989 held that opposite party No. 1 - was a workman and he was entitled to all the benefits under the provisions of Industrial Disputes Act. Accordingly, the petition filed u/s 33-C(2) of the Act was allowed and the claim of opposite party No. 1 was computed to be Rs. 30,615.00. The said order as stated earlier is assailed in this writ application by the Corporation mainly on the ground that the petition filed u/s 33-C(2) was not maintainable as opposite party No. 1 was holding a managerial post and the Labour Court acted illegally, and with material irregularity in granting increments and holding that the workman was entitled to cross the second efficiency bar and as such the writ cannot be sustained.

5. In support of the aforesaid contention, learned Counsel for the petitioner relied upon Rule 68 of the Forest Corporation Service Rules wherein it has been stipulated that the increment next above the efficiency bar shall be drawn only after specific sanction of the authority empowered to allow crossing of the bar in respect of the post and when an employee/workman is held up at the stage of efficiency bar, his case shall be reviewed each year by the competent authority, who shall pass specific orders on each such review as to whether he is fit to cross the bar. On the basis of such submissions the petitioner prays that the writ

application should be allowed and the impugned order passed by the Labour Court should be quashed.

6. At the other hand, learned Counsel for opposite party-workman forcefully submitted that the Labour Court has taken into consideration all the facts and circumstances and the evidence on record. According to him, the existing rights of a workman could be computed in a proceeding u/s 33-C(2) of the Industrial Disputes Act. The Labour Court has taken into consideration the evidence, both oral and documentary, and there are no errors apparent on the face of the records. Mr. Das, learned Counsel for opposite party No. 1 submits that this Court while exercising powers under Article 227 of the Constitution of India should be slow to interfere with such finding of facts and it is a fit case where the writ application should be dismissed in limine.

7. I have heard Mr. Patnaik, learned Counsel for the petitioners, and Mr. Das, learned Counsel for opposite party No. 1 at length. I have also perused the materials available on record and the evidence adduced meticulously. In view of the specific stand taken by the Management in the counter affidavit filed before this Court in OJC No. 1411/1989 that the petitioner-management could raise industrial dispute before the Conciliation Officer or Labour Court and the writ application was not maintainable, the Management is estopped from challenging the maintainability of the proceeding u/s 33-C(2) of the Industrial Disputes Act. The Labour Court in paragraph 5 of the impugned order relying upon the statement of O.P.W. 1 the Upper Division Assistant who was dealing with the establishment matters at Jaipur Road and the fact that criminal case initiated against opposite party-workman was dismissed long since, came to the conclusion that the Management had acted illegally in not permitting opposite party-workman to cross the efficiency bar. In paragraph-6 of the impugned order the Labour Court observed on analysis of the evidence of both sides that though opposite party-workman during his evidence had fully corroborated his case as to his dues on different heads claimed by him, the two management witnesses had not denied the said claim of the opposite party-workman on different heads on different grounds as set forth in the counter. At the other hand, both the management witnesses had categorically agreed that different employees of the corporation were getting their dues on different heads as stated by the opposite party-workman. In cross-examination also it appears that the management had only adduced evidence of general nature and had failed to dislodge the statements made by opposite party-workman in his examination.

8. After perusing the order and hearing learned Counsel for the parties, this Court feels that the Labour Court has not committed any illegality or irregularity in entertaining the petition filed u/s 33-C(2) of the Industrial Disputes Act, specially in view of the stand taken by the Management in its counter affidavit on OJC No. 1411/1989.

9. The only other question which needs to be determined in the present case is as to whether opposite party-workman is entitled to the amounts claimed in his

statement towards arrears dues as per annexure to the petition. Admittedly, the opposite party-workman was suspended from service w.e.f. 8.2.1988 and he was dismissed from service with effect from 24.10.1994. The order of dismissal has not been varied. During suspension period the opposite party-workman was entitled to suspension allowance as per Rules. Similarly he would be entitled to the wages for the period he discharged his duties i.e. from 18.9.87 to 17.10.1987. He would also be entitled to bonus for the period 1888-1889 as claimed under Item Nos. 5, 6 and 7, house rent allowance till date of dismissal and allowance towards medicine as per Item No. 9. The only other claim made by the opposite party-workman, was arrears towards deduction of wages @ Rs. 30/- per month from 1.3.85 to 31.10.1990. In view of the fact that opposite party-workman was suspended with effect from 8.2.1988 it has to be adjudicated as to whether he was entitled to claim (he same. So far as Hem No. 2 is concerned, i.e. wages not paid for sanctioned leave period of 101 days, there is no finding as to whether his leave was sanctioned or not. In the absence of such finding, it would not be possible to direct payment of the said amount. That apart the Court below has not considered as to whether the opposite party-workman would be entitled to any wages for the period he had not discharged his duties.

10. In view of the aforesaid facts and circumstances while upholding the conclusion arrived at by the Labour Court and confirming the direction with regard to payment of the amount claimed by opposite party No. 1 - workman vide Item Nos. 3, to 9 of the statement of arrears dues, I dispose of this writ application directing the Labour Court to consider afresh the claims with regard to the entitlement of opposite party No. 1 workman, in respect of other items in consonance with the observations made above.

Accordingly the writ application is allowed in part. Parties shall bear their own costs.