
(2009) 06 OHC CK 0025
In the Orissa High Court

Orissa Forest Development Corporation Ltd.

APPELLANT

Vs

Bhababni Sankar Das and Another

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

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

Citation : (2009) 108 CLT 613 : (2010) 1 LLJ 359 : (2009) 2 OLR 936 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—The Management - Orissa Forest Development Corporation Ltd. (hereinafter referred to as "the Management") is the petitioner in this writ petition and has called in question the Order dated March 18, 2006 vide Annexure-1 passed by the Labour Court, Sambalpur in Misc. Case No. 1/2005 filed by the Opp. Party No. I. The said application was filed u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short, "the Act") claiming monetary benefits, which he alleged to be entitled to from the Management towards his salary, provident fund etc. from August, 2003, onwards as mentioned in the statement appended to the application u/s 33-C(2) of the Act, along with the enhanced arrear D.A. with effect from July 2000 to August, 2003.

2. The facts in nut-shell are that the Opp. Party No. 1 while working as Field Assistant, Turumunda Sal seed Purchase Centre of Keonjhar (C-KL) Division of the Orissa Forest Development Corporation Ltd. along with 71 other employees was transferred to Bhubaneswar (C) Division by office order No. 132 dated July 19, 2003 of the General Manager, O.F.D.C. Ltd. It is alleged by the Management that pursuant to the transfer order, as the Opp. Party No. 1 did not hand over the charge and left his place of work after receipt of the said transfer order on July 19, 2003, he was relieved from Keonjhar Division by order of the Divisional Manager dated August 20, 2003 under Annexure-3 to the Writ Petition. He was also paid Rs. 3105 and Rs. 640 on August 20, 2003 as advance salary and T.A. advance to join in his new place of posting. The Opp. Party No. 1 did not receive

the relieving order which was sent to his home address as he was not staying in his place of work and the same was returned unserved with a postal remark "refused" as at Annexure-4. Thus, it was stated that the Opp. Party No. 1 avoided to receive the relieving order and did not join in his new place of posting nor has performed any duty from August 20, 2003 onwards. While remaining unauthorizedly absent, the Opp. Party No. 1 filed a complaint before the District Labour Officer, Keonjhar with regard to non-payment of salary for that period vide Annexure-5, On receipt of the complaint/notice from the Assistant Labour Officer, Keonjhar, a reply was submitted on behalf of the Management - O.F.D.C. Ltd. explaining the position that the Opp. Party No. 1 after being relieved has not joined in his new place of posting. No conciliation proceeding has been taken up on the said complaint as yet. When the matter was thus pending, the Opp. Party No. 1 filed W.P.(C) No. 12026/2003 before this Court and the said Writ Petition was disposed of on July 23, 2004. This Court considering the facts of the case permitted the Opp. Party No. 1 herein by the aforesaid order to withdraw the Writ Petition and approach the Managing Director by way of representation highlighting all his grievances as made out in the Writ Petition within a period of the month from the date of the said order and further directed the Managing Director to take a decision on such representation of the Opp. Party No. 1 within a period of one month after receiving the same. The Opp. Party No. 1 herein, accordingly, filed a representation, on consideration of which, the Chairman-cuw-Managing Director of the Corporation passed an order on September 21, 2004 directing the Opp. Party No. 1 to hand over complete charge and join his place of posting and communicated the said order to the Opp. Party No. 1 (Annexure-7). In spite of the above order, the Opp. Party No. 1 did not join in his duty in his new place of posting and after lapse of about one year, filed a petition before the Presiding Officer, Labour Court, Sambalpur for computation of wages, as already stated above. The Management on receiving the notice filed a reply, inter alia, stating that the Opp. Party No. 1 has not performed any duty during the period in question and also raised the question with regard to the maintainability of the application u/s 33-C(2) of the Act.

3. The Opp. Party No. 1, however, in his counter affidavit filed before this Court, inter alia, stated that the order of the Labour Court is now under a Certificate Proceeding and is at the stage of attachment. The Writ Petition having been filed after a long lapse of time, the same deserves dismissal in limine with costs. According to the Opp. Party No. 1, the Labour Court has jurisdiction u/s 33-C(2) of the Act to compute the entitlement of the Opp. Party No. 1 as the same is within the purview of the said Section, which specifically provides that if the workman is entitled to receive any money from the employer or any benefit which is capable of being computed in terms of money, the Labour Court has jurisdiction to compute the amount due.

4. From the impugned order, it appears that the Labour Court took note of the case of the workman that successor to the Opp. Party No. 1, namely, Shri Sanatan Pradhan could not take charge of the above establishment in view of the

resistance put-forth by the outsiders, namely, Krushna Chandra Prusty and Others. The Opp. Party No. 1 has never handed over the charge of the establishment/unit including the stock available with him to his successor and by ignoring the fact that he has not committed any error, his salary from 2003 onwards were not paid to him. It also took note of the counter affidavit filed on behalf of the Management that the Opp. Party No. 1 was relieved from his previous station in the forenoon of August 20, 2003 to join in his new place of posting and the said order was duly sent to him by registered post, but he refused to receive the same. He also took note of the orders passed by this Court in the aforesaid Writ Petition, being W.P. (C) No. 12026/2003, and the order passed on the representation of the Opp. Party No. 1 pursuant to the said order. Taking note of the fact that the Management has not proved the endorsement of the postman showing that the Opp. Party No. 1 has refused the relieve order, the Labour Court came to the conclusion that there are materials to infer that his reliever, namely, Sanatan Pradhan could not take charge of the, establishment/unit because of the resistance put forth by the persons of the locality and observed that if this aspect is taken into account, then there is every reason of the authority to treat the Opp. Party No. 1 liberally as because, his absence from the centre would have caused loss to the Management/Corporation. Taking note of the calculation sheet furnished by the Opp. Party No. 1, the Labour Court held that the Opp. Party No. 1 is entitled to get Rs. 74,444 in cash and a sum of Rs. 9468 is to be deposited in his EPF Account and directed accordingly. He also allowed a cost of Rs. 1000 in favour of the Opp. Party No. 1.

5. Mr. S.K. Patnaik, Learned Counsel for the Petitioner raised the question of maintainability of the application u/s 33-C(2) of the Act on the ground that while exercising power under the said Section, the Labour Court acts as an executing Court and unless there is previous adjudication of the claim of the workman, it is not open for the Labour Court, while deciding the application u/s 33-C(2) of the Act, to first determine the entitlement of the Opp. Party No. 1 and then direct payment of the same. According to Mr. Patnaik, such a procedure can only be adopted, if the monetary benefits claimed by an applicant u/s 33-C(2), of the Act is admitted by the Management, which is not the case here, as the Management has stoutly disputed the assertion that the Opp. Party No. 1 is performing his duties at present though he has not joined in his new place of posting.

6. Mr. Das, Learned Counsel for the Opp. Party No. 1 strongly urged that the writ petition, which has been filed on February 21, 2007, i.e., about a year after the impugned order was passed, should be dismissed on the ground of laches. With regard to the jurisdiction of the labour Court to calculate the entitlement of the Opp. Party No. 1 in a proceeding u/s 33-C(2) of the Act, Mr. Das submitted that the case comes wholly within the ambit of the said Section. He relied upon the decisions in the cases of Managing Director, the Orissa Agro Industries Corporation Ltd. v. Presiding Officer, Labour Court, Orissa and Anr. 1984 II LLJ 217 and Chintamani Acharya v. Union of India and Ors. 66 (1988) CLT 714.

7. The moot question, therefore, to be gone into in the present case is, as to whether the application filed by the Opp. Party No. 1 u/s 33-C(2) of the Act was maintainable in the facts and circumstances of this case and as to whether the Labour Court has committed an error in computing the monetary benefits (wages) to which the Opp. Party No. 1 is entitled to in spite of the fact that it was disputed that he is not entitled to any amount. In the case of *Managing Director, the Orissa Agro Industries Corporation Ltd v. Presiding Officer, Labour Court, Orissa and Anr. (supra)* this Court was considering the claim of the workmen in employment under the Orissa Agro Industries Corporation Ltd. seeking computation of the monetary benefit to which they claim to be entitled to pursuant to the resolution of the Board of Directors of the said Corporation accepting the report of the 4th Pay Committee appointed by the Government of Orissa and directing implementation of the said report as accepted by the Government. Relying on the 2 decision in the case of *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, and the decision in the case of *Shyamsundar Sahu and Co. Vs. Labour Court and Another*, as well the other case laws, it was held as follows:

Pursuant to the aforesaid resolution of the Board, the Corporation fixed the revised scales of pay of its Class III and Class IV, 3 employees according to the Fourth Pay Committee Report as accepted by Government under Finance Department Notification No. 652/74 dated September 2, 1974 vide Office Order No. 5470 dated January 28, 1975, Annexure-A/2. Since the workmen-Opposite Parties are the employees of the Corporation, they are entitled to the benefits of the revised scales of pay as per Exhibit N read with Annexure-A/2. The claims made by the workmen-Opposite Parties in their applications before the Labour Court represent the difference between their existing scales of pay and revised scales of pay. These claims had been considered by the Labour Court and accepted and we see no reason to interfere.

8. In the case of *Chintamani Acharya v. Union of India and Ors. (supra)* similarly, a Division Bench of this Court relying upon various decisions of the Apex Court as well as this Court, while considering the question of jurisdiction of the Labour Court u/s 33-C(2) of the Act to compute the benefits to which the workmen are entitled to in regard to over time wages, vividly discussing the law on the point held as follows:

10. What vexes the Court is what would fall within the scope of Section 10 reference of the Act and which matters can be adjudicated u/s 33-C(2) of the Act. Keeping in view the principles laid down by the Supreme Court and various High Courts, we are of the view that the test would be whether the claim of the workmen relates to any money claimed from the employer or any benefit which is capable of being computed in terms of money and disputes raised must be incidental or ancillary to the money claimed as aforesaid. Ancillary or incidental disputes will also include disputes whether the workman is entitled to receive the money so also the computation of the quantum of money. However, when the

dispute is of such a nature that the claim of money becomes incidental to the dispute, it can be only adjudicated by the Tribunal by way of reference u/s 10 of the Act.

11. It would be very difficult to enunciate or catalogue which category of claim will fall u/s 33-C(2). No Court has made any attempt to do so nor we propose to make such an attempt.

12. Keeping the aforesaid principle in view, on the facts of this case we are of opinion that the claim made by the workman in this case can be adjudicated u/s 33-C(2) of the Act, notwithstanding the stand of the employer the Union of India. The Order Dated May 19, 1981 holding that the proceeding u/s 33-C(2) is not maintainable cannot be sustained and is accordingly quashed. The claim petition is remitted back to the Labour Court for disposal in accordance with law. The writ application is allowed but there will be no order as to costs.

9. Mr. Patnaik, Learned Counsel for the Petitioner relied upon the decision in the case of Bishnu Ch. Ojha and Others Vs. Presiding Officer, Labour Court and Others, . This Court in the said case was considering the claim of NMR/CLR workmen under the Port Trust claiming "equal pay for equal work" which was raised in an application u/s 33-C(2) of the Act. While considering such claim, relying upon various decisions of the Apex Court as well as this Court, in the facts of the said case, held that the application filed u/s 33-C(2) of the Act before the Labour Court is not maintainable. With regard to the phrase "the amount at which such benefit should be computed", the Court held that the said phrase occurring in Section 33-C(2) of the Act does not extend the jurisdiction so as to empower the Labour Court to adjudicate if the workmen are entitled to "equal pay" on the principles of "equal pay for equal work", When their claim is not conceded or admitted or agreed upon by the employer "equal pay for equal work" in the absence of any terms of 3 settlement, terms of employment, agreement or award cannot be computed by the Labour Court while discharging its jurisdiction u/s 33-C(2) of the Act. The facts of the said case being totally divergent from the facts of the 3 present case, the ratio of the above decision cannot be applied to the instant case.

10. No doubt, the claim of the Opp. Party No. 1 has been refuted by the Management, Maxwell on Interpretation of Status, at page 350, observes as follows:

Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution.

Relying on the above observation, this Court in Managing Director, the Orissa Agro Industries Corporation Ltd. v. Presiding Officer, Labour Court, Orissa and Anr. (supra) laid down that Section 33-C(2) of the Act takes within its purview cases of workmen, who claim that the benefit to which they are entitled to can be computed in terms of money, even though, the right to the benefit on which their claim is based is disputed by their employer. Relying upon the decision in

the case of Central Inland Water Transport Corporation Ltd. v. Workmen and Anr. (supra) it was further held that a claim in an application u/s 33-C(2) of the Act must be based on an existing right and determination of the identity of the person by whom or against whom a claim, is made and if there is a challenge on that score the same can be decided in a proceeding u/s 33-C(2) of the Act.

11. It appears that at the outset, though in (the objection filed on behalf of the Management, a question with regard to maintainability of the application u/s 33-C(2) of the Act was raised, but the same has not been canvassed during hearing of the case, as is seen from the impugned order, even then, the same is a question of jurisdiction and can be gone into in this case. This Court on finding that there is no case made out that the Opp. Party No. 1 is out of employment, though his entitlement has been disputed, and applying the above ratio to the facts of the present case, the Labour Court has acted within its power in exercising jurisdiction u/s 33-C(2) of the Act by computing the entitlement of the Opp. Party No. 1.

12. I, therefore, find no error apparent on the face of the impugned order nor do I find that the said order is perverse or illegal. I am, therefore, not inclined to interfere with the said impugned order and dismiss the Writ Petition, being devoid of merit, but in the circumstances, without cost. All interim orders passed earlier stand vacated and all pending Misc. Cases stand disposed of.