
(1998) 02 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No's. 13 and 375 of 1996

Ramesh Chandra Sahu	Vs	APPELLANT
State of Orissa and Another		RESPONDENT

Date of Decision : 05-02-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5), 33C(2)

Citation : (1999) 2 LLJ 654

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : Satyabadi Mishra, B.K. Sahoo and K.C. Sahoo, for the Appellant;
Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Pasayat, J.—Order passed by the Government of Orissa in Labour and Employment Department refusing to refer dispute raised by petitioner for adjudication by the Labour Court as provided in the Industrial Disputes Act, 1947 (in short, the "Act") is assailed in this writ application.

2. Background facts as projected by the petitioners sans unnecessary details are as follows:

Petitioner was working under Turnkey International Limited with effect from 1986 for construction work of Indian Charge Chrome Limited (in short, the "ICCL-opposite party No. 2). But when the plant of opposite party No. 2 was established, he was engaged directly under it from the year 1990 as a Hammerman. He was working in the Finished Products Department under supervision of officers of the company. His attendance was being taken by the staff of the company. He was enjoying the benefits extended to employees under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, the "P.F. Act") and the Employees' State Insurance Act, 1948 (in short, the "ESI Act") as an employee of the company. His services were terminated

with effect from March 14, 1992 by way of refusal of employment. He raised a dispute before the Assistant Labour Officer cum-Conciliation Officer, Choudwar, which was admitted for conciliation. ICCL, the opposite party No. 2, was asked to give its views and to participate in the proceedings. In the conciliation proceedings the representative of opposite party No. 2 took the stand that the petitioner was engaged under a contractor namely, M/s. Ojha Technical and he was refused employment due to shortage of raw materials and non-availability of work for the contractor. It was stated that as petitioner was an employee under the Contractor and not under opposite party No. 2, no dispute against it was maintainable. The conciliation failed and the Conciliation Officer submitted failure report to the State Government. By the impugned order the State in the Labour and Employment Department refused to refer the matter for adjudication by Labour Court. Before such rejection, several representations were made by petitioner to the concerned authorities highlighting long inaction. The ground on which refusal has been directed was that legal remedies are available u/s 33C(2) of the Act.

3. It is submitted that the nature of dispute raised by the petitioner is not adjudicable in terms of Section 33C(2) of the Act. In any event the State Government was not competent to form an opinion that there was no case for reference as remedies are available u/s 33C(2) of the Act. It is highlighted that there is marked distinction between scope and ambit of Section 12(15) and Section 33C(2) of the Act. Dispute regarding legality and validity of an order of termination can only be decided on a reference being made u/s 12(15) of the Act.

4. The scope of an adjudication u/s 33C(2) is limited to the question of recovery of money due from an employer. The said provision reads as follows:

"(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or, as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Essentially it deals with computation of any benefit or money which is to be capable of being computed in terms of money.

5. The object of the Section is a speedy remedy to employee for realisation of the claims for money or benefits. A proceeding u/s 33C(2) is a proceeding generally in the nature of execution proceedings wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms

of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit in view of its being previously adjudged, or otherwise, duly provided for. It is true that in a proceeding u/s 33C(2), as in an executing proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on the score. But that is merely incidental. See Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, . The Labour Court acting u/s 33C(2) does not exercise the power of deciding an industrial dispute relating to the validity of a termination or retrenchment from employment. A question relating to the validity of a termination order cannot be gone into in a proceeding u/s 33C(2). A dispute requiring investigation to determine right of employee and liability of employer is outside its scope. If an employee is dismissed and it is his case that the dismissal is wrongful, it would not be open for him to make a claim for recovery of his salary or wages u/s 33C(2). His dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer had dismissed him, a claim that the dismissal is unlawful and therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre- existing contract cannot be made u/s 33C(2). See The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., .

6. Therefore, the nature of dispute that was being raised by the petitioner was not adjudicable u/s 33C(2) of the Act. Accordingly we set aside the impugned order vide Annexure-3 in which reference was made to the communication of the Labour and Employment Department memo No. 13986(3) dated October 10, 1995. The State Government shall take a decision afresh on the question whether a reference is called for. Necessary action shall be taken within three months from the date of receipt of the writ. Requisites for issue of writ shall be filed within one week.

The writ application is allowed. No costs.

S.C. Datta, J.

7. I agree.