
(2013) 08 OHC CK 0032
In the Orissa High Court
Case No : WPC No. 1859 of 2013

Secretary Biranarasi

APPELLANT

Vs

Nilakantha Srangi

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2013) 08 OHC CK 0032

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S.C. Parija, J.—This writ petition has been filed by the petitioner-Management, challenging the order dated 03.05.2012, passed by the Labour Court, Bhubaneswar, in Industrial Disputes Misc. Case No. 86 of 2010, allowing the application of the workman-opposite party, filed u/s 33-C(2) of the Industrial Disputes Act, 1947 ("I.D. Act" in short), computing the claim of the workman towards differential wages for the period from 01.05.2007 to 31.10.2010 at Rs. 40,500/- and directing the Management to pay the same. The case of the petitioner-Management is that as the claim of the workman made u/s 33-C(2) of the I.D. Act for payment of differential wages on the basis of the minimum wages notified by the State Government from time to time, the same could not have been adjudicated by the Labour Court. It is the plea of the petitioner-Management that the application filed by the workman u/s 33-C(2) of the I.D. Act for implementing the minimum wages cannot be adjudicated by the Labour Court and the proper procedure is for the workman to approach the prescribed authority under the Minimum Wages Act. In this regard, it is submitted that as the claim made by the workman is required to be adjudicated upon by the prescribed authority under the Minimum Wages Act, the same cannot be the subject matter of an application u/s 33-C(2) of the I.D. Act and only the admitted claim and/or entitlement can be adjudicated by the Labour Court. It is the further plea of the petitioner-Management that as it is a Cooperative Society,

the minimum wages notified by the State Government is not applicable to the employees of the Cooperative Societies.

2. Learned counsel for the petitioner-Management submits that even other wise as the workman had filed an affidavit in evidence before the Labour Court claiming Rs. 36,000/- towards differential amount as per the minimum wages fixed by the State Government for the period from 01.05.2007 to 31.10.2010, the impugned order computing the same to be Rs. 40,500/- and directing the petitioner-Management to pay the same is not proper and justified.

3. Learned counsel appearing for the workman-opposite party while supporting the impugned order submits that the notifications of the State Government in the Labour and Employment Department dated 28.04.2007 and 26.02.2009, published in the Orissa Gazette, prescribing the nature of employment, categories of employees and the minimum wages payable shows that the "Cooperative Societies" come within the ambit of the said notifications and therefore the minimum wages prescribed therein is payable to the workman-opposite party.

4. Learned counsel for the workman-opposite party has relied upon a decision of the Gujarat High Court in Somiben Mathurbai Vasava Vs. Lalji Hakku Parmar Leather Works Company, Gujarat, where in a similar case, the Hon''ble Court has held that there cannot be any doubt that the Labour Court has the jurisdiction to entertain application for recovery of minimum wages and there is no provision in the Minimum Wages Act, which bars the jurisdiction of the Labour Court u/s 33-C of the I.D. Act.

5. As regard the adjudication of the applicability of minimum wages, Hon''ble Court has held as under:-

It was also contended that since the liability was disputed by the employer the application under S. 33C was not maintainable. When minimum rates of wages have been statutorily fixed by notification under S. 5, there is a clear direction to the employer under S. 12 that the employer shall pay to every employee wages at the rates not less than minimum rates of wages fixed by the notification. Therefore what could be otherwise fixed by agreement, settlement or award, has been fixed by the notification and there is no question of resolving any disputes and fixing any liability. The liability has been fixed statutorily and the only question that would arise would be regarding implementation and recovery in pursuance of the same. Therefore, S. 33C is a proper remedy in cases like the present one.

6. Learned counsel for the workman-opposite party has also relied upon the decision of the apex Court in Manganese Ore (India) Ltd. Vs. Chandi Lal Saha and others, wherein the Hon''ble Court has held as under:

In the present case there was no dispute regarding the rates of wages and it is admitted by the parties that the minimum rates of wages were fixed by the

Government of India under the Act. The workmen demanded the minimum wages so fixed and the appellant denied the same to the workmen on extraneous considerations. Under the circumstances the remedy u/s 20 of the Act was not available to the workmen and the Labour Court rightly exercised its jurisdiction u/s 33-C(2) of the Industrial Disputes Act, 1947.

7. In view of the above, the plea raised by the petitioner-Management that the application of the workman filed u/s 33-C(2) of the I.D. Act for payment of differential wages on the basis of the minimum wages prescribed by the State Government is not maintainable, cannot be accepted. However, as the affidavit in evidence of the workman filed before the Labour Court, Bhubaneswar goes to show that the workman had claimed Rs. 36,000/- towards differential amount, as per the minimum wages fixed by the State Government from 01.05.2007 to 31.10.2010, he is entitled to the said amount only.

8. In view of the above, I do not find any infirmity in the impugned order so as to warrant any interference. However, the amount of Rs. 40,500/- computed by the Labour Court is modified and reduced to Rs. 36,000/-, as had been claimed by the workman-opposite party in his affidavit in evidence.

9. The petitioner-Management is directed to pay the modified amount of Rs. 36,000/- to the workman within eight weeks hence. The writ petition is accordingly disposed of.