
(2005) 06 OHC CK 0048
In the Orissa High Court
Case No : O.J.C. No. 5534 of 2000

S.R. Tamma

APPELLANT

Vs

I.D.L. Chemicals Ltd. and Another

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33(2), 33C, 33C(2)

Citation : (2006) 101 CLT 553 : (2005) 107 FLR 99 : (2005) OLR 770 Supp

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

Bench : Single Bench

Advocate : S.N. Mishra, B.N. Misra and B. Dash, for the Appellant; S.K. Misra, P.K. Mohapatra and M.K. Pati for O.P. No. 1, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—This Writ Application has been filed challenging the order dated 19th July, 1999 (Annexure-4) passed by the Presiding Officer, Labour Court, Sambalpur in Misc. Case No. 13 of 1995.

2. Bereft of unnecessary details the short facts necessary for effectual adjudication of the Writ Application are that the petitioner was appointed and working as a Senior Operator (Ribbon Blender) in the establishment of opposite party No. 1, the I.D.L. Chemicals Limited. As certain allegations were levelled against him the petitioner was put under suspension. A domestic enquiry was conducted and ultimately he was dismissed from service. The management of opposite party No. 1 filed a petition u/s 33(2)(b) of the Industrial Disputes Act, 1947 before the Industrial Tribunal, Sambalpur seeking approval of the dismissal order. The said petition was registered as I.D. Misc. Case No. 10 of 1983. The Tribunal after hearing both sides by order dated 31st January, 1987 came to the conclusion that the enquiry was not properly conducted and moreover the charges levelled against the petitioner having not been proved, refused to accord approval to the order of dismissal of the petitioner from service and held that the

said order was unjust and illegal.

3. The management of opposite party No. 1 assailed the said order of the Industrial Tribunal before this Court in OJC No. 1164 of 1987. The said writ application was dismissed on merit on 16th July, 1991. In spite of dismissal of that Writ Application, the management did not permit the petitioner to join his service and challenged the order of this Court before the Supreme Court in SLP No. 17138 of 1991. The said SLP was also dismissed on 28th November, 1991. Thus the order passed by the Industrial Tribunal refusing to accord approval to the order of dismissal of the petitioner from service and the finding that the punishment imposed on the petitioner was illegal were confirmed by the Supreme Court. After dismissal of the SLP the management allowed the petitioner to join his service with effect from 29th January, 1992. After joining his service, the petitioner claimed certain monetary benefits for the period he was kept out of service and as the management did not accede to such claim, the petitioner approached the Labour Court by filing a petition u/s 33-C(2) of the Industrial Disputes Act which was registered as Misc. Case No. 13 of 1995. The Labour Court after going through the materials available and after hearing the parties allowed the claim of the petitioner to a tune of Rs. 91,072.35 (Ninety-one thousand seventy-two rupees and thirty-five paise only) and directed the management to pay the same to the petitioner within two months of the order, but then rejected the claim of the petitioner with regard to lunch allowance, dress allowance, shoe allowance, etc. Being aggrieved by the said order of the Labour Court the petitioner has approached this Court.

4. According to the petitioner, as the order of his dismissal from service was found to be illegal and he was directed to be reinstated in service, he is entitled to all the benefits which his counterparts were enjoying during the time he was kept out of employment and, as such, the conclusion arrived at by the Labour Court with regard to his claim for lunch allowance, dress allowance, shoe allowance, etc. is unjust and illegal and that portion of the order of the Labour Court needs to be varied.

5. Opposite party No. 1 -management at the other hand forcefully submitted that for the period the petitioner has not discharged duties he would not be entitled to the allowances as claimed by him and the Labour Court has rightly rejected such claims. It is further submitted that the aforesaid allowances claimed by the petitioner are not paid to all the employees automatic, but only paid to the employees who actually discharge their duties.

6. In support of their respective submissions, Learned Counsel for the parties relied upon certain earlier judgments of this Court, but then on going through the same I find that the same are not applicable to the facts and circumstances of this case.

7. The power of the Labour Court while deciding a petition filed u/s 33-C(2) of the Industrial Disputes Act was considered by this Court in the case of Surendra

Nath Biswal and Others Vs. Presiding Officer, Labour Court and Another, This Court after analysing the law on the point held as follows :

Section 33-C of the Act vests a power upon the Labour Court to determine the disputes regarding the right of the workman to receive the amount claimed by him, that power did not extend so far as to determine industrial disputes. The scope of the Labour Court under this Section can be catalogued as follows :

(1) If the claim of a workman involves an adjudication of disputes which falls within the definition of an industrial dispute as given in the Act, then that dispute cannot be resolved u/s 33-C(2).

(2) If a claim in the nature of an execution application relating to an industrial award or settlement is made then Section 33-C(2) is available.

(3) Even other claims of workmen not arising out of awards or settlements can be made the subject matter of claim u/s 33-C.

(4) If such claims are disputed, the dispute can be resolved and the claims quantified by the Labour Court, unless the disputes raised amount to industrial disputes.

(5) If there is subsisting relationship of master and servant or employer and employee, then the Labour Court has jurisdiction u/s 33-C(2) to determine the scope of the contract for quantifying the claim made.

(6) If the relationship of master and servant etc. has been terminated then the Labour Court cannot determine the validity of the termination for the purposes of determining a money claim.

(7) If a workman makes a claim for additional wages (beyond his contract) or relating to the conditions of his work, then it is a matter beyond the Labour Court's power u/s 33-C(2) because the claim falls within the scope of an industrial dispute.

8. In the present case, admittedly, the petitioner was out of service from 3rd March, 1983 till 29th January, 1992. The dress allowance, shoe allowance, lunch allowance, etc. are paid to the employees who discharge their duties. Lunch allowance is paid to the employees who remain on duty during lunch time, and dress allowance and shoe allowance are paid to them as they are required to put on the same to protect their persons and to maintain their dresses and shoes which are supposed to get damaged during the course of discharging their specialized duties. The Labour Court has also held that the workman who remained on leave for 2/3 months was not entitled to such allowance during that period of leave even though he was paid other allowances. The reasoning given by the Labour Court for denuding such allowances to the petitioner does not suffer from any illegality or infirmity. The conclusion arrived at by the Labour Court was reasonable and within its jurisdiction and competence. Law is well settled that if a conclusion arrived at by the Tribunal/ Labour Court is reasonable

and is on the basis of materials available, even though a different view can be taken, this Court in exercise of jurisdiction under Article 227 of the Constitution of India should not interfere with the said conclusion. Even otherwise, the claim of the petitioner for the allowances does not fall within the scope of Section 33-C(2) of the Industrial Disputes Act. On a reading of the impugned order of the Labour Court this Court is satisfied that the said order has been passed within the parameters of Section 33-C(2) of the Act and this Court finds no reason to interfere with the same.

9. The Writ Application is, accordingly, dismissed Parties to bear their respective costs.