
(2011) 01 OHC CK 0030

In the Orissa High Court

Case No : Writ Petition (C) No. 5844 of 2009

Sri Ashok Kumar Pradhan

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 2, 33, 33(1), 33A

Citation : (2011) 111 CALLT 761 : (2011) 129 FLR 537 : (2011) 4 LLJ 155 :
(2011) 1 OLR 580

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

Bench : Single Bench

Judgement

M.M. Das, J.—Heard learned Counsel for the parties.

The Petitioner in this writ petition has challenged the award dated 2.2.2008 passed by the Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar-opp party No. 1 in I.D. Misc. Case No. 12 of 2002. The Petitioner claiming himself to be a workman under the opposite party No. 3 filed an application u/s 33A of the Industrial Dispute Act, 1947 (hereinafter referred as "the Act") challenging the decision of the management dated 27.11.2011 terminating him from service on the ground that the order of termination is bad due to non-compliance of the statutory provisions provided in Section 33(i) of the Act. A perusal of the impugned order shows that the learned Presiding Officer came to a finding that the workman-Petitioner was not a concerned workman in the pending dispute and therefore, Section 33A of the Act is not applicable and consequently, the complaint of the Petitioner under the said section is not maintainable. Nevertheless the learned Presiding Officer thereafter examined the legality of the order terminating him and the legality of the disciplinary proceeding initiated against him and came to the conclusion that dismissal was justified. Ultimately, the learned Presiding Officer held as follows:

In the result, therefore, while holding the complaint to be not maintainable, this Tribunal declares the action of the O.P. management to be legal as well as

justified one and consequently the workman is not entitled to any relief.

2. Learned Counsel for the Petitioner submits that though the learned Presiding Officer, Industrial Tribunal relied upon various decisions in his award, but he has misconstrued the same. In the case of Punjab Beverages Pvt. Ltd. v. Jagadish Singh and Anr. 1978 (II) LLJ SC 1, the Supreme Court has categorically laid down in paragraph-11 that the first issue which is required to be decided in a complaint filed by an aggrieved workman u/s 33A of the Act, is whether the order of discharge or dismissal made by the employer is in contravention of Section 33 of the Act. The foundation of the complaint u/s 33A of the Act is in contravention of Section 33 and if the workman is unable to show that the employer has contravened Section 33 in making the order of discharge or dismissal, the complaint would be liable to be rejected. However, if the contravention of Section 33 is established, the Tribunal shall have go into the question whether the order of discharge or dismissal passed by the employer is justified on merit and decide whether on merits the order of discharge or dismissal passed by the employer is justified. If it is, the Tribunal would sustain the order treating the breach of Section 33 of the Act as a mere technical breach. It, therefore, transpires that when the workman fails to establish the contravention of Section 33, the application u/s 33A is to be rejected as not maintainable. Only when the workman succeeds in proving such contravention, the Tribunal will be authorized to examine the legality, propriety and correctness of the order of discharge or dismissal, on merit.

3. In the impugned award, it appears the learned Tribunal came to the conclusion that the workman has failed to prove the contravention of Section 33. Hence, the learned Tribunal should have rejected the said application u/s 33A as not maintainable.

4. Learned Counsel for the Petitioner, however, submits that it is well established principles of law that wherein any pending dispute the workman who has been discharged or dismissed will be bound by the award to be passed, Section 33 comes into play and the employer is required to comply with the said provision. In the instant case, the learned Presiding Officer has misdirected himself in holding that the Petitioner-workman was not a concerned workman in the pending dispute. He further submits that before entering into the merit of the order of discharge or dismissal, proper opportunity was required to be given to the workman to show that the said order was unsustainable. In the instant case, no such opportunity was afforded to the Petitioner-workman even though the learned Presiding Officer, Industrial Tribunal went wrong by going into the question of merit of the order of dismissal. I am satisfied that the Petitioner has not been afforded with opportunity to defend the case on merit.

5. In the case of New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, , the Supreme Court while examining the question as to who would be a concerned workman in the pending dispute, laid down that by enacting Section 33, the legislature wanted to ensure a fair and satisfactory enquiry of the industrial

dispute undisturbed by any action on the part of the employer or the employee which would create fresh cause for disharmony between them. During the pendency of an industrial dispute status quo should be maintained and no further element of discord should be introduced. That being the object of Section 33, the narrow construction of the material words used in Section 33(1)(a) would tend to defeat the said object. If it is held that the workmen concerned in the dispute are only those who are directly or immediately concerned with the dispute it would leave liberty to the employer to alter the term and conditions of the remaining workmen and that would inevitably introduce further complications which it is intended to avoid. Similarly, it would leave liberty to the other employees to raise disputes and that again is not desirable. That is why the main object underlying Section 33 is inconsistent with the narrow construction sought to be placed by the Appellant on the material words used in Section 33(1)(a). Even as matter of construction pure and simple there is no justification for assuming that the workmen concerned in such dispute must be workmen directly or immediately concerned in the said disputes. The Supreme Court further observed that there is no justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute, it is to be borne in mind the essential condition for the raising of an industrial dispute itself, "and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. It was further pointed out that this construction is harmonious with the definition prescribed by Section 2(s) and with the provisions contained in Section 18 of the Act. Therefore, the Supreme Court held that the expression "workmen concerned in such dispute" cannot be limited only to such of the workmen who are directly concerned with the dispute in question, but should include all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute.

6. In view of the above, I set aside the impugned award and remit the matter back to the learned Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar to rehear the case and pass a fresh award by giving full opportunity of hearing to the parties. He shall also decide the question with regard to maintainability of the petition u/s 33A of the Act by taking into consideration the various decisions of the Apex Court cited before this Court by the Petitioner, for finding out as to whether the award which is to be passed in the pending dispute will bind the present Petitioner or not and as to whether in such view of the matter, the Petitioner was a concerned workman or not. He shall also afford opportunity of leading evidence to both the parties, if he decides to examine the order of dismissal on merit. Since the order of dismissal was passed in; the year, 2001, parties are directed to appear before the learned Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar on 31.1.2011, when the Presiding Officer shall fix a date of hearing and make an endeavour to dispose of the entire dispute within

a period of three months thereafter.

7. With the aforesaid observations and directions, the writ petition is disposed of.
Urgent certified copy of this order be granted on proper application.