

GAHC010288132019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8802/2019

BARNALI DIHINGIA AND ANR.
W/O LT. HARI DIHINGIA ALIAS HARI CHANDRA DIHINGIA, R/O-
MAKHUWABARI, KHAMUN GAON, P.O. KHAMUN, DIST.- SIVASAGAR, PIN-
785697.

2: RENU RAJKONWARI
W/O- LT. LILESWAR RAKONWAR
R/O LAKWA UJANI
KONWAR GAON
P.O. LKWA
SIVASAGAR
PIN- 78569

VERSUS

UNION OF INDIA AND ANR.
THROUGH THE SECY., GOVT. OF INDIA, MINISTRY OF LABOUR, NEW
DELHI.

2: OIL AND NATURAL GAS LIMITED
HAVING ITS REGD. OFFICE AT NEW DELHI AND THE HEAD OFFICE AT
TEL BHAWAN
DEHRADUN AND EASTERN REGIONAL BUSINESS CENTRE AT NAZIRA
SIBASAGAR
ASSAM
PIN- 785685

Advocate for the Petitioner : MR A DASGUPTA

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WP(C)/9114/2019

SADANANDA BARUAH
S/O- LT. INDRA KANTA BARUAH
R/O- BETBARI
LUTHURIGAON
P.O. BETBARI
ALI MOOR
DIST.- SIVASAGAR
PIN- 785639.

VERSUS

UNION OF INDIA AND ANR.
THROUGH THE SECY.
GOVT. OF INDIA
MINISTRY OF LABOUR
NEW DELHI.

2:OIL AND NATURAL GAS CORPORATION LIMITED
HAVING ITS REGD. OFFICE AT NEW DELHI AND THE HEAD OFFICE AT TEL
BHAWAN
DEHRADUN AND EASTERN REGIONAL BUSINESS CENTRE AT NAZIRA
SIBASAGAR
ASSAM
PIN- 785685.

Advocate for : MR A DASGUPTA
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND ANR.

**BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 09/02/2023.

Date of judgement : 09/02/2023

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. A. Dasgupta, learned senior counsel assisted by Ms. B. Das, learned counsel for the writ petitioners in both these writ petitions. Also heard Mr. G. N. Sahewalla, learned senior counsel assisted by Mr. B.K.Das, learned counsel appearing for the ONGC

authorities. Since both these writ petitions raises common question of law and facts, hence, these are being disposed of by this common order.

2. The brief factual background of these cases are that the writ petitioners in WP(C) 8802/2019 are the two widows of 2(two) workmen employed on contractual basis under the ONGC. The writ petitioner in WP(C) 9114/2019 is also another workman employed on contractual basis under the ONGC but he has retired from service. Since those workmen were amongst those engaged on contractual basis, hence, they were not given the service benefits of regular employees as a result of which, a dispute had arisen between those workmen and the ONGC. By notification dated 14/06/1999 issued under section 10 of the Industrial Dispute Act, 1947, the following question was, therefore, referred to the Industrial Tribunal at Guwahati, for adjudication :-

“Whether the claim of ONGC Contractual Mazdoor Sangha Lakwa regarding regularization of services of their members (who are working as contractual workers) in ONGC Ltd. at Lakwa is justified? If so, to what relief, the workmen are entitled?”

3. After hearing both the sides and on consideration of the materials available on record, the learned Industrial Tribunal at Guwahati had answered the reference in favour of the workmen by issuing the award dated 18/12/2000. The relevant observations made in the award dated 18/12/2000 is reproduced herein below for ready reference :-

“Accordingly, it is ordered that all the employees mentioned in both the annexure ‘A’ and ‘B’ of order of reference should be regularized within a year from the date of this award. If all of them cannot regularized within a year they should be paid equal wages with those of regular employees till their regularization. It is further ordered that employees mentioned in annexure ‘B’ of the order of reference should be paid equal wages with that of regular employees for doing same nature of work within a period 3 months from the date of this award.”

4. Be it mention herein that in both these writ petitions, we are concerned only with the annexure ‘A’ of the reference since annexure ‘B’ pertains to some other category of workmen.

5. Aggrieved by the award dated 18/12/2000 passed by the learned Industrial Tribunal,

Guwahati at Assam in Reference No. 12(C)/1999, the respondents (ONGC) had preferred two Writ Petitions, registered and numbered as WP(C) 8376/2001 and WP(C) 8369/2001 before this Court. Both the writ petitions were disposed of by the learned Single Judge by judgement dated 21/05/2004 dismissing the writ petitions. Aggrieved thereby, the ONGC had preferred Writ Appeal Nos. 266/2004 and 267/2004 before this Court, which were allowed by the Division Bench by order dated 02/02/2012 by setting aside the order of the learned Single Judge as well as the impugned award. Aggrieved thereby, the workmen had preferred Special Leave Petition (SLP) No. 23494/2023 before the Hon'ble Supreme Court of India. By the order dated 03/04/2018, SLP was allowed by the Hon'ble Supreme Court and the matter was remanded back to the Division Bench of this High Court for a fresh decision of the appeals. Accordingly, the appeals were heard by the Division Bench and by judgement dated 07/01/2019, both the Writ Appeals bearing No. WA 266/2004 and WA 267/2004 were dismissed by affirming the impugned award as well as the order of the learned Single Judge.

6. Aggrieved thereby, the ONGC had once again approached the Supreme Court by filing SLP (C) Diary No. 14640/2019, which was also dismissed by order dated 03/05/2019. After dismissal of the SLP, it was evident that the award dated 18/12/2000 had attained finality in the eye of law and, therefore, was required to be implemented by the ONGC. However, when no action was taken by the ONGC to implement the award and give the financial benefits to the writ petitioners herein, these two writ petitions have been filed seeking a Writ of Mandamus directing the respondents to calculate the benefits ensuing upon the petitioners under the award dated 18/12/2000 and release the amount found due.

7. Mr. A. Dasgupta, learned senior counsel for the writ petitioners submits that the award dated 18/12/2000 has elaborately dealt with all the contentious issues and thereafter, answered the reference in favour of the workmen. After the challenge made to the award has been declined by as many as three forums, viz. the learned Single Judge as well as the Division Bench of this High Court and the Hon'ble Supreme Court of India, there is no scope for the ONGC to deny the reliefs to the petitioners. As such, it is a fit case where a Writ of Mandamus would lie.

8. Mr. G.N. Sahewalla, learned senior counsel appearing for the ONGC, on the other hand, submits that the award dated 18/12/2000, even if the same is held to have attained finality in the eye of law, does not spell out the financial benefits including the back wages etc

that would be payable to the workmen and therefore, unless the petitioners approach the Labour Court under section 33(C)(2) of the Industrial Dispute Act, 1947, for determination of the amount, no payment can be made under the award. On such ground, Mr. Sahewalla has prayed for dismissal of the writ petitions.

9. I have considered the submissions made by learned counsel for both the sides and have also gone through the materials available on record.

10. As noted above, there is no dispute about the fact that under the award dated 18/12/2000, some benefits would ensue upon the workmen in annexures 'A' & 'B'. There is also no dispute about the fact that the claim of the writ petitioners in both the writ petitions pertain to the category of employees listed in annexure 'A' of the reference. It appears that although, there were number of workmen covered by the award, yet, it is only the deceased husbands of the two writ petitioners in WP(C) 8802/2019 as well as the writ petitioner in WP(C) 9114/2019, who are presently not in employment under the ONGC. It also appears that the remaining workmen, coming within the purview of the award dated 18/12/2000 are still working under the ONGC. Therefore, the only question that would now arise in these proceedings is as to whether, there is any scope for the ONGC to deny the fruits of the award dated 18/12/2000 to the writ petitioners at this point of time. For the reasons stated above, the answer to the said question obviously has to be in the negative.

11. In so far as the plea raised by Mr. Sahewalla regarding requirement of approaching the Industrial Tribunal under section 33(C) (2) of the Act is concerned, it is noticeable that no such plea was ever raised by the ONGC either before the High Court or the Supreme Court. Therefore, at this distant point of time, the respondents cannot be permitted to nullify the award by taking such technical plea of this nature for the first time.

12. There is no doubt about the fact that the decision relied upon by Mr. Sahewalla rendered in the case of ***Union of India and others Vs. Kankuben (dead) by LRs and others*** reported in ***(2006) 9 SCC 292***, the Hon'ble Supreme Court has observed that for the money that the workmen is entitled to receive as benefit, he must approach the Labour Court under section 33(C) (2) of the Act. However, the aforesaid observations made by the Supreme Court, in the opinion of this Court, would not be applicable in the facts situation of this case. In the present case, since the ONGC has never raised such question as regards the entitlement of the petitioners and considering the language employed in the impugned

award, it must be understood that the ONGC authorities were also aware about their liability under the award. Therefore, the technical plea raised by the ONGC, in the opinion of this Court, cannot be entertained at this point of time.

13. Having held as above, the question that now would have to be dealt with is as regards the amount that would be payable to the petitioners under the award dated 18/12/2000. Mr. Dasgupta has submitted that his clients would also be entitled to medical benefits as is applicable to the similarly situated regular employees.

14. Taking note of the aforesaid submissions of Mr. Dasgupta, both the writ petitions are hereby disposed of with a direction upon the respondents to compute the monetary benefits payable to the writ petitioners in both the writ petitions, flowing from the award dated 18/12/2000. Upon such computation, the amount be released to the petitioners. The aforesaid exercise be carried out and completed within a period of 90 (ninety) days from the date of receipt of a certified copy of this order.

15. It is made clear that if the order of this Court is not complied with by the respondents within the above time frame, then in that event, over and above the consequences that may ensue under the law, the respondents would also be liable to pay interest @ 9% on the amount that is found to be due and payable under the award dated 18/12/2000, calculated with effect from the date of the order till its realization.

Both the writ petitions stand disposed of.

There would be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant