

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 7067 of 2007

Joint Secretary, Lok Shakti Samiti, Kabir Chowk, Mahendra Modha
Gogam, Orissa Road, Raigarh, District Raigarh, CG

---- Petitioner

Versus

1. Presiding Officer (Under Industrial Dispute Act), Labour Court, Raigarh, CG.
2. Kumari Ranjana Rajput D/o Shri Madan Singh Rajput, Saraipali, Thana Tamnar, Teh. Gharghoda, District Raigarh, CG

---- Respondents

For Petitioner	:	Shri K. P. S. Gandhi, Advocate.
For Respondent No.2	:	Shri C. R. Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/12/2016

The challenge to the present writ petition is the award dated 11.09.2007 passed in Case No. 5/IDA/2006 (Ref.) by the Labour Court, Raigarh in exercise of powers under the provisions of Industrial Disputes Act.

2. Relevant facts for adjudication of the present case is that a reference was made to the Labour Court, Raigarh on 29.09.2006 wherein the State Govt. had made the following terms of reference for adjudication:

“Whether the termination of service of Ku. Ranjana Rajput D/o Shri Madan Singh Rajput was legal or justified. If not, what relief she is entitled for? What direction can be granted to the employer in this regard?”

3. The said reference was registered by the Labour Court at Raigarh and proceeded further with it. Either of the parties i.e. the respondent no.2 who was the first party and the petitioner who was the second party were noticed. Both the parties entered appearance and submitted their reply and

the matter was fixed for evidence of the worker. On behalf of respondent No.2, she herself was examined and in her support, the evidence of one Ramesh Ku. Agrawal was also recorded. After evidence of the first party i.e. respondent no.2, the matter was fixed for evidence of the second party i.e. the petitioner before the Court below on 11.05.2007 and subsequently on 13.06.2007 but there was no witness produced for evidence on behalf of the second party. When there was no witness on both the dates, the Court below closed the right of the petitioner to lead evidence and proceed further. On 13.06.2007, the petitioner moved an application seeking for grant of time to adduce evidence which was rejected by the Court below on 09.07.2007 and further went on deciding the case finally vide impugned order dated 11.09.2007.

4. It is this award 11.09.2007 which is under challenge in the present case.

5. Counsel for the petitioner submits that he does not want to contest the case on merit at this juncture on account of the fact that the evidence on the part of the petitioner has not been brought on record before the Court below and prays for a limited relief that the matter may be remitted back to the Labour Court with a direction for permitting the petitioner to adduce evidence and thereafter for passing a final order in the light of the evidence which would come on record.

6. Shri C. R. Sahu, counsel appearing for the respondent no.2 opposing the petition submits that there is no illegality or infirmity on the part of the Court below in passing the impugned award as sufficient opportunity was granted to the petitioner yet they did not avail the same. Therefore, the Court below was left with no other course of action but to close the right of the petitioner to lead evidence and proceed further with the case. Thus, prayed for rejection of the petition.

7. Having considered the rival submissions put forth by the counsel appearing on either side and on perusal of the record what clearly reflects from the pleadings and also from the award is that one of the preliminary objections raised by the petitioner was that the provisions of Industrial Disputes Act do not apply upon the petitioner's establishment as it does not fall within the ambit of an industry. The petitioner establishment is only a social institution registered under the Firms and Societies Act and therefore under no stretch of imagination it can be brought within the ambit of industry under the Industrial disputes Act. From the award it is also reflected that the petitioner establishment in support of their written statement has produced the registration certificate, however, the original of the same had not been filed with the reply. Therefore, the Court below also did not take cognizance of it because no evidence was led on behalf of the petitioner. This in the opinion of this Court is a vital aspect which ought to have been considered by the Court below on its merit. Once the objection is raised by the petitioner on the applicability of the Industrial Disputes Act, the Court below on its own while deciding the dispute should have decided the said issue whether the nature of dispute raised by the petitioner would fall within the definition of Industrial Disputes Act or not and the Industrial Disputes Act would at all be applicable for the petitioner establishment or not. Further the worker has also not been able to adduce any evidence to disprove the objection or to establish that the petitioner's institution is an industry. In absence of the same, this Court is of the opinion that in the interest of justice the present petitioner deserves to be granted an opportunity to substantiate its case on merit.

8. To this limited aspect counsel appearing for the respondent no.2 does not oppose. However, he submits that in case the matter is remitted back, the Labour Court may be directed to decide the same at the earliest.

9. In the light of the aforesaid discussions, this Court is of the opinion that ends of justice would meet if the award dated 11.09.2007 is set aside and the matter is remitted back to the Labour Court with a specific direction that the parties to the dispute shall now enter appearance before the Labour Court on 10th of January, 2017, on which date the petitioner shall positively keep his witnesses present before the Court below for recording of evidence and thereafter, the Court below shall proceed further to decide the case based on the evidence brought on record by both the parties. It is accordingly ordered.

10. In case the petitioner without any *bona fide* reason fails to produce their evidence on the next date of hearing, the Court below shall be at liberty to pass an appropriate order.

11. With the aforesaid observation, the present petition stands allowed and disposed of.

Sd/-

**(P. Sam Koshy)
JUDGE**