

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 840 OF 2003.

PETITIONER : Nav Bharat Press, THROUGH : its
Vyavasthapak Shri Bajrang Kedia,
near Bus Stand, BILASPUR
(CHHATTISGARH).

// VERSUS //

RESPONDENTS : 1. Presiding Officer,
Labour Court Ambikapur
2. Kishan Asawa, Son of Shri
Ganga Bishan Asawa, Resident of
Nayan-Kala

P. N. No. 695103
Presented by Shri. Sanjay K. Singh
dated 04.03.03

WRIT PETITION UNDER ARTICLES 226/227 OF THE
CONSTITUTION OF INDIA.

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 840 of 2003

Nav Bharat Press

---- Petitioner

Versus

Presiding Officer, Labour Court & Anr.

---- Respondents

Shri Sourabh Sharma, counsel for the petitioner/s.

Shri Majid Ali, counsel under instructions from Shri A.V.Shridhar, counsel for Workman.

And

WPS No. 1835 Of 2009

Kishan Asawa S/o Late Shri Ganga Bisen Asawa, R/o Ring Road Namnakala,
Ambikapur, Distt. Surguja (CG)

---- Petitioner

Vs

1. State Of Chhattisgarh, Through the Secretary, Department of Revenue, DKS Bhawan, Raipur, CG.
2. The Collector, Bilaspur, Distt. Bilaspur(CG)
3. The Tahsildar, Bilaspur, Distt. Bilaspur(Cg)
4. The Dainik Nava Bharat, Through Its Managing Director, Cotton Market, Nagpur (Maharashtra)
5. The Nava Bharat Press, Bilaspur, Through Its Manager, Bilaspur (Cg)
6. The Commissioner, Regional Provident Fund Office, Nava Bharat Complex, Raipur (Cg)

---- Respondents

Shri Majid Ali, counsel under instructions from Shri A.V. Shridhar, counsel for workman.
Shri Sourabh Sharma, counsel for the employer.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

09/01/2017

W.P.No.840/03 has been filed by the employer assailing correctness and validity of order dated 13/09/2002 by which, the Labour Court, in purported exercise of power under Section 33 (C) (2) of the Industrial Disputes Act, 1947, has directed payment of Rs.2,24,900/- as wages to the respondent / employee.

W.P(S) No.1835/09 has been filed by the employee / workman ventilating grievance that despite the order of the Labour Court, the workman is not being paid wages.

2. The genesis of dispute between the parties giving rise to this petition is in narrow compass and stated as below -

The workman – Kishan Asawa initially filed an application under Section 15 (3) of the Payment of Wages Act before the Labour Court in January, 1995 claiming monetary relief towards pay, bonus, allowances, totaling Rs.2,34,200/- along with penalty. That application was, however, not pursued and withdrawn by him.

Later on, workman -Kishan Asawa moved an application under Section 33 (C) (2) of the Industrial Disputes Act, 1947 before the Labour Court seeking direction for payment of amount of Rs.2,95,900/-. Learned Labour Court entertained the matter, issued notices and in response thereof, the petitioner herein filed reply disputing the claim including relationship of employer and employee. According to the petitioner / Management, Kishan Asawa was not even the employee of the respondent / Management, but only a press representative. The Labour Court adjudicated the dispute and passed an order giving rise to these petitions.

3. Learned counsel appearing for the petitioner / Press assails correctness

and validity of the impugned order solely on the ground that the proceedings under Section 32 (C) (2) of Industrial Disputes Act are in the nature of execution proceedings. He submits that prayer for payment of money or any benefit which could be computed in terms of money alone could be entertained and order could be passed by the Labour Court only when the rights of the parties have already been adjudicated and an award has been passed or when there is settlement under the provisions of the law. It is submitted that unless, the right of the workman is already adjudicated under the award or stated in the settlement or otherwise recognized by the employer, the disputed claim could not be adjudicated in proceedings under Section 33 (C) (2) of Industrial Disputes Act. Therefore, only on this count, the impugned order is in excess of jurisdiction and liable to be quashed.

4. On the other hand, learned counsel for the workman submits that the workman – Kishan Asawa was working as Editor under the employer / Press at Ambikapur and the Labour Court has clearly recorded in para 7 while deciding issue No.3 and 5 that the workman was working as an employee of the employer / press. Therefore, in these circumstances, the Labour Court was fully justified in passing the order. He further submits that the Labour Court has drawn a full fledged enquiry in which, both the parties were allowed to lead oral and documentary evidence. Therefore, the order does not call for any interference.

5. After hearing learned counsel for the parties, in the considered opinion of this Court, the issue raised in this petition is squarely covered by the decision of the Supreme Court in the case of **Municipal Corporation of Delhi v. Ganesh Razak and anr., 1995 (1) SCC 235.**

6. It is not in dispute that Respondent No.2 / Workman in WP No.840/2003 initially moved an application under Section 15 (3) of the Payment of Wages Act before the Labour Court which was later on withdrawn. The workman does not claim that he sought issuance of orders by instituting proceedings under Section 33 (C) (2) of Industrial Disputes Act before the Labour Court on the basis of any award passed in his favour by the Labour Court in some other proceedings or that a relief was sought under any statutory settlement or for payment of any monetary benefit under a right recognized by the employer.

7. The impugned order clearly goes to show that the Labour Court proceeded

to adjudicate a dispute between the parties. Respondent No.2 / workman claimed to be the employee of the petitioner/Press on the pleadings *inter alia* that he was employed to work as Editor in the local office at Ambikapur. This has been denied by the petitioner / press in its reply before the Labour Court. The petitioner/ Press has emphatically denied the very existence of relationship of employer and employee as between it and respondent No.2. Apparently therefore, it was a case which required adjudication of the dispute in appropriate proceedings drawn in accordance with the provisions of the Industrial Disputes Act, 1947.

8. The scope of proceedings under Section 33 (C) (2) of Industrial Disputes Act came up before a three judge Bench of the Supreme Court in the case of **Municipal Corporation of Delhi** (Supra). The Supreme Court examined in great details, the statutory scheme of the Act, background of jurisdiction and upon survey of its earlier decisions in the cases of **Bombay Gas Co. Ltd. v. Gopal Bhiva, AIR 1964 SC 752, Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar, AIR 1968 SC 218, Central Inland Water Transport Corporation Ltd. v. Workmen, (1974) 4 SCC 696, State Bank of Bikaner and Jaipur v. R.L. Khandelwal, 5 (1968) 1 LLJ 589**, the issue regarding payment of wages are set at rest. The legal position is that the power of the Labour Court under Section 32 (C)(2) of Industrial Disputes Act extended to interpretation of award of settlement on which workman's right rests, like that of the Executing Court's power to interpret the decree for the purpose of its execution, where basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of claim if there had been no appropriate adjudication or recognition of the same by the employer. The legal position was summarised thus -

“12. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33- C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the

benefit so adjudicated on that basis in exercise of its power under Section 33- C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33- C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.”

9. In view of abovesaid clear legal position, I have no hesitation to hold that the orders and proceedings of the Labour Court, in purported exercise of powers under Section 32 (C) (2) of Industrial Disputes Act, without there being any appropriate adjudication of the dispute, are illegal and without any authority of law and therefore, have to be quashed.

10. The proceedings of the Labour Court and the impugned order passed therein are accordingly quashed. The connected writ petition i.e. WPS No.1835/09 filed by the employee seeks implementation / execution of the order of the Labour Court which has been set aside by this Court. This petition, therefore, meets *fait accompli* and is liable to be dismissed and is accordingly dismissed.

11. In WP No.840/2003, an interim order was passed by this Court on 11/08/2003 to the effect that on petitioner's depositing half of the amount of award within a month, recovery of remainder shall remain stayed and that the amount so deposited shall be permitted to be withdrawn by respondent No.2 on furnishing an undertaking.

Therefore, as the petition filed by the employee has been dismissed, the amount, if any, withdrawn by respondent No.2 shall be subject to recovery as per undertaking given by him.

Sd/-
(Manindra Mohan Shrivastava)
Judge