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HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 3434 of 2011**

1. General Manager, Advani Orlincon Ltd. (Changed name : Ador Welding Limited) Adore House, 6 K Subhash Marg, Mumbai, 40023
2. Manager, Advani Orlincon Ltd. (Changed name : Ador Welding Limited) Industrial Area, Birgaon, Raipur, Chhattisgarh

---- Petitioners**Versus**

1. Abdul Wahid, S/o. Abdul Samad, Aged about 46 years, R/o. 24, Piyush Colony, Amlidih, Raipur Chhattisgarh
2. Labour Court, Raipur, 53, Anand Nagar, Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. N. K. Vyas, Advocate
For Respondent No.1	:	Mr. Vivek Tripathi, Advocate

AND**WPL No. 3600 of 2011**

Abdul Wahi, S/o. Shri Abdul Samad, Aged about 46 years, R/o. 24, Piyush Colony, Amlidi, Raipur, Tehsil and District Raipur, Chhattisgarh (Ex-employee of Adwani Arlican Limited, Raipur Plant, Industrial Veergaon, Raipur, Chhattisgarh)

---- Petitioner**Versus**

1. General Manager, Adwani Orlincon Limited, changed name : Adore Balding Limited, Adore House, 6 K Dubhash Marg, Mumbai, Pin-40023
2. Manager, Adwani Orlincon Limited, changed name : Adore Balding Limited, Raipur Plant, Industrial Area, Veergaon, Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Vivek Tripathi, Advocate
For Respondents	:	Mr. N. K. Vyas, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

02/12/2020

1. Since the two writ petitions are one by the Management and the other by the Employee himself, the two writ petitions have been heard and decided by this common order. For convenience sake the petitioner and the respondents are referred to as the “Employer/management” and “Labour/Employee”.
2. The challenge in both these writ petitions is to the order passed by the Labour Court, Raipur in case No. 242/2005/I.D.Act (Claim). Vide the said order, the learned Labour Court has in his order dated 18.05.2011 allowed the application of the employee under Section 33(C)(1) treating it to be an application under Section 33(C)(2) of the Industrial Disputes Act and held that the employee is entitled for an ex-gratia amount of Rs.1,48,715/- of which the management/employer having already paid Rs.20,000/- the employee was entitled for the balance of ex-gratia payment of Rs.1,28,715/-. It is this order which is under challenge by either parties to the dispute.
3. The employer has preferred the petition questioning the award and the maintainability of the claim case itself, whereas the employee has challenged the award on the non granting of interest on the amount awarded.
4. The employee in the instant case was appointed by the Management-employer on the post of Office Assistant and he was drawing a salary of Rs.7003/- per month. The petitioner ultimately resigned from the service tendering resignation letter on

04.10.2001. The said resignation letter was accepted by the employer and the employee stood relieved from service w.e.f. 29.10.2001.

5. After about 4 years' time the petitioner moved an application under Section 33(C)(1) of the Industrial Disputes Act before the Labour Court, Raipur claiming for ex-gratia amount from the employer, which according to the employee was orally assured by the Management of being paid on the petitioner's resigning from service. The Labour Court registered the case as 242/2005/I.D.Act (Claim) and issued notice to the Management. The employer-Management entered appearance and contested the case on merits with a preliminary objection at the outset, of the dispute not being maintainable under Section 33(C)(1). The Labour Court proceeded further with the matter and in the course of deciding the case framed three issues; (i) whether the case is maintainable itself under Section 33(C)(1) of the Industrial Disputes Act, (ii) whether the petitioner is entitled for the balance of ex-gratia amount of Rs.1,28,715/- and (iii) Relief and costs.
6. It was the specific contention of the employer-Management that the claim application of the petitioner under Section 33(C)(1) or 33 (C) (2) would not be maintainable for the reason that the claim of the petitioner does not arise out of any settlement or an award or under any of the service condition governing the employee in writing in this behalf. In the absence of the settlement award or anything in writing in favour of the employee so far as his entitlement is concerned, according to the Management the claim application

itself would not be maintainable. To the said objection of the employer the Labour Court in his impugned award has held that since the application moved by the employee is one under Section 33(C)(1), but considering the fact that he is a poor employee, his claim should not be rejected only on the technicality of the wrong provision of law being quoted and the Labour Court treated the said application to be one under Section 33(C)(2) and have proceeded to decide the same. According to the petitioner, even under Section 33(C)(2) the claim would not have been maintainable for the same reason that the claim put forth by the employee was not one, which was quantifiable under any of the settlement award or any agreement in a writing which is in existence. As such the application ought to have been rejected on that ground alone.

7. So far as the granting of ex-gratia is concerned, according to the employer-Management, there was never any assurance given at any point of time to the employee, so far as any fixed amount of ex-gratia that he is entitled for. According to the employer, considering this length of service, the employer had at the time of his resignation itself committed the pay Rs.20,000/- as ex-gratia and which has been duly paid also to the petitioner and there was nothing which the petitioner was entitled for beyond the said amount of Rs.20,000/-. For this reason, the counsel for the petitioner prays for quashment of the award passed by the Labour Court.

8. As regards the petition of the employee is concerned, the counsel for the petitioner/employee, submits that even before the employee has tendered his resignation, the management had assured the petitioner for payment of ex-gratia amount and the Management had paid the ex-gratia amount to many other employees similarly placed in the establishment and since the employee has put in another extra year with the employer till October, 2001, he would be entitled for more ex-gratia payment than what was paid to the other similarly placed persons.
9. According to the counsel for the employee, since the ex-gratia amount was not paid to the petitioner at the time of his being relieved from employment in October, 2001 and the petitioner being forced to avail the recourse available before the Labour Court for ventilating his grievance. He should not be deprived of the interest on the delayed payment of ex-gratia amount and therefore the award passed by the Labour Court needs to be modified to the extent that on the balance of amount of Rs.1,28,715/- there should be interest paid to the employee.
10. Having heard the contentions put forth on either side and on perusal of record, some of the undisputed admitted factual matrix of the case is that the employee in the instant case was working with the employer-Management as an Office Assistant with a monthly salary of Rs.7003/-. The said employee submitted his resignation from service vide letter dated 04.10.2001. The resignation letter was accepted by the Management on 29.10.2001 with immediate effect. The letter of acceptance is also a part of the

pleadings. In the letter of acceptance of resignation there is no such commitment prescribed by the employer so far as the monetary dues which the employee would be entitled for. It only has a bare reference of the petitioner being requested to approach the Accounts Department for settlement of the dues payable to him.

11. What is paramount to consider at this juncture is that it is a case where the petitioner has tendered the resignation from employment, which has been accepted by the employer. On resignation an employee would not normally be entitled for any ex-gratia payment other than what has been committed by the employer. Many a times, on resignation from service the employee is not even entitled for dues payable to him; like pension, etc. In the instant case, there is no documentary proof or any cogent material by which it could be said that there was an assurance given in writing by the management in favour of the employee, so far as his entitlement for an ex-gratia payment is concerned.
12. It is also not a case where the resignation letter of the petitioner was tendered pursuant to any voluntary retirement scheme which was floated by the management. The management on the contrary submits that there was a voluntary retirement scheme floated in the establishment which prevailed for only three days i.e. from 25.07.2000 to 28.07.2000 and all those persons, who had opted for voluntary retirement scheme during the said period were granted the monetary benefits as agreed upon under the voluntary retirement scheme and which included payment of ex-gratia to those employees. However, the employee herein did not opt for the

voluntary retirement during the said period. He tendered his resignation well after about 01 year i.e. on 04.10.2001 when the voluntary retirement scheme itself was not in force.

13. Another aspect, which needs consideration is that even after his resignation was accepted on 29.10.2001 with immediate effect for well over a period of 4 years the petitioner did not put forth any of his claim so far as his ex-gratia payment is concerned. An application for the first time was filed before the Labour Court on 26.11.2005 under Section 33(C)(1) of the Industrial Disputes Act. The entire basis for the claim of ex-gratia was in the backdrop of certain employees in the Department being paid ex-gratia on their resignation being accepted by the employer.
14. Admittedly, there was no settlement agreement or an award, nor was there anything in writing which spelt out entitlement of ex-gratia either in favour of the petitioner or in respect of the employees working with the management. In this backdrop it would be relevant at this juncture to consider the provisions of Section 33(C)(1) as also 33(C)(2). For ready reference Sections 33(C)(1) and 33(C)(2) of the Industrial Disputes Act are reproduced herein under:

“33C. Recovery of money due from an employer.-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

15. From the plain reading of the contents of the said provision of law, it clearly reflects that the said provision deals with execution of an existing right in favour of an employee. There has to be a settlement award or an agreement between the employer and the employee or between employer and the union in an establishment, which would create a right in favour of the employee for getting it executed, invoking the provisions of Section 33(C)(1) or for that matter Section 33(C)(2).
16. The law in this regard has been well settled by the Hon'ble Supreme Court way back from the time of the judgment passed in the case of "Municipal Corporation, Delhi v. Ganesh Razak" 1995(1) SCC 235 and which has been further reiterated many a times, wherein it has been specifically mentioned that the scope of proceedings under Section 33(C)(1) and 33(C)(2) is exclusively an execution proceedings arising out of a specific settlement award or

an agreement between employer and the employee or union as the case may be.

17. The law also is settled on this issue to the extent that the Presiding Officer of the Labour Court in exercise of its power under Section 33(C)(2) cannot adjudicate upon a claim of an employee unless there already exists a settlement, award or agreement in this regard. It is not an adjudicatory proceedings as such, but is more of an execution proceedings. The aforesaid judgment of the Hon'ble Supreme Court in the case of "Ganesh Razak" was further followed by this Court in the case of "Steel Authority of India v. State of Chhattisgarh & Ors." WP No. 4536/2006 decided on 17.02.2017, wherein again this Court had reiterated the same proposition holding that the claim application in the absence of a settlement agreement or an award cannot be maintainable under the provisions of Section 33(C)(2).
18. Recently, again the Hon'ble Supreme Court in the case of "Raibahadur Narayan v. Mangeram" 2019(9) SCC 365, it has been held that unless the entitlement of the worker has been earlier adjudicated or recognized by the employer there cannot be a proceedings under Section 33(C)(2) or for that matter 33(C)(1) deciding upon an entitlement.
19. Given the aforesaid legal pronouncements as it stands, so far as the maintainability of an application under the provisions of Section 33(C) of the Industrial Disputes Act, qua the nature of dispute prevailing in the present writ petition this Court has no hesitation in reaching to the conclusion that from the pleadings and the

evidence led by the parties before the Labour Court there does not seem to be any settlement agreement or an award deciding the entitlement of the employee, so far as the ex-gratia payment is concerned. Moreover, there was no document whatsoever adduced or produced in the course of proceedings before the Labour Court by the employee concerned by which it could be determined that there was an assurance or an agreement by the employer for payment of ex-gratia to the employee upon his resignation.

20. In the absence of which, the whole order of the Labour Court in the opinion of this Court is not sustainable and the application itself before the Labour Court was not maintainable under the provisions of Section 33(C)(1) or 33(C)(2).
21. Another facts, which needs to be considered is that the Labour Court seems to have of his own treated it to be an application under Section 33(C)(2) when there was no such request made by the employee for converting it or treating it to be one under Section 33(C)(2). The employee in the instant case was represented by a learned counsel and there does not seem to be any proposal, prayer or request on behalf of the worker treating it to be one under Section 33(C)(2) and for this reason also the findings of the Labour Court in entertaining the application and in deciding the issue No.1 in favour of the employee does not seem to be proper, legal and justified.
22. In view of the same the writ petition WPL No. 3434/2011 preferred by the management stands allowed. The award (Annexure P/1)

dated 18.05.2011 is set-aside/quashed. The writ petition WPL No. 3600/2011 stands rejected on the ground that since the application itself was not maintainable before the Labour Court under the provisions of Sections 33(C)(1) and 33(C)(2) the petitioner would not be entitled for any relief arising out of the said application. The writ petition WPL No. 3600/2011 stands rejected.

23. The quashment of the award of the Labour Court holding it to be not maintainable would not come in the way of employee/worker in approaching the concerned Court by raising a dispute in respect of the claim for ex-gratia and which could be adjudicated upon by the concerned Labour Court as and when raised by the employee.
24. Pursuant to an interim order passed by this Court the entire amount awarded by the Labour Court has been deposited before the Labour Court. Since the writ petition of the employer has been allowed and the award of the Labour Court dated 18.05.2011 is set-aside, the employer i.e. the management of Advani Orlincon Limited would be entitled for the refund of the said amount.

Sd/-
(P. Sam Koshy)
Judge

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