

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 32 of 2021**

*(Arising out of order dated 02.12.2020 passed by the learned Single Judge in  
WPL No. 3434 of 2011)*

- Abdul Wahid S/o. Shri Abdul Samad, aged about 55 years, R/o 24 Piyush Colony. Amalidih Raipur, Tahsil & Distt.- Raipur (C.G.) (Ex- Employee of Advani Orlincon Ltd.).

---- Appellant

**Versus**

1. General Manager. Advani orlincon Ltd. (Changed name Ador Welding Limited) Adore house, 6 K Subhash Marg Mumbai, Pin- 40023.
2. Manager, Advani Orlincon Ltd. (Changed name Ador Welding Limited) Industrial Area, Birgaon Raipur, Tahsil & Distt.- Raipur (C.G.).
3. Labour Court Raipur, 53 Anand Nagar, Raipur, Distt.- Raipur (C.G.).

---- Respondents

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| For Appellant             | : Mr. Sumit Shrivastava, Advocate |
| For Respondent Nos. 1 & 2 | : Mr. N. K. Vyas, Advocate        |

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**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**

**Hon'ble Shri Parth Prateem Sahu, Judge**

**Judgment on Board**

**Per, Parth Prateem Sahu, Judge**

**04.02.2021**

1. Challenge in this writ appeal is to the order dated 02.12.2020, passed by learned Single Judge in WPL No. 3434/2011, whereby the writ petition was allowed and the order passed by labour Court has been set aside.
2. Submission of the learned counsel for the appellant is that the learned Single Judge has not taken into consideration that the appellant has tendered his resignation and after resigning from his job, he asked for the amount of *ex-gratia* due against the employer. He submits that the labour Court, taking into consideration the entire facts & circumstances of the case, have allowed the application and have ordered for the grant of *ex-gratia*

amount of Rs.1,48,750/- in total after adjusting Rs.20,000/- which has already been paid to the appellant. He further submits that as the amount was due therefore, an application under Section 33C(1) of the Industrial Disputes Act, 1947 (for short, "the 1947 Act") has been filed, but the learned Single Judge arrived at a conclusion that the application filed under Section 33C(1) of the 1947 Act would not be maintainable. His submission is that the learned Single Judge ought to have considered the application to be under Section 33C (2) of the 1947 Act and he submits that the impugned order to be interdicted.

3. *Per contra*, Shri Vyas, learned counsel appearing for the Respondent Nos. 1 & 2 submits that the learned Single Judge taking into consideration that there was no accepted dues against the employer and therefore, the application under Section 33C(1) of the 1947 Act itself is not maintainable.
4. The provision under Section 33C(1) of the 1947 Act is in the form of execution only to grant or direct the employer to pay the admitted dues for which the employee is having any right under his service, settlement or award.
5. We have perused the relevant provisions of the law and also the pleadings. The pleading of the appellant himself in the application is that the similar employees who have tendered their resignation on earlier date have been provided the benefit of the *ex-gratia* amount as claimed by him.
6. The appellant has tendered his resignation after about lapse of one year and the employer in the pleadings have stated that the voluntary retirement schemes as floated by the employer has come to an end much prior to the date of tendering of the resignation by the appellant.

7. In view of the aforementioned admitted fact that the appellant has tendered his resignation much after the ending of the voluntary retirement scheme, he is not having any right to seek for any *ex-gratia* amount as claimed by him which has been given to other employees who had opted the voluntary retirement under the scheme floated by the employer at that point of time. The amount claimed is not under any settlement or award but of a scheme which was floated by employer and came to an end on particular date prior to option of resignation by the appellant.
8. Learned Single Judge has considered both the provisions i.e. Section 33C (1) as also 33C (2) and arrived at a finding that the appellant is not entitled for any relief under any of the above provision and rejected the case of the appellant. Learned Single Judge upon considering, entire facts of the case recorded following for setting aside order of labour Court.

“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 concern. 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).”

9. For the foregoing reasons, we do not find any infirmity in the impugned order. The appeal is liable to be and is hereby dismissed.

Sd/-

**(P.R. Ramachandra Menon)**  
Chief Justice

Sd/-

**(Parth Prateem Sahu)**  
Judge

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