

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.2083 of 2012

Pratap Chandra Jena

.... Petitioner

Mr. R. Panda, Advocate

-versus-

***Presiding Officer, Labour Court,
Bhubaneswar and another***

.... Opposite Parties

Mr. P. K. Muduli, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
06.07.2022**

Order No.

04. 1. The Petitioner challenges an order dated 5th January, 2012 passed by the Labour Court, Bhubaneswar disposing of the Petitioner's Industrial Dispute Misc. Case No.200 of 2003 under Section 33-C(2) of the Industrial Disputes Act, 1947 ('ID Act') praying for computation of his arrears and wages as peon of the Balasore Mahila College, Balasore for the period from 1st April, 1989 to 30th November, 2000 amounting to Rs.69,800/-.
2. By the impugned order, the claim of the Petitioner was computed at Rs.28,000/-, which was directed to be paid by the Opposite Parties within two months failing which it would carry interest @ 10% per annum.
3. The grievance of the Petitioner is that he ought to have been granted the entire amount as claimed since, according to him, he had produced materials to show that he had been engaged as

Polling Officer, and had worked as such and that his pay was Rs.800/- per month from April, 1989 onwards. However, on factual basis, the Labour Court found as under:

“4. On perusal of the case record it appears that the applicant has claimed his arrear wages at the rate of Rs.700/- per month from 1.4.89 to 30.11.2000 after adjusting Rs.100/- per month which he has already been received from the opposite-party as his monthly salary. Ext.1, the copy of appointment letter dt.12.3.89 does not disclose the pay of the applicant. There is also no materials on record to show that the applicant was getting Rs.800/- per month from the date of his joining under the opposite-party. Further there is no pre-existing condition or agreement between the parties regarding the wages of the applicant at the rate of Rs.800/- per month from 1.4.89. Law is well settled that:

“Labour Court while exercising powers under Section 33-C(2) exercising power only as Executing Court and it has no jurisdiction to decide the entitlement of the workman and then to proceed to compute the benefits adjudicate.”

However, on perusal of the order of appointment of Presiding and Pooling Officers issued by the District Election Officer, Balasore dt.6.4.96 for 13-Basta Assembly Constituency/ and forming part of 2-Balasore Parliamentary Constituency under the cover of Ext.8, it shows that the applicant was appointed as 3rd Pooling Officer whose designation has been mentioned as Peon and his pay was reflected as Rs.800/- and there no other material to suggest that he was getting Rs.800/- per month from April, 1989.”

4. Learned counsel for the Petitioner is unable to explain to the Court as to why the Labour Court committed an error in appreciating the evidence. He is also not able to show any

document, which indicates that there was an agreement between him and the Management about his engagement as a Peon, which fixes his monthly salary at Rs.800/-.

5. In the absence of such material, it was not possible for the Labour Court to have computed the claim as prayed for by the Petitioner.

6. The Court also notes that in the recent judgment dated 4th February, 2022 of the Supreme Court of India in Civil Appeal No.813 of 2022 (*M/s. Bombay Chemical Industries v. Deputy Labour Commissioner*), the Supreme Court has reiterated the legal position that for entertaining an application under Section 33-C(2) of the ID Act, there has to be a predetermined claim whereas in the present case, there was no such predetermined claim.

7. For all of the aforementioned reasons, the Court is not persuaded to interfere with the impugned order of the Labour Court. The petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda