

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.21073 of 2012**

Sri Santosh Kumar Sarangi ***Petitioner***
Mr. Susanta Dash, Advocate
-versus-
The Presiding Officer, Labour
Court, Bhubaneswar and another ***Opp. Parties***
Mr.A. Mishra, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIAK

ORDER
28.06.2022

Order No.

03.

Dr. S. Muralidhar, CJ.

1. The present petition has been filed challenging an order dated 30th August, 2011 passed by the Labour Court, Bhubaneswar rejecting the workman's application in I.D. Misc. Case No.56 of 2003 filed under Section 33 C (2) of the Industrial Disputes Act, 1947 (ID Act) on the ground that "in the absence of any term of settlement, appointment, agreement or any award, this Court has no jurisdiction to compute the claim of the workman".

2. Learned counsel for the Petitioner submits that the Petitioner was employed as a Typist under the Opposite Party organization "Natya Chetana", Bhubaneswar drawing Rs.600/- per month and that his services were suddenly terminated without paying him salary and other dues. Although it is not clear from the pleadings what the precise facts are, learned counsel for the Petitioner volunteers that the Petitioner was employed from 1992 to 1997. When asked about the delay of

six years in approaching the Labour Court, learned counsel for the Petitioner states that the Petitioner is poor and not aware of the legal remedies.

3. Be that as it may, the ground on which the Labour Court has rejected the plea is that no documents are placed on record by the Petitioner to show that he was engaged as a Typist by the Opposite Party. Two witnesses were examined on his behalf who could only produce photocopies of certain documents. It was not borne out therefrom what was the terms of engagement of the Petitioner, if at all, were. The findings of the Tribunal was that “nothing has been elicited from the mouth of the Opposite Party to show that the applicant was working under him. Above all, there is no pre-existing condition or agreement between the parties regarding wages.”

4. Learned counsel for the Petitioner relies on the decisions in ***Central Bank of India Ltd. v. P.S. Rajagopalan AIR 1964 SC 743*** and ***Director of Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda AIR 2010 SC 1236*** to urge that even without a pre-determination of the legality of the order terminating the Petitioner's services a simple claim for wages can be maintained under Section 33-C (2) of the ID Act.

5. On the other hand, learned counsel for the Opposite Party has placed reliance on the decision of the Constitutional Bench of the Supreme Court in ***Municipal Corporation of Delhi v. Ganesh Razak (1995) 1 SCC 235*** and ***Union of India v. Kankuben (Dead) by Lrs. (2006) 9 SCC 292*** and also relies

recent decision dated 4th December, 2022 of the Supreme Court of India in Civil Appeal No.813 of 2022 (*M/s. Bombay Chemical Industries v. Deputy Labour Commissioner*).

6. As far as the decision in *Director, Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda (supra)* the Court notes that it concerns the validity of termination of services of the workman for non-compliance of Section 25G of the ID Act. It is not a case concerning Section 33C(2) of the ID Act at all.

7. Likewise even in *Central Bank of India Ltd. v. P.S. Rajagopalan (supra)* there was a Scheme the terms of which called for interpretation and that was reason why it was held that the claim for wages in terms thereof could be determined under Section 33C(2) of the ID Act. Neither of the decisions advance the argument of the present Petitioner.

8. On the other hand, it has been explained by the Supreme Court in the recent decision in *Bombay Chemical Industries v. Deputy Labour Commissioner (supra)* as under:

“7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, when there was no prior adjudication on the issue whether respondent No.2 herein was in employment as a salesman as claimed by respondent No.2 herein and there was a serious dispute raised that respondent No.2 was never in employment as a salesman and the documents relied upon by respondent No.2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court

ought not to have proceeded further with the application under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court ought to have relegated respondent No.2 to initiate appropriate proceedings by way of reference and get his right crystalized and/or adjudicate upon. Therefore, the order passed by the Labour Court was beyond the jurisdiction conferred under Section 33(C)(2) of the Industrial Disputes Act. The High Court has not appreciated the aforesaid facts and has confirmed the same without adverting to the scope and ambit of the jurisdiction of the Labour Court under Section 33(C)(2) of the Industrial Disputes Act.”

9. In the present case, there is no adjudication preceding the application under Section 33C (2) of the ID Act. Also, before the Labour Court, no materials were placed by the Petitioner to substantiate that he has been engaged by the Opposite Party as a Typist or that the terms of such engagement were agreed upon between the parties.

10. In the circumstances, the Court finds that no error having been committed by the Labour Court which calls for interference. The writ petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge