

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8008 of 2008

The Managing Director, Orissa State Handloom Weavers Cooperative Society Ltd., Bhubaneswar ***Petitioner***

Mr. S. K. Pattanaik, Senior Advocate
-versus-

Prafulla Kumar Kundu ***Opposite Party***
Mr. D. N. Pattanaik, Advocate

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

Order No.

**ORDER
24.02.2022**

07. 1. The challenge in the present petition is to an order dated 18th August, 2007 passed by the Labour Court, Bhubaneswar in I. D. Misc. Case No.229 of 1997 whereby in an application filed by the Opposite Party-Workman under Section 33-C (2) of the Industrial Disputes Act, 1947 (ID Act), an order was passed directing the Petitioner-Management to pay the Workman Rs.1,24,311.25 towards subsistence allowance as claimed payable to him during the period of his suspension.
2. While directing notice to issue in the present petition on 21st October, 2008, this Court stayed the order of the Labour Court and that interim order has continued since.
3. This Court has heard the submissions of Mr. S. K. Pattanaik, learned Senior Counsel for the Petitioner-Management and Mr. D. N. Pattanaik, learned counsel for the Opposite Party-Workman.

4. The brief background facts of the case are that in relation to the shortage of stock as well as cash at the Nuapada procurement centre of the Petitioner, notice dated 1st September, 1993 was issued to the Opposite Party to show cause why disciplinary action should not be taken against him. It appears that on that very date, the Opposite Party absconded and never turned up. Meanwhile, a special audit report was submitted to the Petitioner-Management on 21st September, 1993 showing a total shortage of Rs.29,74,027.50.

5. On 2nd November 1993, an order was issued by the Management placing Opposite Party under suspension fixing the Headquarters at the head office of the Petitioner-Society at Bhubaneswar. The said order contained a direction to the Workman to sign the attendance register maintained in the P&A section for the purpose of payment of subsistence allowance. As it transpired, the Opposite Party never turned up to sign the attendance register at the Headquarters. When despite service of notice he did not turn up, on 7th March 1994, a notice was published in the newspapers asking the Opposite Party to join the Head office within 15 days and hand over the charge of stock. He did not do so.

6. The workman also did not participate in the disciplinary enquiry despite receiving notice. The inquiry report dated 11th February, 2000 stating that he was held guilty was provided to him along with a second show cause notice regarding penalty, but he did not choose to reply. On 4th April 2000, the Disciplinary Authority passed an order dismissing the workman from service. This was communicated to the Opposite Party-Workman.

7. Meanwhile, the Opposite Party approached the Labour Court with Misc. Case No.229 of 1997 under Section 33-C (2) of the ID Act claiming the aforementioned sum of Rs.1,24,311/- towards subsistence allowance. This application filed in 1997 was allowed by the Labour Court by the impugned order. As regards the plea of the Management that the Workman had not signed the attendance register and was therefore not entitled the subsistence allowance, the Labour Court held that in the absence of any rule requiring the Workman to sign the attendance register, the subsistence allowance could not be denied to him.

8. Learned Senior Counsel for the Petitioner placed reliance on the decision of the Supreme Court in ***U.P. State Textile Corporation Ltd. v. P.C. Chaturvedi, AIR 2006 SC 87*** where *inter alia* it was held that unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the disciplinary proceedings. The denial by the Management in that case of subsistence allowance on the ground that the employee did not sign the attendance register was upheld by the Supreme Court.

10. Learned counsel for the Workman was unable to place before this Court any decision to the contrary. Even before this Court, no satisfactory explanation was given by the Workman for not signing the attendance register. Although, it is contended that he did not receive such notice, the very conduct of the Workman absconding since 1st September, 1993 reveals why his stand is untenable. The impugned order of the Labour Court is unsustainable in law and is hereby set aside.

11. The writ petition is allowed, but in the circumstances, with no order as to costs. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda

