

IN THE HIGH COURT OF ORISSA, CUTTACK**W.P.(C) No.15840 of 2014****(Through hybrid mode)**

Abhijit Guha

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Petitioner

-Versus-

Madhuri Ranjan Sahu & another

Opposite Parties

Advocates appeared in the case:

For Petitioner

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M/s. Sanjeev Udgata,

S. Udgata &

A. Mishra

For Opposite parties

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Mr. D. Mohanty, Advocate

Amicus Curiae

CORAM:**JUSTICE ARINDAM SINHA****JUSTICE SANJAY KUMAR MISHRA****JUDGMENT****27.10.2022****ARINDAM SINHA, J.**

1. Mr. Udgata, learned advocate appears on behalf of the firm. He submits, his client had never employed opposite party no.1. She used to roll Bidi in her house under his client's contractor. There was no master servant relationship between his client and said opposite party.

2. Impugned order dated 11th March, 2011 was made on the application (Misc. Case no.22 of 2007) under section 33-C(2) of Industrial Disputes Act, 1947. Not only the application was misconceived since, opposite party no.1 could not have been said to be entitled to anything from his client but, by impugned order the Labour Court purported to adjudicate on the controversy regarding relationship between the parties, to hold retrenchment and thereupon direct payment.

3. He relies on judgment of the Supreme Court in **U.P. Elec. Supply Co. v. R. K. Shukla**, reported in AIR 1970 SC 237, paragraphs 16, 17 and 18 to submit that there can be no order for awarding retrenchment compensation without finding that there was retrenchment and compensation was payable.

4. He then relies on several judgments, wherein views were taken that if relationship of master and servant is terminated, the Labour Court cannot determine validity of the termination in computing a money claim [**Surendra v. Presiding Officer**, reported in 2004 (1) OLR 647, paragraph 8]. Issue as to whether there is master and servant relationship is to be first established, before giving rise to question of

wages [Shankar Rao B.M. v. Labour Court, Chikmagalore, reported in (1999) III LLJ (Supp) 1288, paragraph 4]

5. Mr. Mohanty, learned advocate was appointed Amicus Curiae by coordinate Bench. He points out from paragraphs-6 and 7 of impugned order that the Court had, inter alia, held in case of monetary benefits also computation will be sometimes necessary as in the case of retrenchment compensation, which has got to be worked out in accordance with section 25-F. He submits, on perusal of the pleadings and impugned order, a clear case of retrenchment compensation emerges. He draws attention to judgment of the Supreme Court in **Central Bank of India Ltd. Vs. P.S. Rajagopalan** reported in AIR 1964 SC 743, paragraph-16 (Manupatra print). A passage from paragraph 16 is extracted and reproduced below.

“16. xxx xxx xxx

According to the appellant, the scope of sub-s. (2) is similar to that of sub-s. (1), and it is pointed out that just as under sub-s. (1) any disputed question about the workman's right to receive the money due under an act cannot be adjudicated upon by the appropriate Government, so under sub-s. (2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point

which the Labour Court can determine is one relation to the computation of the benefit terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-s. (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-s. (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause "where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such words "admittedly, or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words

“admittedly, or admitted to be” in that clause, and that clearly is not permissible.

xxx xxx xxx”

He submits further, the firm’s witness had admitted in evidence that as per Exhibit-A/8 the workman had joined the company on 1st April, 1990 and left the job on 1st January, 2005. This was noticed by the Court in impugned order.

6. Section 33-C(2) proceeds on entitlement of a workman to receive from the employer any money or benefit, which is capable of being computed in terms of money and on question arising as to the amount due or the amount, at which the benefit should be computed, for there to be adjudication. Petitioner’s contention has been that there was no relationship of master and servant between the firm and opposite party no.1. This was the controversy before the Labour Court and adjudicated on the application made under section 33-C(2). This could not have been done.

7. Opposite party no.1 had made a very brief application before the Labour Court. Paragraphs-1, 3, 7 and 8 from the application are extracted and reproduced below.

“1. The petitioner was working as a Bidi Roller under the OP from April, 1990 to December, 2004 continuously. For the said work the petitioner was earning Rs.2,000/- to Rs.2,500/- P.M. from the OP. But for the

reasons not known to the petitioner, though the OP was disbursing wages to the petitioner, yet the OP was obtaining the signature of the husband of the petitioner on the Pay Roll.

xxx xxx xxx xxx

3. *The services of the petitioner under the OP were satisfactory and no stigma of whatsoever nature is attributable to her. But on 31.12.2004 surprisingly Sri Avijit Guha illegally refused employment to the petitioner without payment of any compensation and approval of the Govt. The refusal of employment to the petitioner amounts to retrenchment from service. The action of the OP in refusing employment to the petitioner is neither legal nor justified.*

xxx xxx xxx xxx

7. *Thus the applicant is entitled to receive the following benefits from the OP which has accrued to her;*

a)	Retrenchment compensation	Rs.20,160/-
b)	Notice pay	Rs. 8,640/-
c)	Earned Leave encashment of 255 days	<u>Rs.24,480/-</u>
	Total	<u>Rs.53,280/-</u>

8. *It is submitted the OP was statutorily bound to pay the aforesaid dues to the applicant on or before the date of her refusal of employment. But the OP on false pretext of paying the same later did not pay the amount till date. The OP also in furtherance of his ill motive failed to transmit the EPF withdrawal application form after counter*

signature to the EPF organization and as such the petitioner is being debarred to receive her EPF deposit.”

(emphasis supplied)

8. We perused the objection to the application, filed by the firm. In paragraph-1 of the objection, inter alia, following was said.

*“1. It is true that the petitioner was enrolled as a Biri Roller. But it is not true that the petitioner was rolling directly under the supervision of the OPP. PARTY. The petitioner enrolled herself as a Biri Roller under a contractor in the village Gambharkata. The said contractor used to disburse the wages to the Rollers directly after taking signature or thumb impression. The OPP. PARTY had no knowledge about the monthly earning of the petitioner. After going through the statement of the petitioner the OPP. PARTY scrutinized some of the relevant documents available at his office and found that the petitioner used to draw Biri Rolling wage from the said contractor after putting her signature in some cases. **But in most of the cases the petitioner’s husband signed in the Pay Roll (weekly wage sheet) as “Madhuri Ranjan Sahu” and not “as Prafulla Kumar Sahu for and on behalf of Madhuri Ranjan Sahu”.** So the allegation in Para-1 stating “But for the reasons not known to the petitioner, though the OPP. PARTY was disbursing wages to the petitioner, yet the OPP. PARTY was obtaining the*

*signature of the husband of the petitioner on the Pay Roll”
is denied.”*

(emphasis supplied)

Paragraphs-5, 6 and 7 from the objection are also reproduced below.

“5. The claim in para 7 is denied.

6. The petitioner never approached the OPP. PARTY nor applied or submitted any documents for counter signature. So the allegation in para 8 is denied.

“The petitioner never submitted any applications or forms as stated in para-8 of her petition. It is her obligations to submit the applications and forms for EPF withdrawal when she refused service, but yet the petitioner never submitted the same to the OPP. PARTY. Later the petitioner sent the forms for EPF withdrawal through her advocate R.N. Debata alongwith notice dt. 12.04.2007, but the petitioner neither signed before the OPP. PARTY nor she supplied the relevant particulars mentioned in the form. So the OPP. PARTY has not able to sent the same to the EPF Authority. The petitioner has obligation to contact the OPP. PARTY to transmit the same with relevant requirements, but till date the petitioner neither contact with the OPP. PARTY nor she present in the office of the OPP. PARTY. Thus the claim is liable to be rejected.

7. It is agreed that the OPP. Party received an advocate’s notice dt. 12.04.2007.”

9. Analysis of above pleadings is sufficient to convince us that there was no dispute regarding the retrenchment. Petitioner admitted that payment of salary used to be obtained by husband of opposite party, by putting signature in the pay roll in her name instead of on her behalf. Furthermore, the Court also found, the person said to be contractor had EPF account no.OR/774/119 and was not examined by petitioner. Particulars of entitlements stated in paragraph-7 of the application were simply denied. Absence of specific denial amounts to evasion. So far as contention of opposite party that the firm was statutorily bound to pay the dues to applicant on or before date of refusal of employment as stated in paragraph-8 in the application, it was not dealt with at all in paragraph-6 in the objection. In the circumstances, there was no dispute regarding the relationship or entitlement of opposite party no.1 to receive the benefit on having been retrenched. It follows that **Surendra** (supra) and **Shankar Rao** (supra) have no application to the case.

10. Notwithstanding aforesaid, impugned order stands fortified by declaration of law in **Central Bank Ltd.** (supra) and not affected by **R. K. Shukla** (supra).

11. We find no merit in the writ petition. In coming to the finding we were assisted by Mr. Mohanty, Amicus Curiae. We record our appreciation of his effort.

12. The writ petition is dismissed.

(Arindam Sinha)
Judge

(S. K. Mishra)
Judge



P.Pradhan