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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3532 of 2012

Kelu Charan Mohanty

....

Petitioner

Mr. Ramanath Acharya, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Mr. J. Katikia, Addl. Government Advocate for the State

Mr. Sibasish Mishra, Advocate for O.P. No.2

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

29.06.2022

Order No.

Dr. S. Muralidhar, CJ.

09.

1. The challenge in the present petition is to an award dated 25th November 2011 passed by the Labour Court, Bhubaneswar in Industrial Dispute Misc. Case No.161 of 2003 filed by the Petitioner under Section 33 C (2) of the Industrial Disputes Act, 1947 (ID Act) praying for computation of his arrears of wages for the period April 1988 to December, 2002.

2. The case of the Petitioner before the Labour Court was that he was engaged as a Workman by the Opposite Party-Management and was having no managerial function.

3. The Management pointed out to the Labour Court that there was a history of the litigation with the Petitioner having first filed OJC No.4558 of 1995 in this Court assailing an order dated 14th January, 1994 passed by the Labour Court in I.D. Case No.329 of 1991 in an

application under Section 33 (C) (2) of the ID Act in which the Labour Court refused to compute the Petitioner's entitlement on the ground that he was not a Workman within the meaning of Section 2(s) of the ID Act.

4. On 9th October 2001, the learned Single Judge of this Court disposed of the said OJC No.4558 of 1995 along with OJC No.3874 of 1995, also filed by the same Petitioner. It was categorically observed by the learned Single Judge that there was already pending in the Industrial Tribunal, Bhubaneswar since 1991 I.D. Case No.32 of 1991 which was a reference under Section 10 of the ID Act "for determination as to whether an Assistant Engineer/Sub-Assistant Engineer working under the Management, Orissa State Electricity Board (OSEB) (subsequently merged in Grid Corporation and AES) were Workmen and entitled to be declared as such for the purposes of the further consequential reliefs." Accordingly, learned Single Judge concluded that there was no occasion for the Labour Court to decide an application under Section 33 C (2) of the ID Act. Therefore, the orders of the Labour Court assailed in both the writ petitions were quashed and the matter was remitted to the Labour Court "for fresh consideration of the application under Section 33 C (2) of the ID Act after the determination of the status is made by the Industrial Tribunal in ID Case No.32 of 1991".

5. Thereafter, ID Case No.32 of 1991 came to be disposed of by the Industrial Tribunal by an award dated 14th February, 2002. One of the issues considered by the Industrial Tribunal was "whether the

Sub-Assistant Engineers (now Junior Engineers) working under OSEB performed the duties of Workman and come within the definition of 'Workman' given in Section 2 (s) of the ID Act". While answering this issue in the negative, the Tribunal in the said award dated 14th February 2002 categorically held that the Claimants were "employed in the supervisory capacity and admittedly they are drawing much more than the amounts stipulated in the Act as their monthly salary and as such, they cannot in any stretch of imagination be declared as Workman". The other issues arising in the said ID Case No.32 of 1991 were held to have become infructuous in view of the above finding.

6. The above award dated 14th February 2002 of the Industrial Tribunal in ID Case No.32 of 1991 attained finality with their being no further challenge to it.

7. The Petitioner was aware of the consequences of the above award dated 14th February 2002 since in the Petitioner's own writ petitions i.e. OJC Nos.4558 and 3874 of 1995, the learned Single Judge had passed the earlier mentioned order dated 9th October 2001 remanding the matters to the Labour Court for deciding the issue after the decision in ID Case No.31 of 1991.

8. It is pursuant to that remand that the impugned order has been passed by the Labour Court and the issue has been decided against the Petitioner by referring to the award of the Industrial Tribunal dated 14th February 2002 in ID Case No.32 of 1991. Once it was held that the Petitioner was not a Workman within the meaning of

Section 2 (s) of the ID Act, the question of computing his entitlement within the ambit of Section 33 C (2) of the ID Act did not arise.

9. Mr. Ramanath Acharya, learned counsel for the Petitioner places reliance first on the decision of the Division Bench of this Court dated 21st September 1993 in OJC No.3316 of 1990 (***Gangadhar Mishra v. Orissa State Electricity Board***) and submits that it squarely applies to the fact of the present case.

10. Having examined the said judgment, the Court is unable to agree with the above contention of the learned counsel for the Petitioner. Para-2 of the said decision states “the Petitioner’s case is that he should be paid salary equal to that of the Superintendent”. The case therefore was about equal pay for equal work. The said decision did not address the issue whether within the meaning of Section 2 (s) of the ID Act, the Petitioner in that case was a ‘Workman’. Consequently, the said decision is of no assistance to the Petitioner.

11. It is moreover pointed out by the learned counsel appearing for Opposite Party No.2 that the SLP filed by the OSEB against the said decision being SLP(C) No. CC 23311 of 1994 was no doubt dismissed by the Supreme Court on 3rd January 1995, but the order reads “although there is much to be said on merits in favour of the Petitioner-Board, we are dismissing the petition because there is no satisfactory explanation for condoning the delay of 313 days in

filing the present special leave petition. The question of law is kept open to be agitated in some appropriate proceedings.”

12. Reliance is next placed by Mr. Acharya on the decisions in *Arkal Govind Raj Rao v. Ciba Giegy of India Ltd. AIR 1985 SC 985* and *National Engineering Industries Limited v. Shri Shri Kishan Bhageria AIR 1988 SC 829*.

13. The question in *Arkal Govind Raj Rao (supra)* was whether a person recruited as Stenographer-cum-Accountant and promoted as Assistant-Designated ‘Group Leader’ was a Workman within the meaning of Section 2 (s) of the ID Act. Clearly, the decision turned on its own facts whereas in the present case concerning the very post in which the Petitioner was working there is a finding of the Labour Court which has become final, that such person cannot be considered to be a Workman within the meaning of Section 2 (s) of the ID Act.

14. Likewise, in the decision in *National Engineering Industries Limited (supra)*, the question was whether a person “not doing supervisory work”, but only checking up on behalf of the employer was a ‘Workman’ within the meaning of Section 2 (s) of the ID Act. That issue does not arise for consideration here. On the other hand, the very issue whether the post held by the Petitioner could be considered to be that of a ‘Workman’ has been answered against the Petitioner by the Labour Court in ID Case No.32 of 1991 by the award dated 14th February, 2002.

15. In that view of the matter, the Court is unable to find any error having been committed by the Labour Court in rejecting the claim of the Petitioner. The writ petition is accordingly dismissed with no orders as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin

