

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1525 of 2011

Executive engineer, Telingiri ***Petitioners***
Head Works Division, Jeypore,
Koraput and others

Mr. D. Nayak, AGA

-versus-

Presiding Officer, Labour Court ***Opposite Parties***
Jeypore and others

Mr. Achyutananda Routray, Advocate for Opposite Parties 2
to 5, 7, 8, 10 and 11

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAİK

Order No.

ORDER
08.08.2022

11. 1. The Executive Engineer, Telingiri Head Works Division, Jeypore, Koraput has in this petition challenged an order dated 7th April 2010 passed by the Labour Court, Jeypore, Koraput in I.D. Misc. Case No.38 of 2008 under Section 33-C (2) of the Industrial Disputes Act, 1947 (ID Act) whereby the Labour Court has directed to pay Rs.19,04,422/- to the Petitioners, who were ten in number as per the calculation sheet filed by the Opposite Parties herein, who were Non Muster Role (NMRs) workers from 1977 onwards.
2. While directing notice to issue in the present petition on 17th February 2011, this Court stayed the operation of the impugned order.
3. Subsequently, by an order dated 28th February 2011, as agreed to by the parties, so far as Opposite Parties 1 to 5, 7, 8, 10 to 13,

the present writ petition was in fact allowed and the impugned order of the Labour Court was set aside. The petition was continued only as far as the legal representatives (LRs) of the deceased Opposite Parties 6 and 9.

4. The Court has heard the submissions of learned counsel for the parties.

5. It is pointed out by Mr. D. Nayak, learned Additional Government Advocate for the Petitioners states that as regards the Telingiri Head Works Project, the present Opposite Parties had filed OJC No.871 of 1991. While disposing of the said writ petition by the judgment dated 6th March 1992, this Court issued certain directions for their absorption in other projects. Interestingly, in the aforementioned judgment of the Court, it was specifically stated that the said petition did not involve the question of either regularization of the NMRs or the issue of equal pay for equal work performed by their contemporary regular workers.

6. Aggrieved by the above judgment dated 6th March 1992, the State filed Civil Appeal No.7342 of 1993 and other connected appeals in the Supreme Court of India, which came to be allowed by judgment dated 29th October, 2002 holding that the NMRs would not be entitled to pay equal to that of regular employed staff till they were regularized and taken as permanent members of the establishment. However, it was held that “they would be entitled to be paid only at the rate of the minimum wages prescribed or notified.”

7. Meanwhile the writ petitions filed in this Court by some other NMR workers were transferred to the Odisha Administrative

Tribunal (OAT) and numbered as TA No.47 of 1993 and TA No.54 of 1993. These TAs were disposed of by separate orders by the OAT allowing the prayers of the applicants. The present Opposite Parties were not Petitioners in either of those applications. After the judgment of the Supreme Court, the present Opposite Parties filed a representation dated 22nd March 2007 seeking the same reliefs as granted to the applicants in TA Nos. 47 and 54 of 1993. According to Mr. Nayak, their representations were rejected only because they were not parties to either TA No.47 of 1993 or TA No.54 of 1993.

8. It is seen that the present Opposite Parties straightway approached the Labour Court thereafter with an application under Section 33-C (2) of the ID Act notwithstanding the rejection of their representation. They computed certain amounts due to them. The solitary witness examined by them was not cross-examined by the present Petitioners. On that sole ground in the impugned order, the Labour Court allowed the application and issued the directions as noticed hereinbefore.

9. Learned counsel for the Petitioners is right in his contention that without there being actually a determination of claim by the Tribunal, the Labour Court could not have straightway entertained an application under Section 33-C(2) of the ID Act. The law in this regard is well settled. In *M/s. Bombay Chemical Industries v. Deputy Labour Commissioner* [decision dated 4th February 2022 of the Supreme Court of India in C.A. No. 813 of 2022] it was held as under:

“As per the settled preposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of

wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. (See *Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (1995) 1 SCC 235*)”

10. Consequently, this Court has no hesitation in setting aside the impugned order in so far as it directs payment of the determined wages in terms of the calculation filed by Opposite Parties 6 and 9. Nevertheless, the claim of minimum wages as directed by the Supreme Court in the judgment noted hereinbefore will still have to be considered on its merits by the present Petitioners notwithstanding that they may not have joined the applicants in TA Nos.47 or 54 of 1993.

11. If the LRs of Opposite Parties 6 and 9 make such representation for payment of minimum wages for the work actually performed not later than 5th September 2022, it shall be considered on its merits by the present Petitioners notwithstanding that Opposite Parties 6 and 9 may not have been parties to TA Nos.47 or 54 of 1993, or the rejection of earlier representation and communicate the decision to the LRs of Opposite Parties 6 and 9 within a period of three months thereafter.

12. The writ petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge