

(2016) 10 OHC CK 0029

ORISSA HIGH COURT

Case No: O.J.C. Nos.103 and 104 of 2000

Ramesh Ch. Patra

APPELLANT

Vs

P.O., Labour Court

RESPONDENT

Date of Decision: Oct. 6, 2016

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33C (2)
- Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 - Section 17(2)

Citation: (2017) 152 FLR 111 : (2017) 1 LLN 530

Hon'ble Judges: Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench: Division Bench

Advocate: M/s. D. Mohanta, B. Rout, D.K. Mohanty, K.R. Mohapatra and P.K. Panda, Advocates, for the Opposite Parties No. 2; M/s. S.S. Rao, B.K. Mohanty, S. Patra and N. Pattnaik, Advocates, for the Petitioner

Final Decision: Disposed Off

Judgement

S. N. Prasad, J. - The order dated 22.6.1999 passed by the Labour Court, Jeypore in I.D. Misc. Case No.29 of 1996 whereby and where under an application filed by the petitioner under Section 33-C(2) of the Industrial Disputes Act, 1947 has been held to be not maintainable and as such rejected.

2. Brief case of the petitioner is that he was appointed as News Contributor for three months on 9.12.1988. He continued to discharge duty but remuneration has not given to him, hence issued notice through Advocate demanding payment, however the management has denied its liability. Hence, an application has been filed under Section 33-C(2) of the I.D. Act but however the same was rejected being held to be not maintainable on the ground that the petitioner who is a working journalists could have resorted the procedure contemplated under Section 17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and

Miscellaneous Provisions Act, 1955, since the remuneration which the petitioner is claiming has been disputed by the management.

3. Before appreciating the legality and propriety of the order, it is necessary to deal with the provision of Section 33-C(2) and the scope of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

4. Section 33-C(2) provides a provision for recovery of money due to an employee from his employer. Sub-section (1) of Section 33C is a provision in the nature of execution proceeding and it contemplates that if money is due to workman under a settlement or an award or under the provisions of Chapter VA or Chapter VB, he is not compelled to take recourse to the ordinary recourse of execution in a civil Court, but may adopt a summary procedure prescribed by this sub-section.

5. This provision enables a workman to make an application to the appropriate Government for the issue of a certificate, for any money due to him under an award or settlement or under the provisions of Chapter VA or VB, to the Collector, for its recovery as arrears of land revenue. If on such application being made under sub-section (1), the appropriate Government is satisfied that a specific amount is due to the workman, then it will issue a certificate to the Collector, for the recovery of the amount under the Revenue Recovery Act. In this respect, the judgment pronounced by the Hon'ble Apex Court dealing with this issue in the case of **Central Bank of India Ltd. v. P.S. Rajagopalan reported in AIR 1964 SC 743.**

6. Before going into the impugned order, it is necessary to deal with the provisions of Section 33C of the I.D. Act and in appreciating the finding, it is necessary to see the provision of Section 33C, which is being reproduced herein below:-

"33C. Recovery of money due from an employer.- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-A or Chapter V-B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer : Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government 3[within a period not exceeding three months:] 4[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen."

7. The Hon'ble Apex Court in the case of **Central Bank of India Ltd. v. P.S. Rajagopalan** reported in **AIR 1964 SC 743**, while dealing with the scope of Section 33C(2) has been pleased to hold that the word "benefit" used in Section 33C(2) is not confined merely to non-monetary benefit which could be converted in terms of money, but that it takes in all kinds of benefits which may be monetary as well as non-monetary if the workman is entitled to the, and in such a case, the workman is given the remedy of moving the appropriate Labour Court with a request that the said benefits be computed or calculated in terms of money. Once such computation of calculation is made under Section 33C(2) the amount so determined has to be recovered as provided for in sub-section (1). In other words, having provided for the determination of the amount due to the workman in cases falling under sub-section (2), the legislature has clearly prescribed that for recovering the said amount, the workman has to revert to his remedy under sub-section(1).

8. Sub-section (3) empowers the Labour Court to appoint a Commissioner for the purpose of computing the money value of the benefit, and it lays down that if so appointed, the Commissioner shall take such evident as may be necessary and submit his report to the Labour Court. The Labour Court is then required to proceed to determine the amount in the light of the report submitted by the Commissioner

and other circumstances of the case. This means that proceedings taken under sub-section (2) may be determined by the Labour Court itself or, in a suitable case, may be determined by it after receiving a report submitted by the Commissioner appointed in that behalf. It is clear that if for computing in terms of money the value of the benefit claimed by the workman, an enquiry is required to be held and evidence has to be taken, the Labour Court may do that itself or may delegate that work to a Commissioner appointed by it.

9. This is the settled proposition as has been held in the case of **Punjab National Bank Ltd. v. K.L. Kharbanda reported in (1962) 1 LLJ 234**, the question which is the subject matter before the Hon'ble Apex Court regarding the scope of sub-section (2) as to whether when it can be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties in cases which fall under sub-section (2). While answering this, the Hon'ble Apex Court in the case of **Central Bank of India Ltd. v. P.S. Rajagopalan reported in AIR 1964 SC 743** has been pleased to hold at para-16, which is being reproduced herein below:-

"Para.16. xxx xxx In our opinion, on a fair and reasonable construction of sub-section (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-section (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 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. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-section (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under section 33 C (2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases. have to be preceded by an enquiry into the existence of the right and

such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution(1). We must accordingly hold that Section 33C (2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers incidentally, it may be relevant to add that it would be somewhat odd that under sub-section (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-section (2). On the other hand, sub-section 3 becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-section (2)".

The Hon"ble Apex Court in the said case while discussing the scope of Section 33C(1) and 33C(2) has been pleased to hold at para-19, which is being reproduced herein below:-

"Para-19. xxx xxx It is remarkable that similar words of limitation have been used in Section 33C (1) because section 33 C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under Section 33C (1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in Section 33C(2) and to that extent, the scope of Section 33C(2) is undoubtedly wider than that of Section 33C(1). It is true that even in respect of the larger class. of cases which fail under Section 33C(2), after the determination is made by the Labour Court the execution goes back again to Section 33C(1). That is why Section 33C(2) expressly provides that the amount so determined may be recovered as provided for in sub-section (1). It is .unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under Section 33C(2). There is no doubt that the three categories of claims mentioned in Section 33C(1) fall under Section 33C(2) and in that sense, Section 33C(2) can itself be deemed to be a kind of. execution proceeding; .but it is possible that Claims not based on settlements, awards or made under the provisions of Chapter V A, may also be competent under Section 33C(2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under Section 33C(2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under Section 33C(2). His demotion or dismissal may give rise to an industrial

dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal Or demotion is unlawful and. therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a preexisting contract, cannot be made under section 33 C (2). If a settlement has been, duly reached between the employer and his employees and it fails under Section 18(2) or (3) of the Act and is governed by Section (19)2 it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative no claim can be made under Section 33C(2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may be arise thereafter may to be dealt with according. to the, other procedure prescribed by the Act. Thus, our conclusion is that the scope of Section 33C(2)is wider than Section 33C (1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under section 33G (2) which may not fall under Section 33C(1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd (1), that Section 33C is a provision in the nature of execution should not be interpreted to mean that the scope of Section 33C(2) is exactly the same as Section 33C(1).

10. So far as the fact of this case is concerned, the petitioner being aggrieved with the action of the management since according to him, the remuneration has not been paid had made application under Section 33C(2) of the I.D. Act and the Tribunal has rejected the application held to be not maintainable with an observation to move to the appropriate Government under Section 17(2) of the Working Journalists Act.

11. The Tribunal while passing such order has not taken into consideration the intent of the legislation of Section 33C(2) as has been settled by the Hon"ble Apex Court in the case of Central Bank of India(supra), hence applying the said principle, the order passed by the Tribunal is hereby quashed.

In the result, the matter is sent back to the Industrial Tribunal for disposal in accordance with law.

Accordingly, both writ petitions are disposed of.