

(2003) 07 JH CK 0024

Jharkhand High Court

Case No: CWJC No. 895 of 2000 (R)

Damodar Valley Corporation

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: July 25, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 33C(2)

Citation: (2003) 4 JCR 71

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Advocate: S. Choudhary and C.S. Singh, for the Appellant; Mahesh Tiwari, Rita Kumari and Sujata Bhattacharjee, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.K. Merathia, J.

Heard leaned counsel for the petitioner and respondent No. 4. The employer-petitioner (Damodar Valley Corporation) has filed this writ petition to quash the order dated 20.11.1999 passed by the Presiding Officer, Labour Court, Bokaro Steel City, Bokaro in M.J. Case No. 2 of 1994(R) allowing the application filed by the respondent No. 4 u/s 33C(2) of the Industrial Disputes Act, 1947 and directing the petitioner to pay different of wages due etc.

2. The respondent No. 4 filed an application u/s 33C(2) of the Industrial Disputes Act on 20.7.1994 claiming himself to be a workman of the respondent No. 3 who was a contractor under the petitioner. His case was that he was a licensed electrical Supervisor working under the contractor of the petitioner. Therefore, according to him the petitioner was his principal employer. His further case is that the petitioner awarded various electrical contracts in favour of the respondent No. 3, which were

of permanent and regular nature. He was appointed as B-Supervisor as far back as 25.7.1988 on a total monthly salary of Rs. 1000/- consolidated which was raised to Rs. 1200/- per month which was less than the minimum rates of wages. On raising claim for enhancement of wages, he has been wrongfully and illegally removed from the service w.e.f. 1.6.1994 against which he has been taking legal action. He worked even beyond his duty hours but no overtime was paid between 25.7.1988 to 31.5.1994. He was also not paid one month's notice and the retrenchment compensation.

3. The case of the petitioner was that the respondent No. 4 has to establish his existing right to receive the amount from the contractor (respondent No. 3) and settle the claim with the contractor. There is no employer-employee relationship between the petitioner and respondent No. 4. In any event the claim is not within the ambit of, definition of wages, and Section 33C(2) of the Industrial Disputes Act.

4. The case of the contractor (respondent No. 3) was that the respondent No. 4 was purely part-time supervisor in electrical department as he was possessing licence granted by the Bihar Government, he was working with other companies simultaneously, he was paid not less than prescribed minimum wages; he being a part time supervisor doing work with other employers also, question of retrenchment and payment of other claims did not arise.

5. Learned counsel for the petitioner argued as follows :

Without there being any pleading to that effect, the workman stated in his deposition that other supervisor was paid about Rs. 3000/- per month whereas he was being paid Rs. 1200/- per month. He further submitted that the contractor (respondent No. 3) although did not appear at the time of hearing, its written statement disputing and denying the claim of the workman was on the records, he also submitted that the labour Court should have taken into account, that the respondent No. 4 worked for about six years without any grievance regarding wages, he lastly submitted that the impugned order is without Jurisdiction and illegal. He placed reliance on the decision reported in [Municipal Corporation of Delhi Vs. Ganesh Razak and Another](#), State Bank of India v. Ram Chandra Dubey and Ors. 2001 LabIC 82 Ramesh K. Sharma and Anr. v. Rajasthan Civil Services and Ors. 1999 LabIC 228 Tara and Ors. v. Director Social Welfare and Ors. Chief Superintendent, Government Livestock Farm Hissar v. Ramesh Kumar, (1997) 11 SCC 363 .

6. Learned counsel for the respondent No. 4 supported the impugned order and relied on, the judgments of different High Courts reported in AIR 1965 Mad 450 Proprietor, Lenox Photo Mount Manufacturing Co., Madurai v. Presiding Officer, Labour Court. Madurai and Anr.. 1969 LabIC 1126 Indra Singh and Ors. v. Labour Court, Jullundur and Anr. 1991 LLJ 218 Ajudhia Textile Mills and Ors. v. Presiding Officer, Labour Court and Anr..

7. The said cases relied on by counsel for respondent No. 4 are clearly distinguishable from the case on hand. Moreover, in view of the aforesaid judgments of Hon"ble Supreme Court relied on by counsel for the petitioner, clearly laying down the scope of Section 33C(2) of the Industrial Disputes Act, in my opinion, labour Court has committed error of jurisdiction in allowing the application of respondent No. 4 u/s 33C(2) of the Industrial Disputes Act.

8. The Hon"ble Supreme Court has laid down that the labour Court cannot adjudicate the dispute of entitlement, or the basis of claim of workman u/s 33C(2) of the industrial Disputes Act. It can only interpret the award or settlement on which the claim is based. The jurisdiction of labour Court is like that of executing Court. It is only when the entitlement has been earlier adjudicated or recognized by the employer, the labour Court can proceed u/s 33C(2) of the Industrial Disputes Act for the purpose of implementation or enforcement thereof and if in that process some ambiguity requires interpretation, the labour Court may incidentally interpret such adjudication or settlement.

In this case the very basis of the claim of respondent No. 4 was disputed and denied. There was no earlier adjudication, or recognition of the claim of the respondent No, 4 by the contractor or the petitioner.

Admittedly there has been no adjudication or settlement between the parties with regard to the claim of respondent No. 4. In the case of Municipal Corporation of Delhi, (supra) the workmen who were daily wages/casual workers claimed wages at the same rate as of the regular workers. In the present case also the respondent No. 4 claimed more wages.

The respondent No. also could not establish that he was paid less than the minimum wages. Further, the labour Court without applying its mind to the legal aspect of the matter, erroneously passed the impugned order.

9. In view of the facts and the circumstances noticed above, this writ petition is allowed. The impugned order dated 20.11.1999 passed by Presiding Officer, Labour Court, Bokaro Steel City, Bokaro in M.J. Case No. 2 of 1994 (R) is quashed. However, in the facts and circumstances of this case, there will be no order as to costs.