



GAHC010109522016

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2119/2016

SAYED ZAKIR HUSSAIN
S/O- LT. SYED LATIFUR RAHMAN, HOUSE NO. 1, HATIGAON CHARIALI,
P.O.- HATIGAON, GHY- 38, DIST.- KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY COMMISSIONER and SECY., LABOUR DEPTT., DISPUR, GHY- 6.

2:THE MANAGEMENT OF SYEDBARI TEA ESTATE
P.O.- TITABOR
PIN- 785630
DIST.- JORHAT
ASSAM.

3:THE ASSTT. LABOUR COMMISSIONER
JORHAT
PIN- 785001
ASSAM.

4:THE DIST. COLLECTOR
JORHAT DISTRICT
JORHAT
PIN- 785001
ASSAM

Advocate for the Petitioner : MS.P KALITA

Advocate for the Respondent :



**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 06-08-2022

Heard Ms. A Bhattacharyya, learned counsel for the petitioner. Also heard Mr. J K Goswami, learned Additional Senior Government Advocate for the respondent no. 1, 3 and 4 respectively, being the Commissioner & Secretary, Labour Department, Government of Assam, Assistant Labour Commissioner, Jorhat and the District Collector, Jorhat.

2. The respondent no. 2 is the Management of Syedbari Tea Estate where the petitioner was a workman.

3. In respect of service on the respondent no. 2, there is an order by the Lawazima Court dated 03.08.2022 providing that there is already an order of the Court dated 22.03.2018 wherein notice was accepted on the respondent no. 2 and further the A/D Card received back upon service although indicates of service, but the seal and signature thereof may be not properly legible. As there is already a judicial order accepting the notice, we proceed with the matter in the absence of respondent no. 2 inasmuch as, no attempt has been made by the said respondent to appear before the Court.

4. The petitioner was a Head Clerk under the Management of Syedbari Tea Estate, Titabor, Jorhat. Upon the service of the petitioner being discontinued by the Management of the Syedbari Tea Estate, an industrial dispute was raised resulting in Reference Case No. 7/1997 before the learned Labour Court, Dibrugarh. The Reference Case No. 7/1997 was answered by the Award, which was passed 10.11.1998. By the Award of 10.11.1998, the learned Labour Court had held that the Management was not justified in keeping the petitioner



workman under suspension for an indefinite period and that he was entitled to a reinstatement with full back wages from the date of his suspension. It was held that the Management was not justified by not paying the subsistence allowance to the petitioner at the rate of 75% after expiry of 90 (ninety) days from the date of suspension. Further it was held that the petitioner workman was also entitled to get arrear subsistence allowance at the rate of 75% from the date of its due.

5. Accordingly, the Award of the learned Labour Court made on 10.11.1998 in Reference Case No. 7/1997 was carried forward by the Assam Chah Karmachari Sangha, Jorhat to the Assistant Labour Commissioner, Jorhat as per the letter no. ACKS/JRT/108/474 dated 09.10.1999, on behalf of the workman, for taking necessary action on the matter. In the process, the Assistant Labour Commissioner, Jorhat had given a personal hearing to the Manager of Syedbari Tea Estate, but the Manager failed to appear before the Assistant Labour Commissioner. A show-cause notice dated 21.07.2000 was also issued to the Manager of Syedbari Tea Estate but in spite of it, the Manager of Syedbari Tea Estate had not responded to the notice of the Assistant Labour Commissioner. A subsequent notice was also served by the Assistant Labour Commissioner dated 15.02.2001 upon the Managing Director as well as the Manager of Syedbari Tea Estate but the said notice was also not acted upon by the Management.

6. In the circumstance, the Assistant Labour Commissioner had issued a certificate under Section 33 C (1) of the Industrial Dispute Act, 1947 (in short, the Act of 1947) for an amount of Rs.2,50,405.47 in favour of the petitioner workman Syed Zakir Hussain. The Assistant Labour Commissioner by his communication no. LMD.86/2000/PT/1991 dated 24.05.2001 made to the District Collector, Jorhat had made a request for an early realization of the

certified amount with any such further amount that may accrue from July, 2000 onwards up-to the date of realization.

7. This writ petition is instituted on the grievance that the communication of the Assistant Labour Commissioner, Jorhat dated 24.05.2001 requiring the District Collector, Jorhat to act upon the certificate issued under Section 33 C (1) of the Act of 1947, had not been done so by the District Collector.

8. We have taken notice that there is an Award made on 10.11.1998 in Reference Case No. 7/1997 by the learned Labour Court, Dibrugarh in favour of the petitioner workman. Section 33C(1) of the Act of 1947 inter-alia provides that where any money is due to a workman from an employer, amongst others, under an award, 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.

9. Section 33C(1) of the Act of 1947 is extracted as 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 ⁴[Chapter VA or VB] 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.”

10. Section 33C(1) of the Act of 1947 provides that if, there is an award in favour of any workman, either, he himself or by any person on his behalf may make an application to the appropriate Government for the recovery of the amount, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to be recovered by the Collector of the district concerned. We further take note that by a Notification No. GLR.358/81/6 dated 22.09.1981, the appropriate Government being the Government of Assam had under Section 39(b) of the Act of 1947 delegated its authority to issue the certificate under Section 33C(1) of the Act of 1947 upon the Assistant Labour Commissioner. Upon such delegation, it has to be understood that the Assistant Labour Commissioner, Jorhat is exercising the power of the appropriate Government under Section 33C(1) of the Act of 1947.

11. A copy of the Notification No. GLR No. GLR.358/81/6 dated 22.09.1981 has been produced by Mr. J K Goswami, learned Additional Senior Government Advocate for the respondents and the same is extracted as below:

“NOTIFICATION

Dated Dispur, the 22nd Sept/1981

No. GLR.358/81/6 :- In exercise of the powers conferred by section 39 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947), the Governor of Assam is pleased to direct that the powers exercisable by the State Government under section 33C of the said Act shall also be exercisable by the under noted officers of the Labour Department within their respective jurisdiction subject to the condition that the employer concerned shall be given an opportunity in writing to show-cause against such recovery :-

- (1) Senior Assistant Labour Commissioners.*
- (2) Assistant Labour Commissioners.*

This supersedes Govt. notification No. GLR.207/61/39 dated 19th August/1963.



*Sd/- C.R.Samaddar,
Secretary to the Govt. of Assam,
Labour & Employment Deptt."*

12. The communication of the Assistant Labour Commissioner dated 24.05.2001 also enclosed therewith a certificate issued in favour of the petitioner workman for an amount of Rs.2,50,405.47. Although the certificate is shown under the heading Sections 4 and 6 of the Bengal Public Demands Recovery Act, 1913, but it has to be read that the certificate had quoted a wrong provision of law and in the facts and circumstance of the present case, it has to be understood that it is a certificate under Section 33C(1) of the Act of 1947. We have also noticed from the communication of the Assistant Labour Commissioner that the further requirement of Section 33C(1) of the Act of 1947 as regards the satisfaction to be arrived by the appropriate Government that the money is so due had also been complied with inasmuch as three notices were issued to the Management of Syedbari Tea Estate but inspite of it, the Management had not responded to the notices of the Assistant Labour Commissioner.

13. Further, the Award itself is clear as to what had been awarded to the workman and the satisfaction can also been arrived from the award itself. Accordingly, as the compliance of the requirement of the Section 33C(1) of the Act of 1947 had been complied with and thereupon, a certificate had been issued by the Assistant Labour Commissioner for an amount of Rs.2,50,405.47, now it is for the District Collector, Jorhat to recover the said amount from the Management of Syedbari Tea Estate, and pay the amount to the workman petitioner. The District Collector to also take note that the Assistant Labour Commissioner had made the calculation of the amount payable up-to July, 2000 by further providing that it is for the District Collector to arrive at any further



sum that may have accrued to the workman petitioner in the meantime up-to the date of realization of the money.

14. Accordingly, the District Collector, Jorhat is directed to act upon the certificate issued by the Assistant Labour Commissioner under Section 33C(1) of the Act of 1947 for an amount of Rs.2,50,405.47 and any further amount that may have been accrued to the workman up-to the date of realisation and issue necessary process to recover the amount from the Management of the Syedbari Tea Estate in the manner of recovery of arrear of land revenue and upon recovering the amount from the Management of Syedbari Tea Estate, take necessary steps to pay the amount to the petitioner workman as per law.

15. The requirement be done by the District Collector, Jorhat within a period of three months from the date of receipt of certified copy of this order.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant