

GAHC010014632018



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

Case No. : WP(C)/689/2018

BIVASH CHANDRA DAS
S/O- LATE RATNESWAR DAS, VIDYA NAGAR, QTR NO. 07, P.O AND P.S-
MARGHERITA, DIST- TINSUKIA, ASSAM, PIN- 786181

VERSUS

COAL INDIA LTD.
REP. BY ITS CHAIRMAN, COAL BHAWAN, PREMISE NO.04, MAR PLOT NO.
AF-III, ACTION AREA-1A, NEWTOWN, RAJARHAT, KOLKATA, WEST
BENGAL, PIN- 700156

2:NORTH EASTERN COALFIELDS
COAL INDIA LIMITED
MARGHERITA
THROUGH THE GENERAL MANAGER
NEC
CIL
P.O AND P.S- MARGHERITA
DIST- TINSUKIA
ASSAM
PIN- 786181

3:PERSONNEL MANAGER
NEC
CIL
O/O THE GENERAL MANAGER
NEC
CIL
P.O AND P.S- MARGHERITA
DIST- TINSUKIA
ASSAM
PIN- 786181

4:THE REGIONAL LABOUR COMMISSIONER(CENTRAL)
CHOWKIDINGEE
DIBRUGARH
P.O AND DIST- DIBRUGARH
ASSAM
PIN- 78600

Advocate for the Petitioner : G P BHOWMICK

Advocate for the Respondent : SC, COAL INDIA

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

22.08.2023

Heard Mr. P.P Medhi, learned counsel for the petitioner. Also heard Mr. M.Z. Ahmed, learned Senior counsel assisted by Mr. A.M Dutta, learned counsel representing the Coal India Ltd.

2. This writ petition has been filed by the petitioner who is employed as a Driver (Casual Worker) under the respondent No. 3 since 1994. The employer of the petitioner is the Coal India, namely the respondent No. 1. The petitioner was engaged as a Driver (Casual Worker) on 22.09.1994 at a consolidated pay of Rs. 1500/- per month. Subsequently, he was removed from service by the Management on 25.05.1997 on a verbal order without issuing any formal order of dismissal and without giving any opportunity of being heard. The petitioner approached the Regional Labour Commissioner, who was pleased to hold a conciliation proceedings. However, the said conciliation proceedings were failed and the matter was referred to the Industrial Tribunal as a reference case registered as Reference Case No.14(C)/1999. The Tribunal by award dated 10.08.2000 held that the termination of the workman from service was illegal

and he was directed to be re-engaged with immediate effect and directed the management to issue necessary orders for immediate re-engagement of the petitioner. This award of the Industrial Tribunal was assailed by the Management before this High Court by Writ Petition No. 5553/2001. By Judgment and Order dated 06.02.2008, the writ petition was dismissed against which the Management preferred an appeal being W.A. No. 141 of 2008. The appeal also came to be dismissed and the learned Single Judge's order was upheld. The matter travelled to the Apex Court and as the management preferred an appeal being SLP(C) No. 18078/2008. The said SLP also came to be dismissed as also the Review Petition No. 947/2008 filed by the Management against order of dismissal by the Apex Court, also came to be dismissed.

3. Thereafter, the petitioner by communication dated 22.12.2008 was directed to report for duty at Margherita, which is the Headquarter of Northeast Coal Fields, Margherita. Subsequently, by order dated 08.01.2009, the petitioner was posted at E&M Department.

4. It is submitted by the learned counsel for the petitioner that the petitioner has been re-engaged as a Casual Driver on lumpsum emoluments of Rs.2000/- per month only and he has been discharging his duty without break/interruption of continuous service. In spite of representations being filed before the Competent Authority, the Management had not accepted the prayers of the petitioner seeking regularization. The learned counsel for the petitioner submits that while other similarly situated Casual Workers working as Drivers came to be regularized, the petitioner was never considered for regularization. Being this situated, the case of the petitioner was taken up by the Assam Coal Mines Workers Union, Ledo and a conciliation proceeding was further held in the Office of the Regional Labour Commission (Central), Dibrugarh, which was attended by

the representatives of the Coal India, the Workers Union and the petitioner.

5. During the conciliation proceedings, a memorandum of settlement was arrived at whereby it was agreed that the arrear pay of the petitioner with retrospective effect from 01.04.2015 would be released within 30 days from the date of settlement and further a proposal for regularization of his service was to be initiated for approval before the Competent Authority. The learned counsel for the petitioners submits that inspite of the memorandum of settlement arrived at between the parties, the Management neglected to implement their share of responsibility in respect of the terms of settlement arrived at by and between the parties. It is submitted that the settlement is pursuant to reconciliation proceedings initiated by the Regional Labour Commission (Central) in terms of the provisions of Industrial Disputes Act read with the Rules. The learned counsel for the petitioner submits that he is still continuing his services as a Casual worker on a daily wage of Rs.650/- (Rupees Six Hundred Fifty only) per day which comes to about Rs 17,000/- (Rupees Seventeen Thousand only) per month. The learned counsel for the petitioner submits that till date no action has been taken by the respondent- management authorities in respect of his representations as well as the terms of settlement arrived at by and between the parties. Under such circumstances, the petitioner has approached this Court praying for appropriate direction and order. The learned counsel for the petitioner has relied upon the Judgment of the Apex Court rendered in ***Union of India and Ors. Vs All India Trade Union Congress and Ors.***, reported in ***(2019) 5 SCC 773***. It is submitted that on a given set of facts and circumstances, the writ Court is not denuded of its powers to issue specific directions to the respondents to frame a scheme for regularization of workers like the petitioner. It is submitted that in exceptional cases, the Court may also

consider it proper to issue appropriate mandatory directions.

6. Mr. M. Z. Ahmed learned Senior counsel assisted by Mr. A.M. Dutta submits that the counter affidavit on behalf of the Coal India has already been filed. He vehemently disputes with the submissions made by the learned counsel for the petitioner. According to Mr. Ahmed, the petitioner's case cannot be regularized as the proposal sent has not been accepted by the competent authorities of the Coal India limited. The Coal India is a Government Company, therefore, the Government Rules, Regulations as well as the Guidelines are required to be implemented in respect of the employment of workers engaged by the Coal India. Referring to Paragraph-12 of the affidavit filed by Coal India, Mr. Ahmed submits that the Coal India has provided basic amenities like company's quarter, Medical OPD facilities, water supply, electricity, school facilities for the children of the petitioner. As such there is no malafide intention of the Coal India in not regularizing the services of the petitioner. The petitioner was engaged as a casual worker and he is continuing in his services as casual worker. He is being given daily wage of Rs.736/- (Rupees Seven Hundred Thirty Six only) from April 2023 and all other facilities which are ordinarily available to workers in the Coal India, have been given to petitioner. As such until any such scheme is framed by the Government of India in respect of Coal India or other public sector undertakings, the claims the petitioner for regularization cannot be accepted.

7. The learned counsel for the petitioner objects to the submission made that company facilities are being offered to the petitioners. He submits that except for the company quarter and water supply, other facilities have not been extended to him. He, therefore, submits that even if this Court does not issue any directions to the respondents for regularizing the services of the petitioner, the relief claim may be bonded by directing the authorities to atleast provide

basic amenities as mentioned in paragraph-12 of the affidavit by the respondent.

8. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused. Judgment cited of the bar has also been noted.

9. The clear case of the petitioner is a claim for regularization in the respondent-organization namely, Northeast Coal India Limited, which is under Coal India Limited. While there is no dispute that the petitioner was engaged as a casual worker and has been continuing his services on a fixed pay, however, the claim for regularization will have to be considered in view of the law laid down by the Apex Court. The consistent view of the Apex Court in respect of claims for regularization are that ordinarily it is for the employer of the Government to frame a particular scheme depending on the requirements for conferring regularization on such workers who are working as Casual or daily wage labours. During the present proceedings, no such scheme has been brought to the notice of the Court by counsels representing by the parties. The proposal stated to have been forwarded to the authorities concerned by the Coal India Limited has been held to be rejected by the Coal India. Referring to the terms of settlement arrived at between the parties concerned, it is seen that in the Memorandum of Settlement arrived at by and between the parties on 02.12.2015, the following terms of settlement were agreed upon :

“(1) Daily wages @Rs. 328/per day will be paid to Shri Bivas Ch. Das w.e.f. 01.04.2015 as per order of Ministry of Labour and Employment, Govt. of India, CLC(C), New Delhi vide no. 1/3(3)2015-LS-II dated 30.03.2015 and @Rs. 333/per day will also be paid w.e.f. 01.10.2015 as per order of Ministry of Labour and Employment, Govt. of India, CLC(C), New Delhi vide no. 1/3(3)2015-LS-II dated 30.09.2015. Increase in the daily rate of wages will be revised automatically after publication of notification of CLC(C), Govt. of India, New Delhi from time to time.

(2) It is agreed that arrear payment will be paid to Shri Bivas Ch. Das with retrospective effect i.e. from 01.04.2015 within 30 days from the date of

settlement and enhanced rate will be paid w.e.f. 01.12.2015 payable January, 2016.

(3) It is agreed that since local management is not competent authority for taking any decision regularization of the service of Shri Bivas Ch. Das, Casual Driver, a proposal will be initiated immediately and his service can only be regularized subject to approval of the competent authority.

(4) It is agreed that by this settlement, the Industrial Dispute raised by Shri Bivas Ch. Das and Assam Coal Mines Workers' Union in respect of upliftment of his present salary and regularization of the service is fully and finally settled which is considered to be fair and reasonable.

(5) It is agreed that both the parties shall submit implementation report of the settlement to the RLC(C)-cum-Conciliation Officer, Dibrugarh within 30 days from the date of settlement."

10. The Coal India Limited does not dispute the terms of settlement arrived at by and between the parties as per the Memorandum of Settlement dated 02.12.2015. While it is to be accepted that ordinarily a report will not issue directions for regularization or to the employer to frame a scheme for regularization. However, the fact remains that these terms of settlement agreed by and between the parties reflect that the proposal was to be initiated immediately pursuant to the terms of settlement for regularization of the services of the petitioner subject to the approval of the competent authority.

11. The pleadings available before this Court does not reflect any specific orders rejecting the proposal sent by the Competent Authority, save and except a communication dated 02.12.2017 which is enclosed as an Annexure- P-11, Page-38 of the writ petition, issued by the Nodal Officer, Grievance Redress Cell, North Eastern Coalfields. The case of the petitioner for regularization to permanent workers was declined.

12. In *State of Punjab Vs. Jagjit Singh*, reported in (2017) 1 SCC 148, the Apex Court has held elaborately that in respect of the rights of casual or temporary workers. The Apex Court held that they are entitled to the minimum of pay scale and all of the benefits which may be available to the regular

workers. The stands of the Coal India in the present proceedings are that the petitioner has been provided with all the facilities which are ordinarily available to a permanent worker, which, however, has been disputed by the counsel for the petitioner except for issuance of company quarter with water supply.

13. Under such circumstances this Court is of the view that in the face of the law laid down by the Apex court in *Jagjit Singh(Supra)* that the casual workers are entitled to minimum of pay scale, the Coal India will continue to offer the minimum of pay scale to the petitioner for the services rendered by a casual worker, besides other facilities like company water, medical facilities, water supply, electricity as well as school/ educational facilities for his children, as may be offered to other regular workers. The minimum of pay scale is to be paid to the petitioner in terms of the provisions of the Minimum Wages Act, 1948 as well as the other Government instructions which are issued from time to time. That apart, the Court is hopeful that the Coal India will take up the grievances of the petitioner as well as other casual/ temporary workers seeking regularization into regularization as permanent workers considering the several years of services rendered to the organization. The authorities in Coal India will consider implementation of any such scheme within the framework of the policies and the guidelines issued by the Government of India from time to time. If any such policies are framed then the case of the petitioner along with other similarly situated workers be given adequate consideration. These steps required to be taken by the Coal India are expected to be taken in right earned and on an urgent basis considering the claims made by the petitioner.

14. In terms of the above, the writ petition stands disposed of. No order as to costs.

15. Liberty is also granted to the petitioner to approach the Coal India

authorities to ventilate any further grievances and upon such an event, the Coal India will sympathetically consider the cases of the petitioner and pass appropriate orders.

JUDGE

Comparing Assistant