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IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 1377 / 2004

Petitioner :

M/s Cement Corporation of India,
Akaltara Cement Plant,
Through its General Manager Akaltara,
Dist : Janjgir Champa-(C.G.)

Versus

Respondents :

1. B.P.Choubey
S/o Lalji Choubey
R/o Akaltara, Shivrinarain Marg
Dist : Janjgir Champa.
2. The Industrial Court,
Through its Chairman,
Raipur-(C.G.)
3. The Presiding Officer,
Labour Court Bilaspur,
Dist : Bilaspur-(C.G.)

P. R. No. 1367/04
Presented by Shri Vinod Desai
dated 10.05.04

WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioner :



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HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Writ Petition No. 1376 of 2004

PETITIONER

M/s Cement Corporation of India

VERSUS

RESPONDENTS

D.R. Yadav and others

Writ Petition No. 1377 of 2004

PETITIONER

M/s Cement Corporation of India

VERSUS

RESPONDENTS

B.P. Choubey and others

Writ Petition No. 1452 of 2004

PETITIONER

M/s Cement Corporation of India

VERSUS

RESPONDENTS

R.K. Roy and others

Shri Vinod Deshmukh counsel for the petitioner in all the three cases.

Shri T.K. Tiwari counsel for respondent No.1 in all the three cases.

WRIT PETITIONS UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

ORDER
(28.4.2015)

The petitions, three in number, are disposed of by this common order as the order under challenge and the petitioner which has assailed the same, are one and the same.

2. The private respondents in all the above-mentioned three cases were the employees of the petitioner – M/s Cement Corporation of India and were working as Way Bridge Attendant, Senior Security Guard and Machine Attendant respectively. On 14.2.1995 they were served charge sheet for making false entries in the transport register and after conducting departmental enquiry on 10.6.1997 they were dismissed from service. Against the order of dismissal the private respondents filed applications before the Labour Court under Section 31 (3) of the M.P. Industrial Relation Act and upon receiving the notice the petitioner entered its appearance and filed reply. Vide order dated 3.6.1998 the Labour Court found the departmental enquiry to be vitiated and directed the petitioner/Corporation to prove the misconduct of the private respondents in the Court itself. Against this order, the petitioner/Corporation preferred separate appeals under Section 67 of the M.P. Industrial Relation Act before the Industrial Court Raipur and on 31.8.2001 the Industrial Court allowing the appeals remitted the matter to the Labour Court for framing the proper issues and then to decide the legality of departmental enquiry. The Industrial Court also directed the Labour Court to decide the matter on merits. After receiving the matter the Labour Court issued fresh notice to the petitioner. However, as according to the petitioner/Corporation, it did not receive the notice dated 8.11.2001, the matter was directed to be listed on 30.11.2001 and on that date the order sheet was written by the Labour Court that

notice had been served on the petitioner but as there was no representation on its behalf, it proceeded against the petitioner *ex parte*. After placing reliance on the averments and evidence of the private respondents, the Labour Court has held the departmental enquiry to be illegal and vitiated. Ultimately, vide order dated 28.2.2002 the Labour Court passed the award in favour of the private respondents holding them to be entitled for reinstatement with full back wages and other consequential benefits. However, vide common impugned order dated 27.3.2004 the Industrial Court has dismissed the appeals of the petitioner mainly on the ground that against *ex parte* order of the Labour Court dated 28.02.2002 the petitioner/Corporation had a right to file an application under Order IX Rule 13 CPC before the Labour Court and in case of rejection thereof it could file an appeal before the Industrial Court. The Industrial Court further observed that as no such application was filed by the petitioner before the Labour Court and instead it has preferred an appeal directly before the Industrial Court, no interference on merits could be made. However, the Industrial Court, on merit has observed that the evidence adduced by the employees is un-rebutted and therefore there is no question of interference with the findings recorded by the Labour Court on merit.

3. Counsel for the petitioner has raised various points including the *ex parte* proceedings drawn against the petitioner.

He however submits that these petitions may be disposed of by giving liberty to the petitioner to file appropriate application before the Labour Court under Order IX Rule 13 CPC for setting aside the *ex parte* order dated 28.2.2002 and further making it clear that either of the parties so aggrieved by the order passed on the said application would have the right to challenge the same before the Industrial Court. He submits that as no evidence has been adduced by the petitioner before the Labour Court, the case could not be decided on merits by the Industrial Court and as such the petitioner is likely to suffer an irreparable loss and considering the seriousness of the allegation/charge levelled against the private respondents, the petitioner should be given an opportunity to adduce evidence.

4. Counsel for the respondents submits that the private respondents are out of employment since 1997, that during pendency of this petition Shri D.R. Yadav and R.K. Roy have already retired, that they have already suffered an irreparable loss and therefore no useful purpose would be served in remitting the matter to the Industrial Court. He however submits that if the matter is going to be remitted, in that case the Industrial Court may be directed to expedite the proceedings so that the private respondents may get some relief during their lifetime.

5. Heard counsel for the parties and perused the documents on record.

6. True it is that the private respondents are suffering since 1997. However, considering the nature of the charge levelled against them and that no evidence has been adduced by the petitioner/Corporation till date, this Court is of the view that one opportunity should be given to the petitioner to file an appropriate application before the Labour Court under Order IX Rule 13 CPC for setting aside the *ex parte* order dated 28.2.2002 as has been observed by the Industrial Court.

7. Consequently, the order of the Industrial Court dated 27.3.2004 passed while deciding the common appeals of the petitioner, is set aside. An opportunity is granted to the petitioner to file appropriate application before the Labour Court for setting aside the *ex parte* order within one month from the date of receipt of copy of this order. On that being done, it is expected from the Labour Court Bilaspur to decide the said application as expeditiously as possible preferably within a further period of two months. In the event of further challenge to the order passed by the Labour Court by either party in the Industrial Court, it is expected from the said Court to decide the matter expeditiously so that interest of the parties can be secured.

8. At this stage, it is informed by the parties that subsequent to the proceedings drawn by the Labour Court, Bilaspur, Labour Court has been created at Janjgir also and therefore the matter would be required to be heard by the Jangir Labour Court. It is

left open for the Labour Court Bilaspur to either decide the matter of its own or in case of any legal or technical implication recordable in writing, immediately transfer the same to Janjgir Labour Court.

9. With the aforesaid observations and directions, the petitions are allowed.

Sd/-
Pritinker Diwaker
Judge

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