

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.3393 of 1989

1. Samyukta Khadan Mazdoor Sangh, through Sri M.R. Sahu, Secretary SKMS, Bodal Jajuwal Mines, Ambagarh Chowki, Rajnandgaon
2. Sri E.L. Sahai, Vice President, SKMS, Bodal Jajuwal Mines, Ambagarh Chowki, Rajnandgaon

---- Petitioners

versus

1. Union of India, through Secretary, Ministry of Labour, Government of India, New Delhi
2. The Regional Director, Atomic Mineral Division, Western Region, Nagpur

---- Respondents

For Petitioners	:	Shri Vinod Deshmukh, Advocate
For Respondents	:	Shri Narendra Kumar Vyas, Assistant Solicitor General

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

16.9.2016

1. It is indeed very sad that this, the oldest case in the Chhattisgarh High Court has been pending since the year 1989 and has not been disposed of despite the fact that the issues are trivial in nature.
2. The facts of the case are that the Petitioners claimed to be workmen in the Department of Atomic Energy and made a prayer that they had raised an industrial issue which may be referred to the Central Industrial Tribunal. This writ petition was dismissed in *limine* on 30.6.1989 on the ground that the Department of Atomic Energy was not an industry. The workmen being aggrieved by the said order filed a special leave petition before the Supreme Court and the Supreme Court disposed of the petition by passing the following order:

“O R D E R

Leave granted.

The High Court by its order dated June 30, 1989 made in Misc. Pet. No.3393/89 dismissed the writ petition holding that it may be open to the petitioners to approach the Government for reference under section 10 of the Industrial Disputes Act. In case the Government declines to make a reference, it would be open to the appellant to approach the High Court for appropriate direction. Calling that order in question, this appeal by special leave has been filed.

In the counter affidavits filed by the Union of India and also the Labour Department of the Government of India, the categorical stand taken by them is that Atomic Energy Commission is not an industry within the meaning of the Industrial Disputes Act. In view of the stand taken by them, the question of making the appellants to seek reference does not arise. Then the question is whether the termination challenged by them is according to law. That would be the matter to be decided by the appropriate forum. What would be the forum is the question. Two remedies are open. Normally, the remedy is civil suit in circumstances appropriate to the exigencies or remedy is by proceedings under Art. 226. We find that instead of filing a civil suit, it would be just and fair to have the dispute adjudicated under Art. 226. Accordingly, we set aside the order of the High Court and remit the matter to the High Court requesting it to decide the case according to law as expeditiously as possible, preferably within a period of six months from the date of the receipt of the order.

The appeal is allowed. No costs.”

3. The Supreme Court specifically noted that the Union of India as well as the Labour Department of the Government of India have taken a categorical stand that the Department of Atomic Energy is not an industry within the meaning of the Industrial Disputes Act and went on to hold that “in view of the stand taken by them, the question of making the appellants to seek reference does not arise”. The Apex Court went on to hold that two remedies were available to the Petitioners. They could either be relegated to file a civil suit or to take

out proceedings under Article 226 of the Constitution of India. The Supreme Court held that it would not be just and fair to force the workmen to file a civil suit but their dispute could be adjudicated under Article 226 of the Constitution. The order of the High Court was set aside and the matter was remitted to the High Court to decide the case in accordance with law as expeditiously as possible, preferably within a period of six months from the date of the receipt of the order. This order was passed on April 7, 1994 and one can presume that the order must have been received within a month or two. In fact, this case was remitted to the Madhya Pradesh High Court, and thereafter, the case was listed before a learned Single Judge of the Madhya Pradesh High Court on 9.12.1994. After quoting the order of the Supreme Court, the Learned Single Judge found that the Department of Atomic Energy, Atomic Mineral Division is a Department of the Government of India of which the Petitioners were employees. Learned Single Judge further found that in view of the provision of Section 14 of the Administrative Tribunals Act, 1985 and the law laid down by the Supreme Court in the case of **Deep Chand Pandey (AIR 1993 SC 382) [Union of India v. Deep Chand Pandey]**, the High Court had no jurisdiction to decide the matter and the dispute would have to be referred to the Central Administrative Tribunal. The Petitioners sought six weeks' time for seeking clarification or modification of the order dated 7.4.1994 passed by the Apex Court. More than 22 years have elapsed but the Petitioners have not sought any clarification and it is obvious that their intention is not to seek any clarification.

4. It is indeed shocking and a sad reflection on the working of the judicial system that despite the Apex Court having expressed a hope that the matter should be disposed of within six months, it has taken more than 22 long years but the dispute has not been resolved.

5. After hearing Learned Counsel appearing for the parties and keeping in view the provisions of the Administrative Tribunals Act, 1985, I am clearly of the view that now the only course to be followed is to transfer the instant matter to the Central Administrative Tribunal and it would not be just and fair to dismiss this petition and direct the Petitioners to file a fresh petition. It is true that the Apex Court had observed that this Court can decide the matter in its writ jurisdiction, it is obvious that the attention of the Apex Court was not drawn to the fact that this case is covered by the provisions of the Administrative Tribunals Act, 1985. The Petitioners, for reasons best known to them, have not sought any clarification from the Apex Court. This Court cannot exercise jurisdiction which is not vested in it. Therefore, the matter is transferred to the Central Administrative Tribunal, Jabalpur (Madhya Pradesh), which is requested to hear this matter at Camp Court at Bilaspur (Chhattisgarh) and decide the matter as early as possible.
6. The writ petition is disposed of in the aforesaid terms.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE