

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No.170 of 2017**

1. Jawaharlal Sahu S/o Kamlal Sahu, Aged About 45 Years R/o Village Pateta, Post Gobaripaat, Tahsil Kota, District Bilaspur Chhattisgarh.
2. Kapil Das Manikpuri, S/o Pram Das Manikpuri, Aged About 46 Years R/o Village Pateta, Post Gobaripaat, Tahsil Kota, District Bilaspur Chhattisgarh.
3. Nand Kumar Prajapati S/o Bahorikram Prajapati, Aged About 44 Years R/o Village Pateta, Post Gobaripaat, Tahsil Kota, District Bilaspur Chhattisgarh.
4. Ramnarayan Yadav S/o Ramadhar Yadav, Aged About 47 Years R/o Village Pateta, Post Gobaripaat, Tahsil Kota, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

- Royal Seema Concrete Sleepers Pvt. Ltd. (Patil Railinfrastructure Pvt. Ltd.)
(Patil Rail Infrastructure Pvt. Ltd.) Through Factory Manager, Kargiroad Kota,
District Bilaspur Chhattisgarh.

---- Respondent

For Petitioners	:	Shri Anshuman Shrivastava, Advocate
For Respondent/State	:	Shri S. P. Kale, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****31/10/2017**

This petition under Article 227 of the Constitution of India has been preferred by the petitioner being aggrieved by the impugned order dated passed by the Labour Court, by which, application for grant of stay has been rejected vide order dated 13-07-2017 mainly on the ground that the Labour Court does not have power to grant interim relief.

2. Learned counsel for petitioner submits that the Labour Court was swayed by erroneous view of law that unless the terms of reference includes decision on interim application, the Labour Court would not have jurisdiction. Relying upon the decision of the Supreme Court in the case of *The Management Hotel Imperial, New Delhi and*

others vs. Hotel Workers Union , it is submitted that power of Labour Court to grant interim relief is incidental to the main issue.

3. Per contra, learned counsel for the respondent submits that though the Labour Court rejected the application on this ground, but the Labour Court has also taken into consideration other aspects like balance of convenience and finally came into conclusion that interim order could not be granted. He submits that without there being any reference in express terms regarding stay of transfer of petitioners by the State, the Labour Court does not have jurisdiction to entertain application for grant of interim relief, consequently, no interference is called for under Article 227 of the Constitution of India. He further submits that the transfer order is perfectly justified and there is no work left for the petitioners at the present place therefore, they have to be transferred. He submits that the respondent had also taken defence before the Labour Court that later on, services of the petitioner have again been terminated.

4. After going through the order passed by the Labour Court, this Court finds that the main operative reason for rejecting application for stay is that it is not included in the terms of reference, therefore, the Labour Court would have no jurisdiction to pass any interim order.

5. In view of what has been declared by the Supreme Court in the case of **The Management Hotel Imperial, New Delhi and others** (supra), the view taken by the Labour Court appears to be completely illegal and erroneous in law and by taking such a view, the Labour Court has failed to exercise jurisdiction vested in it under the law.

6. In **The Management Hotel Imperial, New Delhi and others** (supra), the Supreme Court held, as below:-

21. ----- xxx -----

“We are of opinion that there is no force in this argument, in view of the words “incidental thereto” appearing in Section 10(4). There can be no doubt that if, for example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under Section 10(4)

and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.”

7. It is, therefore, clear that the Labour Court does have jurisdiction to pass interim order in appropriate cases. Whether in a given case, interim order should be granted , would be a matter of consideration on the basis of the material placed and the arguments advanced by the parties. In any case, the supervisory jurisdiction of the High Court requires to set aside the impugned order, as this Court finds that the Labour Court has failed to exercise jurisdiction vested in it under the law and on erroneous legal position, stay application has been rejected.

8. In view of above, the impugned order dated 13-07-2017 is set aside and the matter is remitted back to the Labour Court for consideration of stay application, on its own merits. It is made clear that this Court has dealt with only jurisdictional aspect and not with the merits of the petitioner's application for stay. The Labour Court shall do well to decide the application for grant of stay on the basis of pleadings, materials and submissions made by the parties.

9. Accordingly, the petition is allowed.

SD/-
(**Manindra Mohan Shrivastava**)
Judge