

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 176 of 2017

1. Rakesh S/o Shri Bhola Ram Khatkar, Aged About 35 Years Caste Suryawanshi, Occupation Bricks Contractor, R/o Village Mehendi, Tahsil Pamgarh, Civil & Revenue District Janjgir Champa Chhattisgarh.
2. Bhola Ram S/o Shri Ram Sai, Aged About 55 Years Caste Suryawanshi, Occupation Bricks Contractor, R/o Village Mehendi, Tahsil Pamgarh, Civil & Revenue District Janjgir Champa Chhattisgarh.

---- Petitioners

Versus

1. Mantora Bai W/o Shri Ghanshyam Aged About 32 Years Occupation Labour, R/o Village Mehendi, Tahsil Pamgarh, Civil & Revenue District Janjgir Champa Chhattisgarh.
2. The Commissioner, Workmen Compensation Cum Labour Court Janjgir, Civil & Revenue District Janjgir Champa Chhattisgarh.
3. The Tahsildar Cum Execution Officer Pamgarh, Civil & Revenue District Janjgir Champa Chhattisgarh.

---- Respondents

For Petitioner	:	Shri P.M. Shrivastava, Advocate
For Respondent No.1	:	Shri Chandresh Shrivastava, Panel Lawyer
For State/Res. No. 2 & 3	:	Shri Avinash Singh, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/12/2017

Heard.

1. At the outset, learned counsel for the respondent raises an objection with regard to maintainability of the petition under Article 226 of the Constitution of India on the ground that the petitioner has an alternative efficacious statutory remedy of filing appeal under Section 30 of the Employees Compensation Act, 1923.
2. The relevant provision under Section 30 of the Act is reproduced as below:

"30. Appeals:

(1) An appeal shall lie to the High Court from the following orders of a Commissioner namely :-

(a) an order as awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under section 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and in the case of an order other than an order such as is referred to in clause (b) unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner or in which the order of the Commissioner gives effect to an agreement come to by the parties :

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the Limitation Act 1963 (36 of 1963) shall be applicable to appeals under this section."

3. It is clear that the petitioner has a remedy of filing appeal on substantial question of Law. Therefore, I am not inclined to entertain this petition under Article 226 of the Constitution of India on the face of availability of alternative remedy

of appeal.

4. The petition is accordingly dismissed with liberty to file appeal.
5. As prayed, certified copy of the impugned award be returned to the petitioner after retaining photocopy of the same.
6. In the event of petitioner filing an appeal, the period during which this petition remained pending before this Court shall be excluded while considering prayer for condonation of delay in filing appeal.

Sd/--

(Manindra Mohan Shrivastava)

Judge

Praveen