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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.176 of 2017**

Surendra Pratap Singh S/o Late Shri Vishwanath, Aged About 63 Years
Occupation Retd. Senior Clerk Grade I (SLU) At Jhimili, SECL, Sub Area,
Baikunthpur Area, District Korea (Chhattisgarh), R/o At & PO Badsara, District
Surajpur (Chhattisgarh).

---- Appellant**Versus**

1. Central Government Industrial Tribunal Cum Labour Court, Jabalpur Through The Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, 1230 Gole Bazar Ward, Wright Town, Jabalpur (Madhya Pradesh).
2. South Eastern Coalfields Limited, Through The Chairman- Cum- Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur, (Chhattisgarh)
3. Chief General Manager, South Eastern Coalfields Limited, Baikunthpur Area, PO Baikunthpur, Dist. Korea, (Chhattisgarh)
4. Sub Area Manager, South Eastern Coalfields Limited, P O Pandavpara (Patna), Distt. Korea, (Chhattisgarh)

---- Respondents**Writ Appeal No.177 of 2017**

Surendra Pratap Singh S/o Late Shri Vishwanath, Aged About 63 Years
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Baikunthpur Area, District Korea (Chhattisgarh), R/o At & PO Badsara, District
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4. Sub Area Manager, South Eastern Coalfields Limited, PO Pandavpara (Patna), Distt. Korea, (Chhattisgarh)

---- Respondents

For Appellant : Shri Dhani Ram Patel, Advocate.
For Respondent/SECL : Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge.

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

27/06/2017

1. I.A. No.1/2017 has been filed in both the case to condone delay of 13 days in filing the appeals. For the reasons stated in the applications, same are allowed. Delay is condoned.
2. These writ appeals are against the two different judgments rendered in two different writ petitions through which the Appellant had challenged two different decisions of the Industrial Tribunal. Yet we are of the view that in dealing with these writ appeals, it is profitable to consider both these matters together having regard to the nexus between the contentions in relation to the basic facts.
3. We have heard the learned counsel for the Appellant / Writ Petitioner and the learned counsel for the Respondent / Establishment.
4. The Appellant was employed with the Respondent which is a Public Sector Undertaking. On certain allegations, the Appellant was proceeded against before a Criminal Court, after investigation, on the accusation of having committed, an offence punishable under Section 302 of the Indian Penal Code. The Appellant was arrested and he was in prison till the trial ended in his acquittal.
5. According to the Appellant, in terms of clause 28.9 of the Certified Standing Orders in respect of the South Eastern Coalfields Limited which is the employer, the Management is obliged to pay the Appellant 50% of the wages as subsistence allowance in cases where such a person is suspended on a ground referable to

the prosecution. This ultimately led to a reference by the Central Government to the Industrial Tribunal which rendered the award against the interest of the workman. Writ Petition (L) No. 197 of 2016 filed by the workman challenging that award was dismissed by the learned Single Judge. Writ Appeal No.176 of 2017 is filed challenging that judgment.

6. On the plea that the Appellant was not paid wages for about 1½ months after he was released from prison following the said acquittal, a different reference was made by the Central Government to the Industrial Tribunal. That also resulted in an award against the interest of the workman. That is subject matter of Writ Petition (L) No. 144 of 2016 which was filed by the workman challenging that award. That was dismissed. Hence, Writ Appeal No. 177 of 2017.

7. First we will deal with Writ Appeal No. 176 of 2017 which relates to the issue of subsistence allowance.

8. The learned counsel for the Appellant referred to the judgment in *Union of India v. Rajiv Kumar*, (2003) 6 SCC 516 and argued for the position that there is a deemed fictional status of suspension emerging out of the arrest and detention in connection with the criminal case.

9. But, the fact of the matter remains that in the case in hand, the learned Tribunal as well as the learned Single Judge had concluded, on facts, that the Appellant was not one who could raise any such argument because the provisions in the Standing Orders leave it as the prerogative of the Management to decide as to whether it would place an employee under suspension even in a case where he is arrested on account of criminal charge.

10. The provisions in clause 28.9 of the Standing Orders of the employer is relevant in the context, which reads as follows :

“28.9. Notwithstanding the provisions contained in these Standing orders, as above, the management reserves the right

to suspend a workman being prosecuted in a court of law for any grave criminal offence involving moral turpitude or murder until the disposal of the trial. In such cases, the workman concerned shall be entitled to 50% of wages as subsistence allowance. In case the above workman is finally acquitted, he would be paid full wages for the period of suspension.”

11. The aforesaid clause will show that an employee of the Respondent is not visited by the fictional status of suspension from services as a clear consequence of a compulsory provision of the Standing Orders merely on the ground that he is involved in and has been arrested in consequence of the registration of a crime. The aforesaid provision leaves it to the wisdom of the Management to decide as to whether it would suspend the employee concerned. Therefore, the precedent referred above, which deals with the cases where a fictional status arises as a consequence of arrest and detention, does not apply to cases where the Standing Orders provide a clause similar to what is quoted above.

12. The plea of the Respondent – Management which has been accepted by the Industrial Tribunal and by the Learned Single Judge is that the Appellant - employee had applied for leave and had proceed on leave and the establishment had never placed him under suspension even with reference to clause 28.9 of the Standing Orders. The Appellant does not have any material to show that he was ever placed under the suspension in terms of the said provision. That being so, we are unable to find any illegality or jurisdictional error in the decision of the Industrial Tribunal or with the findings of the learned Single Judge insofar as judgment in Writ Petition (L) No. 197 of 2016 is concerned.

13. Writ Appeal No.176 of 2017 is therefore liable to be dismissed.

14. As regards the plea for payment of wages and other accruals for the period after the Appellant was released from prison as a consequence of his acquittal, the concurrent finding is that he had actually availed leave and left the services and thereafter never returned to employment thereafter. The consequent finding

of the Industrial Tribunal, which has been confirmed by the learned Single Judge on facts, is that the Appellant had no link of employment with the Respondent – Establishment and there was no continued live jural relationship between the Appellant - Employee and Respondent – Establishment as master and servant. That being so, we do not find any error of jurisdiction in the decision of the Industrial Tribunal, which has been affirmed by the learned Single Judge. Therefore, the judgment rendered by the learned Single Judge in Writ Petition (L) No. 144 of 2016 is only to be affirmed.

15. Therefore, Writ Appeal No. 177 of 2017 is also liable to be dismissed.

16. Before parting, we may mention that having examined the judgments rendered by the learned Single Judge in both the cases, we do not see that there was any exercise of power by the learned Single Judge in terms of Article 226 of the Constitution of India. The judicial review of the decision of the Industrial Tribunal was confined to parameters which fall under Article 227 of the Constitution. That being so, these intra-Court appeals to Division Bench do not lie in terms of Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. For this reason as well, these appeals are liable to be dismissed.

17. In the result, these writ appeals are dismissed. No costs.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE