

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 207 of 2017**

1. T.K.Chatterjee (Dropped- President, South East Central Railway, Majdoor Congress) S/o Late S.K.Chatterjee, Aged About 76 Years, R/o 503, Amba Park, Lingiyadih, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Presently Elected And Registered President)
2. T.Manibabu (Dropped- Working President, South East Central Railway Majdoor Congress) S/o Late T.Appal Swanay, Aged About 71 Years, R/o B-47, Saidham, Torwa, Bilaspur, Tahsil & District Bilaspur (Presently Elected And Registered Working President)
3. K.S.Murty (Dropped- General Secretary, South East Central Railway Majdoor Congress) S/o Late K.D.L. Murty, Aged About 76 Years, R/o T/11/2, Babu Kholi, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Presently Elected And Registered General Secretary)
4. D.K.Swain (Dropped- Central Treasurers, South East Central Railway Majdoor Congress) S/o Late R.Swain, Aged About 50 Years, R/o 100/1, Bungla Yard, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Presently Elected And Registered Central Treasurer) **---- Petitioners**

Versus

1. Vijay Agnihotri (President, South East Central Railway, Majdoor Congress) S/o Shri M.L.Agnihotri, Aged About 47 Years, Sai Dham Phase-I I, Torwa, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Presently Elected And Registered Joint Secretary)
2. Sameer Pandey, (Working President, South East Central Railway Majdoor Congress) S/o Shri R.K.Pandey, Aged About 48 Years, R/o Kelkar Para, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Presently Elected And Registered Additional Joint Secretary)
3. Pitamber Laxmi Narayan (General Secretary, South East Central Railway Majdoor Congress) S/o Shri Laxmi Narayan, Aged About 56 Years, R/o Moibag, Nagpur (M.H.) (Presently Elected And Registered Joint Secretary)
4. Rabindra Kumar Dhal (Central Treasurer, South East Central Railway Majdoor Congress) S/o R.C.Dhal, Aged About 45 Years, R/o Ahmad Gali, Kasim Para, Bilaspur, Chhattisgarh (Presently Elected And Registered Joint Secretary)
5. Registrar, Trade Union I Ind Floor, Indravati Bhawan, Naya Raipur, District Raipur, Chhattisgarh
6. S.E.C. Railway, Through Chief Personal Officer, Zone Office, Bilaspur, Chhattisgarh **---- Respondents**

For Petitioners	:	Mr. N.K. Vyas, Advocate
For Respondents	:	Mr. Amrito Das, Mr. H.S. Ahluwalia, Advocate appears under instructions from Mr. Abhishek Sinha, Advocate and Mr. KPS Gandhi, Advocate for the respective respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/09/2017

1. With the consent of the parties, the matter is heard finally.
2. This petition, under Article 226 of the Constitution of India, is preferred against order dated 28.07.2017 and modified order dated 04.09.2017. Out of various submissions made by learned counsel for the petitioners, one of the main submission advanced to assail correctness and validity of the order is that the Industrial Court while considering the prayer for stay, has not touched upon the case at all and mechanically granted interim order merely because there exists a dispute. It is submitted that even prima facie case of the appellants under Section 28(J) of the Trade Union Act has not been taken into consideration. Therefore, the order is bad and it may be set aside.
3. Learned counsel for the respondents submit that the Industrial Court has taken into consideration that there exists a dispute. Therefore, in the interest of the Union, the order has been passed.
4. After perusing two orders, referred to above, I find that the only exercise which has been undertaken by the Industrial Court is to record that there exists a dispute between the parties. The first order which was passed by the Tribunal on 28.07.2017 did not consider anything except that there exists a dispute. Thereafter, the application for modification was filed and some modification has taken place but again without considering the prima facie case, balance of convenience and irreparable injury which are well known consideration in the matter of grant of interim relief.
5. The Tribunals while considering application for grant of interim relief are

required to apply their mind to the case and only upon satisfaction that strong prima facie case is made out and balance of convenience and irreparable injury consideration warrant protection by the interim order that the interim order should be passed. This exercise, to say the least, has been completely ignored by the Industrial Court. There exists a clear distinction between the administrative order and a judicial exercise. Whenever judicial exercise is undertaken, the order must speak some reason for granting interim order. It is not necessary that the merits of the case are required to be decided at the stage of grant of interim relief. However, atleast, some reasons are required to be recorded to reflect application of mind and prima facie satisfaction that a case for grant of interim order is made out. This having not been done, in my opinion, the Industrial Court has clearly exceeded its jurisdiction.

6. In the result, the impugned order is set aside and the petition is allowed. The matter is remitted to the Industrial Court. The Industrial Court shall hear both the parties and pass appropriate orders as may be required under the law on prayer for interim relief made by the appellant under Section 28(J) of the Trade Union Act.
7. It is made clear that this Court has not examined or commented upon the merits of the case and it will be open for the Tribunal and Industrial Court to examine the matter on its own point of view.

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