

**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPL No. 33 of 2012**

1. Chhattisgarh Mahakoshal Group Management Committee, through its Secretary, Christian Hospital, District Mungeli, C.G.
2. Dr. Raman Jogi, Medical Superintendent, Jackman Memorial Hospital Bilaspur C.G.
3. S.K. Masih, Secretary, Mission Hospital, Baitalpur Distt. Bilaspur C.G.

**---- Petitioners**

**Versus**

1. Mission Hospital Karmachari Sangh, through the President Vijay Kumar, C/o Mission Hospital, Bilaspur C.G.
2. Dy. Labour Commissioner (State) (Industrial Relations), Office of the Labour Commissioner, State Of Chhattisgarh, Nirmal Chaya Bhawan, Meeradatar Road Shankar Nagar, Raipur C.G.
3. Presiding Officer, Labour Court, Bilaspur (C.G.)
4. Shri Pradeep Kumar Shah S/o Late Premshah, Aged about 50 Years, R/o Jarhabhata Omnagar Bilaspur C.G.
5. Smt. G. Barosh W/o Late Nirmal Barosh, Aged about 60 years, R/o Maharana Pratap Chowk, Jarhabhata Chowk, Bilaspur C.G.
6. Shri Ramchandra Vishwakarma S/o Shri Mukut Ram, Aged about 65 years, R/o Kila Ward Bilaspur C.G.
7. Shri Gaya Prasad Kushwaha Aged about 46 years, R/o Kududand, Bilaspur C.G.
8. Shri Sukhan Yadav S/o Late Dwarika Prasad, Aged about 55 years, C/o Pradeep Kumar Shah, R/o Jarhabhata, Omnagar Bilaspur C.G.
9. Shri Gunaram Yadav, S/o Late Dwarika Prasad, aged about 57 years, C/o Pradeep Kumar Shah, R/o Jarhabhata, Omnagar, Bilaspur (C.G.)
10. Smt. Aruna Masih W/o Chandraprakash, Aged about 50 years, R/o Mini Basti Futha College, Bilaspur C.G.

**-- Respondents**

---

|                             |   |                                     |
|-----------------------------|---|-------------------------------------|
| For Petitioners             | : | Mr. Vinod Deshmukh, Advocate.       |
| For Respondents No. 4 to 10 | : | Mr. Dharmesh Shrivastava, Advocate. |
| For Respondent No. 2        | : | None, though served.                |

---

**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**23/07/18**

1. The extra ordinary writ jurisdiction of this Court has been invoked in this writ petition calling in question the order passed by the appropriate Government granting sanction for prosecution of the petitioners under Section 34 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act of 1947'). The award along with back-wages was passed against the petitioners in favour of respondents on 29.06.2002. According to the petitioners back-wages from the date of termination till the date of passing of the award was paid to the private respondents on 06.03.2009, thereafter, the sanction for prosecution was sought by the respondents to the appropriate Government under Section 34 of the Act of 1947 in which the petitioners are said to have appeared and filed their reply. The appropriate Government has passed an order under Section 34 of the Act of 1947 granting sanction for prosecution by its impugned order on 27.04.2011 holding that the award in question has not been complied with by the petitioners. Impugning the validity and correctness of that order, this writ petition has been filed.

2. Mr. Vinod Deshmukh, learned counsel appearing for the petitioners would submit that though award has been complied with by making

payment of back-wages and the respondents have been offered joining but suppressing that fact they have obtained the order for prosecution of petitioners No. 2 and 3 from the appropriate Government. He also submits that the appropriate Government has not applied his mind and satisfied himself that such a sanction requires to be granted and as such the impugned order deserves to be set aside.

**3.** On the other hand, learned counsel for the private respondents would support the impugned order.

**4.** I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the records with utmost circumspection.

**5.** It is not in dispute that from the date of termination till the date of pronouncement of award, back-wages as per the order of the award has been paid. Upto this stage, there is no dispute but thereafter, it is a case of the petitioners that the petitioners have offered joining to the private respondents as per the order of the Labour Court but the private respondents No. 4 to 10 are not joining and simply demanding the back-wages for the period after the award is passed whereas it is a case of the respondents that reinstatement is not being granted to them by the petitioners. Thus, from the aforesaid it is quite vivid that the award in part has admittedly been complied with by making payment of back-wages from the date of termination till the date of passing of the award but so far as the award is concerned regarding reinstatement, there is dispute

between the parties which ought to have been considered by the appropriate Government after considering the reply and after hearing both the parties which has not been done.

6. Section 34 of the Act of 1947 provides as under :-

**“34. Cognizance of offences.-** (1) No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

7. In the matter of **Feroz Din and Ors. v. State of West Bengal**<sup>1</sup>, the Supreme Court has held that sanction granted under Section 34 of the Act of 1947 by the appropriate Government would be good if it is proved by evidence that it had been granted after all the necessary facts had been placed before the sanctioning authority though these facts might not have been stated on the face of the sanction itself.

8. Similarly, in the Constitution Bench judgment of the Supreme Court in the matter of **Raj Kumar Gupta v. Lt. Governor, Delhi and others**<sup>2</sup>, it has been held that offence punishable under Section 34 of the Act of 1947, cognizance can be taken on the complaint made by the appropriate Government or under the authority of the appropriate Government. It is

---

1 AIR 1960 SC 363

2 AIR 1997 SC 2680

further been held that there is no limitation in regard to the party to whom the authorisation may be given and even a non-government servant can be authorized to file complaint under Section 34 of the Act of 1947 which has been held in paragraph 14 and 15 of the case as under :-

**“14.** The provisions of Section 34 require that no Court shall take cognizance of any offence punishable under the said Act or of the abetment of such offence save on a complaint made by the appropriate Government or under the authority of the appropriate Government. There is no limitation therein in regard to the party to whom the authorisation may be given. It is the workmen, the trade union and the employer who are most concerned with offences under the said Act and neither the terms of Section 34 nor public policy require that they should be excluded from making such complaints.

**15.** At the same time, the provisions of Section 34 are in the nature of a limitation on the entitlement of a workman or a trade union or an employer to complain of offences under the said Act. They should not, in the public interest, be permitted to make frivolous, vexatious or otherwise patently untenable complaints, and to this end Section 34 requires that no complaint shall be taken cognizance of unless it is made with the authorisation of the appropriate Government.”

Thus, the aforesaid provisions, in fact, confers two power to the appropriate Government; first is to make complaint and second to authorize the making of complaint or in other words, to delegate in any

particular case, its power to make complaint.

9. Reverting to the facts of the present case, it appears that though award passed by the Labour Court has been complied with in part by the petitioners but all the necessary facts regarding compliance of the award which has been made in part by the petitioners have not been placed before the sanctioning authority leading to the passing of the order by the appropriate Government under Section 34 of the Act of 1947 for prosecution of the petitioners. Therefore, the order passed by the appropriate Government deserves to be set aside and the matter is remitted to the appropriate Government for considering afresh the materials available on record by hearing both the parties and thereafter, to take a fresh decision in accordance with law, expeditiously.

10. The writ petition is allowed to the extent outlined herein above. No order as to cost(s).

Sd/-

**(Sanjay K. Agrawal)**  
Judge