

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 2-5-2018

Delivered on 19.06.2018

Writ Appeal No. 529 of 2017

(Arising out of order dated 27.07.2017 in W.P. No. 5274/2006 of
the learned Single Judge of this Court)

Cement Corporation of India Limited through its General Manager
Akaltara Cement Factory, District Janjgir- Champa, (C.G.)

---- Appellant

Versus

1. Cement Workers Union through its General Secretary Miss
Manju Banarjee, Mazdoor Sabha Bhavan, Nandini Road, Bhilai,
(C.G.)
2. Industrial Court, State of Chhattisgarh Gadi Chowk, Raipur,
(C.G.)

---- Respondents

For appellant : Shri P.N. Bharat and Shri Vinod Deshmukh,
Advocates

For respondent No. 1 : Shri P.K. Maitra, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

Per Sharad Kumar Gupta, Judge

1. In this appeal challenge is levied to the order dated 27-7-2017 of
the learned Single Judge of this Court in WP No. 5274/2006 vide
Annexure A-1 whereby and whereunder he dismissed the
appellant's writ petition.
2. The respondent No. 1, a trade union, raised a dispute under the
provisions of the M.P. Industrial Relations Act, 1960 (in brevity
'Act of 1960') in the year 1981-82 in respect of the working
conditions and benefits payable to the workers engaged by the
contractor at the appellant's plant at Akaltara. In this reference,
the Bench of Industrial Court at Raipur passed an award dated

30-8-1993 vide Annexure P-4 in favour of the workers. The respondent No. 1 filed an application under Section 61 read with Section 34 of the Act of 1960 for implementation of the award before the Labour Court, Bilaspur. On 4-2-2006, the Labour Court, Bilaspur vide its judgment Annexure P-7 rejected the application of the respondent No. 1 on the grounds that the application is barred by limitation and filed by an unauthorized person. Being aggrieved, the respondent No. 1 preferred an appeal before the respondent No. 2, Industrial Court. The respondent No. 2 set aside the judgment of the Labour Court, Bilaspur by order dated 14-8-2006 vide Annexure P-8 and gave the findings that the application of the respondent No. 1 is not time barred and is not filed by an unauthorized person. The respondent No. 2 also ordered the appellant to comply with the directions of the Industrial Court contained in the award Annexure P-4. Being aggrieved, the appellant preferred the aforesaid writ petition which was disposed of as aforesaid. Being aggrieved, the appellant has preferred this appeal.

3. Shri P.N. Bharat, counsel for the appellant vehemently argued that appellant's factory has been declared sick industry by the Board for the Industrial and Financial Reconstruction on 8-8-1996, thus the execution proceeding against it is not maintainable. The aforesaid award has already been executed. The application filed by the respondent No. 1 is barred by limitation according to Section 62(ii) of the Act of 1960. Thus, the impugned order may be set aside and the writ petition may be allowed.

4. Shri P.K. Maitra, counsel for the respondent No. 1 argued that the

5. As already mentioned hereinabove, by the aforesaid application, the respondent No. 1 had sought from the Labour Court, grant the reliefs mentioned in award Annexure P-4 and to get withdrawn the illegal change.
6. It would be pertinent to mention the provisions of Section 2(15) of the Act of 1960 :-

“2(15) “Illegal change” means an illegal change within the meaning of Section 34.”

7. It would also be manifest to mention the provisions of Section 34(d) of the Act of 1960 :-

“34. Illegal Change.- An illegal change means _

- | | | |
|---------|-----|-----|
| (a) xxx | xxx | xxx |
| (b) xxx | xxx | xxx |
| (c) xxx | xxx | xxx |

(d) failure to carry out the terms of a registered agreement or settlement, or an order, decision or award under this Act.”

8. It would also be pertinent to mention the provisions of Section 61(1)(A)(c) and 61(1)(B) of the Act of 1960:-

“61. Powers of Labour Court. - (1) In addition to powers conferred under other provisions of this Act, a Labour Court shall have power to-

- (A) decide -
- | | | | |
|-----|-----|-----|-----|
| (a) | XXX | XXX | XXX |
| (b) | xxx | xxx | xxx |

(c) whether a strike, lock-out, stoppage, closure or any change is illegal under this Act;

(B) require any employer-

(a) to withdraw any change or lock-out which is held by it to be illegal; or

(b) to carry out any change provided such change is a matter in issue in any proceeding before it under this Act;...”

9. It would be pertinent to mention the provisions of Section 62(ii) of the Act of 1960 :-

“62. Commencement of Proceedings. - Proceedings before a Labour Court shall be commenced-

(i) XXX XXX XXX

(ii) in respect of matters specified in clause (c) of paragraph (A) of sub-section (1) of Section 61, within three months of the commencement of the strike, lock-out, stoppage, closure or of the making of the change on an application made by the employer, the representative of employees, any employee directly affected thereby or by the Labour Officer :

Provided that the Labour Court may, for sufficient reasons, admit any application for a declaration that a change is illegal under the Act, after the expiry of three months from the date on which such change was made.”

10. Looking to the provisions of Section 2(15) and Section 34(d) of the Act of 1960, this Court finds that in the case in hand non-compliance of the award Annexure P-4 is illegal change.

11. Looking to the facts and circumstances of this case, it is unequivocal that the respondent No. 1 had filed the application to withdraw the illegal change. Thus, in the case in hand, provisions

of Section 61(1)(B)(a) of the Act of 1960 are applicable and provisions of Section 61(1)(A)(c) are not attracted, hence the provisions of Section 62(ii) are not applicable in the case in hand for computation of the limitation for filing the aforesaid application. There is no limitation prescribed for the application for proceedings covered under Section 61(1)(B)(a) of the Act of 1960. Moreover, non-compliance of the award is a continuous wrong.

12. Looking to the above mentioned facts and circumstances of the case, the material placed on record and looking to the aforesaid provisions, this Court finds that the learned Single Judge and the Industrial Court have not committed any illegality in holding that the application filed by the respondent No. 1 is not barred by limitation.

13. Other objections regarding compliance etc. may be raised by the appellant at the time of execution before the executing authority.

14. Thus, we are in respectful agreement with the reasoned impugned order of the learned Single Judge. Thus, we find that the appeal is devoid of merit and deserves to be dismissed. Hence, we affirm the impugned order of the learned Single Judge and dismiss the appeal.

15. The appellant shall bear its own costs as well as costs of the respondent.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge