

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (L) NO. 3677 OF 2008

1. Birja Prasad, S/o Ramsunder, age 52 years, occupation Foreman
2. Nand Kishore Patel, S/o Beni Prasad Patel, age 43 years, occupation Foreman
3. Ramanand Ram, S/o Kedar Ram, age 44 years, occupation Mechanical Fitter
4. Rajesh Kindo, S/o Kulluram, age 42 years, occupation Mechanical Fitter
5. Lalit, S/o Sonasai, age 45 years, occupation labour
6. Digambar, S/o Sonsai, age 50 years, occupation Mechanical Fitter
7. Indersai Lakkda, S/o Dharamsai, age 42 years, occupation Mechanical Fitter
8. Ramashankar, S/o Motilal, age 45 years, occupation Mechanical Fitter
9. Makbul Hasan, S/o Mohammad Hasan, age 44 years
All R/o Village Balrampur, District Surguja (C.G.)

... Petitioners

versus

1. Member Judge, Industrial Court, Bench Bilaspur (C.G.)
2. Mines Manager, Kumda Balrampur, through- Finance Manager Kumda, Sub Area Eastern Coalfields Limited, District Sarguja (C.G.)
3. South Eastern Coalfields Limited, through Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G.)

... Respondents

For Petitioners	:	Mr. K.P.S. Gandhi, Advocate.
For Respondents 2 & 3	:	Dr. N.K. Shukla, Senior Advocate, assisted by Mr. Shailendra Shukla, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/01/2018

1. By way of the present writ petition, the challenge is to the order dated 11.4.2008 passed by the State Industrial Court, Chhattisgarh, Bench at Bilaspur, in Civil Appeal No. 09/P.W.Act./B-II/2007.
2. Brief facts of the case are that 9 persons before this Court who were the employees under respondents no. 2 and 3 had been sent for training to Beijing (China) for a period of 21 days between 30.3.1997 to 29.4.1997. During the course of training they were granted daily allowances also. After these persons had returned from the training and assumed their regular work, after about 6 years time the respondent-management issued an

order dated 15.10.2003 seeking for a refund of Rs.57,923/- each from each of the petitioners.

3. The said order dated 15.10.2003 was put to challenge before the Labour Court under Section 15 of the Payment of Wages Act where the case was registered as Case No. 172/P.W.Act/2003. The Labour Court vide its order dated 23.5.2007 allowed the application and ordered the management to refund the said amount to the petitioners.

4. This order of the Labour Court, dated 23.5.2007, was subjected to challenge under Section 17 of the Payment of Wages Act before the State Industrial Court where the case was registered as Civil Appeal No. 09/P.W.Act/B-II/2007. The Industrial Court taking into consideration the factual matrix of the case allowed the appeal of the management holding that the claim application under the Payment of Wages Act itself was not maintainable as the petitioners would not fall within the ambit of employees under the Payment of Wages Act on account of wage ceiling of Rs.1600/- as it stood at the time when the cause of action arose.

5. It this order of the Industrial Court which is under challenge in the present writ petition.

6. Undisputedly, on the date on which the cause of action arose, i.e., on the date of issuance of order dated 15.10.2003, the salary of the petitioners were much more than the ceiling of Rs.1600/- fixed under the Payment of Wages Act. *Per se*, when the statute itself was not applicable upon the petitioners the claim application itself at the first instance was not maintainable. Even though the respondent-management may not have raised this technical issue of maintainability on merits before the Labour Court but at the same time it was also the bounden duty of the Labour Court to have verified whether the claim application itself was maintainable

and whether the employees would fall within the definition of 'employee' as per the provisions of Payment of Wages Act.

7. Since the fact is undisputed that the salary of each of the petitioners were much more than Rs.1600/- which was the prescribed limit for the applicability of the provisions of Payment of Wages Act in case of an employee, the case was not maintainable. Thus, this Court is of the opinion that the Industrial Court has not committed any error of law nor is there any perversity in the finding arrived at by the Industrial Court. The present writ petition thus deserves to be and is accordingly dismissed.

8. However, it is made clear that the dismissal of this writ petition as well as the appeal by the Industrial Court was on the technical ground of the applicability of the provisions of the Payment of Wages Act. This does not preclude the petitioners from availing other legal remedies available to them for redressal of their grievance. In case the petitioners, if they so feel, approach the appropriate authority by moving appropriate application for redressal of their grievance, the limitation, if any, shall be considered keeping in view the pendency of the litigation before the authority under the Payment of Wages Act and all subsequent forums therein.

9. Leaving the issue open, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge