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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5085 OF 2004

PETITIONER

P.R. No. 5071/04
Presented by Shri. N. S. Pandey
dated 30.12.04

✓ The Asiatic Oxygen and Acetylene Company Limited, A company registered and incorporated under the Indian Companies Act, 1956, having its registered Office at 8 B.B.D. Bag (East) Kolkata, 700 001, and a works inter alia at Kumhari, Distt. Durg (Chhattisgarh), represented by the Director Sri S.K. Mishra, being the Principal Officer and the authorized signatory for and on behalf of the Company.

VERSUS

RESPONDENTS

RECEIVED
30/12/04
CHHATTISGARH
A. G. BILASPUR

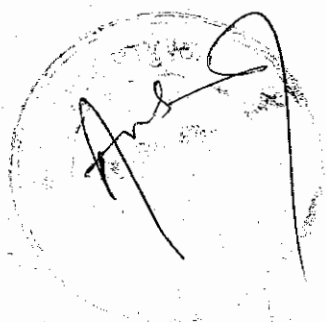
30/12/04

1. ✓ State of Chhattisgarh, through :
Secretary, Labour Welfare, D.K.S.
Bhawan, Raipur (CG)
2. ✓ The Industrial Court, Raipur, through
: Its Registrar, Clock Tower Square,
G.E. Road, Raipur.
3. ✓ R.S. Thakur, son of Shri R.V. Thakur,
4. ✓ Kedarnath Yadav, son of Shri
Balkhera Yadav,
5. ✓ Gangaram Sonkar, son of Shri
Manoharlal,
6. ✓ Dinesh Kumar Mali, son of Shri
Tuman Sonkar,
7. ✓ Bali Ram Dewangan, son of Shri
Rameshwar,
8. ✓ Jhumuk Lal Banjare, son of Shri
Naidu Ram Banjare,
9. ✓ Arjun Sur, son of Shri Suyumukh Sur

10. Shyamlal Shukla, son of Shri Ramkaran,
11. Ramanand Jha, son of Gurun Jha,
12. Vinay Kumar, son of Shri V.P. Choubey,
13. Raju C. Ram, son of Baburao Serma,
14. Kishan Lal Patel, son of Shri Bhanu Ram Patel,
15. Bisahat Banjare, son of Shri Samaru Ram Banjare,
16. Samaru Ram Thakur, son of Shri Melu Ram Thakur.
17. Bhagirathi Banjare, son of Shri Samaro Banjare
18. Ramswaroop Dhiwar, son of Shri Goverdhan Lal,
19. Bahalbaya, son of Shri Jhantu Ram Baya.
20. Padam Singh, son of Shri Jhaduram Kurre.
21. Jhantu Ram Lahre, son of Shri Mehatar Lahre,
22. Neelkanth Yadav, son of Shri Banu Ram Yadav,
23. Develgan Singh, son of Shri Natni Singh,
24. Romi Lal Sahu, son of Shri Panchu Ram Sahu,
25. Makhan Lal Sahu son of Shri Banu Ram Sahu,
26. Pawan Kumar Gilhare, son of Shri Pargahaniya,
27. Sita Ram, son of Shri Bali Ram Mehar,



28. Dwarika, son of Amoli Mehar,
29. Chhoa Lal Kurre, son of Shri Baisakhu Lal Kurre,
30. Dashrath Kumar Sharma, son of Shri Chhoa Lal Kurre.
31. Pawan Kumar, son of Kanhaiyalal Yadav,
32. Sharda Sha, son of Ramsharan Sha,
33. Bhojram Sinha, son of Baisakhuram Sinha.
34. Chhedilal Yadav, son of Shri Tiwari Lal,
35. Pheku Ram Sahu, son of Shri Dalli Ram,
36. P.N. Giri, son of Shri Mahesh Giri,
37. Bisahu Ram Sahu, son of Latel Sahu,
38. A. Bhattacharya, son of K.C. Bhattacharya,
39. I.P. Rathore, Son of Shri Chhedilal Rathore,
40. P.K. Benerjee, son of Late B.D. Banerjee.
41. S. Dutta, son of Shri Sukmar Dutta.
42. Mansur Ali, son of Shri Katal Ahmed.
43. K. Laxman Das, son of Shri K. Ramulu,
44. A.S. R. Murthi,
45. A. Subrhamaniyam, son of Late R. Arikrishnan,
46. Manoj Kumar Srivastav,
47. P. Shashidharan,



48. Rikhiram, son of Shri Indal Singh,
49. Ram Lal Sahu, son of Shri Duje Lal Sahu,
50. Heeralal Sahu, son of Shri Bhoj Ram Sahu,
51. Mukesh Kumar Kose, son of Shri R.P. Kose,

Respondent No.3 to 51, C/o. Bisahuram Sahu, House No. 161, Ward No. 22, village Kukda, Post Office - Urla (B.M.Y.) Distt. Durg. (Chhattisgarh)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT ORDER OR DIRECTION IN THE NATURE OF CERTIORARI, MANDAMUS OR OF ANY OTHER APPROPRIATE NATURE.

The above named petitioner most humbly & respectfully submits as



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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No.5085 of 2004

- The Asiatic Oxygen & Acetylene Co. Ltd

---- Petitioner

Versus

- State Of Chhattisgarh & Ors.

---- Respondent

For Petitioner : Shri Chandresh Shrivastava, Advocate
For Respondent/State : Shri S. Majid Ali, Dy.GA
For Respondent No.3 to 51: Shri Pradeep Saksena, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

09/01/2018

Heard.

2. Learned counsel for respondents have filed copies of statements of Shri Kedar Nath Yadav, Shri Bisauha Ram Sahu and Shri Ghanshyam Das Khandelwal and copies of the same have been given to learned counsel for the petitioner.

3. This petition has been filed under Article 226/227 of the Constitution of India against the order dated 08-11-2004 passed by the Industrial Court, Raipur, CG in appeal, whereby the order passed by the Labour Court on 04-12-2003 has been reversed and direction issued to the employer to reinstate all the workmen in service with backwages and other consequential benefits.

4. Indisputably, the petitioner-Company, at the relevant time, was running a industrial unit engaged in manufacturing and sale of industrial and medical oxygen and acetylene gases. The respondents No.3 to 51 were employed as workmen in the said industrial establishment. According to the petitioner, the industry had become sick unit



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and for various reasons beyond its control, not in a position to continue with the industrial activity. It appears that certain dispute arose between the employer and employee, which led to filing of an application under Section 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 (In short "the Act") before the Labour Court. The workmen, by filing the joint application stated that they were working under the petitioner's industrial undertaking since last 35 years but they are not paying wages with effect from 12-12-2001. It was further stated that no charge sheet was given to them nor departmental enquiry has been initiated. The retrenchment is without retrenchment compensation and therefore, violative of Section 25-F of the Industrial Disputes Act. On such pleadings, prayer was made for declaring retrenchment illegal and directing reinstatement with complete backwages.

5. The petitioner-employer came out with the stand that the employees had voluntarily proposed that they may be retired under the Voluntary Retire Scheme (In short "the Scheme") and agreed to get the benefit of such VRS and towards that, representative, Chemical Employees Union (Registration No.4945) entered into the settlement on 10-04-2002 with the Management, upon due consent and signature of all the workmen. According to that settlement, 28-02-2002 was fixed as the last date of work, payment of wages have been made to the workmen in respect of the period from 06-10-2001 to 11-10-2002, as per the agreement between the parties and therefore, no further relief can be granted.

6. In order to prove its case, the respondents-workmen examined two witnesses namely Kedar Nath Yadav and Bisouha Ram Sahu. The Management examined solitary witness Mr. G. K. Khandelwal, General Manager. The parties led documentary evidence also. The Labour Court, after framing issues, collecting evidence and appreciating the evidence oral as well as documentary both on record, recorded a finding that the parties had entered into an agreement on 10-04-2002. It was also recorded that the Management has partly complied with the terms of the said agreement and in respect of the remaining part of performance under the agreement, a



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case is pending before the High Court. It was also held that the agreement dated 10-04-2002, Ex.D-1 and receipt of wages under the agreement does not render the retrenchment illegal.

7 Aggrieved by the said award, workmen filed an appeal under Section 65 of the Act of 1960 before the Industrial Court, which was eventually allowed. The Industrial Court held that the employees could not be non suited on the basis of agreement, which did not qualify as statutory document of settlement under Section 43 of the Act of 1960. It was further held that the award passed by the Labour Court based on so-called voluntary retirement of all the workmen is factually incorrect, though some of the workmen may have withdrawn their case.

8. In this petition under Article 226/227 of the Constitution of India, arising out of the order passed by the Industrial Court, learned counsel for the petitioner argued that the Industrial Court on 10-04-2002 wrongly held that the settlement was inoperative and the same could not be made a basis to deny claim of the workmen. He would submit that even if, it was not a settlement in terms of Section 43 of the Act, but it was found proved by the Labour Court that an agreement was entered into between the Management and workmen through representative Union namely Chemical Employees Union, whereby they sought to voluntary retire from their work on the condition of payment of monetary benefits. He would submit that except two employees, no other employee stood in the witness box to say that he was willing to prosecute the application or that he did not enter into the agreement or that he did not receive any amount from the Management under the Scheme. The evidence of Bisouha Ram Sahu and Kedar Nath Yadav would be admissible only to the extent of their own case and as they are not the office bearers of the representative Union, they are not authorized under the Law to represent the cause of other employees, therefore, the order of reinstatement of all the employees is in excess of jurisdiction. Next submission of learned counsel for the petitioner is that the petitioner-Industry was declared sick under the provisions of Sick Companies Act, 1985, vide order dated 27-11-1995 passed by



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the Board for Industrial and Financial Reconstruction (In short "BIFR"), therefore, no proceedings could be drawn against the petitioner on application filed by the workmen. It is lastly submitted that the workmen could not have filed joint petition. All the workmen ought to have filed a petition individually or to file a petition through representative Union.

9. On the other hand, learned counsel for the respondents would submit that the Industrial Court, in exercise of appellate jurisdiction has rightly held that the agreement of settlement dated 10-04-2002 could not be termed or categorized as settlement within the meaning of Section 43 of the Act of 1960, because the statutory procedure of reconciliation to move an application in prescribed proforma was not followed. He submits that the evidence led before the Labour Court was rightly appreciated by the Industrial Court to record a finding of fact that there was no agreement between the parties and it could not pressed into service against the applicants. He further submits that even though, all the employees did not enter into the witness box, except two namely Bisouha Ram Sahu and Kedar Nath Yadav, nevertheless, both of them have stated in their evidence that other workmen were also retrenched without retrenchment compensation. He also submits that the Management witness Mr. Khandelwal has admitted in his cross-examination that all the applicants before the Labour Court were made to sit without any salary and rather, they all were discontinued from their respective job without payment of any retrenchment compensation. There is ample evidence on record to sustain a finding recorded by the Industrial Court.

10. In so far as the objection with regard to maintainability of proceedings on the ground that the petitioner was declared a sick industry, at the first place, it is found that the said plea is not tenable because it was not taken before the Courts below and there was no opportunity for the Labour Court or the Industrial Court to make enquiry on such ground of defence of the petitioner-Management. Therefore, in this petition, that issue cannot be allowed to be raised. In any case, the declaration of industry as sick industry operates only against distress proceedings as protective measure



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provided under Section 22 of the Sick Industrial Companies(Special Provision) Act, 1985 (In short "the Act of 1985"). The provisions contained in Section 22 or any other provisions contained in the Act of 1985 do not bar institution of any proceedings or any judicial enquiry on the allegations of violation of provisions of the Act of 1960. The protection against the distress proceedings would be that as and when coercive steps are taken towards execution of award, the petitioner may claim protection against distress proceedings. On that ground, the award cannot be challenged. The other ground that the proceedings could not be instituted jointly by all the workmen, cannot be accepted. There is no bar under any of the provisions contained in the Act of 1960 that the workmen could not file a joint petition. True it is that in view of the provisions contained in Section 26 & 27, the workmen could be represented only by a representative Union, but it does not bar the workmen to move an application under Section 31(3), where it is permissible to do so, either individually or jointly with the other workmen. It is a joint petition by all the workmen. Therefore, the technical objection cannot be allowed to be sustained and the same is liable to be rejected.

11. This Court does not find any ground to interfere with the finding of the Industrial Court regarding the status of agreement dated 10-04-2002. The manner, in which, the settlement could be arrived, has been provided under Section 43 of the Act of 1960, which reproduced hereinbelow:-

43. Settlement and report. - (1) If a settlement of an industrial dispute is arrived at in a conciliation proceeding, a memorandum of such settlement shall be drawn up in the prescribed form by the Conciliator and signed by the employer and the representative of employees. The Conciliator shall send a report of the proceedings along with a copy of the memorandum of settlement to the Registrar and the Chief Conciliator. The Registrar shall record such settlement in the register of settlement and intimate to the parties the date on which it is so recorded. The change, if any, agreed to by such settlement shall come into operation from the date on which it is recorded in the register.

(2) If no such settlement is arrived at, the Conciliator shall, as soon as possible, after the close of the proceeding before him, send a full report to the Chief Conciliator stating the steps taken by him for ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, settlement could not be arrived at.

(3) The Chief Conciliator shall forward the report submitted to him under sub-section (2), or if he is himself the Conciliator his report to the



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Government with such remarks as he deems fit.

(4) Notwithstanding anything contained in this section where an industrial dispute is settled in regard to some of the industrial matters included therein and has not been settled in regard to others and the parties agree in writing that the settlement shall take place in regard to the industrial matters so settled, the settlement of the said industrial matter shall be registered and a report of the industrial matters not settled shall be sent in accordance with the provisions of this section.

(5) The Government shall notify in the Gazette that no settlement was arrived at in the dispute, in its entirety or, as the case may be, as regards the industrial matters specified in the notification.

(6) Before the close of the proceeding before him the Conciliator shall ascertain from the parties whether they are willing to submit the dispute to arbitration and make a note to that effect in his report under sub-section (2).

(7) (a) Notwithstanding anything contained in the foregoing sub-sections, if at any stage of a conciliation proceeding the parties agree in writing to submit the dispute to arbitration, the agreement shall be deemed to be a submission within the meaning of Section 49.

(b) Where the agreement provides for arbitration either by an Arbitrator or by a Labour Court, or by the Industrial Court or by a Board, the Conciliator shall forthwith refer the dispute to the Arbitrator or a Labour Court or the Industrial Court or submitted it to the State Government for reference to a Board, as the case may be.

(c) Where the agreement provides for arbitration without an arbitrator being named therein, the Conciliator shall forthwith submit the dispute to the State Government for giving directions under the proviso to sub-section (2) of Section 49.]

A reading of the aforesaid provision, reveals that if there is re-conciliation, reports are required to be prepared in proper proforma and the same are required to be submitted. Only when settlement is recorded in constituted proceedings, culminating in preparation of document of settlement, then it will take statutory colour of settlement under Section 43 of the Act of 1960. In the present case, the agreement dated 10-04-2002 ought to have been prepared in the manner prescribed under Section 43 in duly constituted conciliation proceedings before any Conciliation Officer. The evidence, which has been led by the Management only shows that it was merely an affair between the office bearer and the representative of the Management without there being any proceedings drawn in the manner prescribed under Section 43 of the Act of 1960. Therefore, to that extent, there is no illegality or perversity in the finding recorded by the Industrial Court.



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12. This Court, however, finds that the Industrial Court exceeded its jurisdiction in directing reinstatement of all the workmen, though only two of them namely Bisouha Ram Sahu and Kedar Nath Yadav have appeared to depose and give evidence. Except these two, other workmen did not enter into the witness box. In fact, all through the proceedings, they did not come forward to even file any affidavit, so that, they could be subjected to cross-examination by the employer. The order of reinstatement could be based on a clear finding based on legally admissible evidence that the workmen were retrenched without payment of retrenchment compensation upon they having worked continuously for a period of 240 days and qualified for continuous service before alleged retrenchment. Moreover, where the workmen have received any amount towards settlement of dispute and took voluntary retirement, it may not be a case of illegal retrenchment. It would depend upon case to case and no general view could be taken. But, this Court finds on the basis of evidence led by two witnesses- Bisouha Ram Sahu and Kedar Nath Yadav and certain admissions made in the cross-examination of the Management witness, the Industrial Court proceeded to record a finding of fact of illegal retrenchment without proper compensation, rejecting the employer-Management plea of the workmen having taken voluntary retirement, upon settlement of dispute and payment of monetary benefits. In so far as two persons, who have appeared, one could say that there is an evidence in respect of their claim, but as far as others are concerned, they having not entered into the witness box and no cogent and reliable evidence having been led before the Labour Court, there was hardly any evidence to record a finding of illegal retrenchment on behalf of remaining workmen other than Bisouha Ram Sahu and Kedar Nath Yadav. As against the evidence led by the Management, based on agreement dated 10-04-2002 that it was signed by all, monetary benefits was accepted and voluntary retirement was also taken, other workmen ought to have entered into the witness box or led some other cogent evidence to prove that they had not accepted monetary benefits of voluntary retirement and claim reinstatement in service. For want of such legally admissible evidence, direction for reinstatement of all workmen is in excess of jurisdiction and

therefore, liable to be interfered with under the supervisory jurisdiction under Article 227 of the Constitution of India.

10. In the result, the petition is partly allowed. The order of reinstatement of Bisouha Ram Sahu and Kedar Nath Yadav are concerned, it is sustained but order passed by the Industrial Court with regard to reinstatement of all the workmen other than Bisouha Ram Sahu and Kedar Nath Yadav is set aside.

Sd/-

(Manindra Mohan Shrivastava)
Judge