

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 558 of 2016

(Arising out of order dated 06.04.2016 in Writ Petition No.877 of 2002 of the learned Single Judge)

- Balco Officer's Association Through Shri S.K. Chaturvedi And J.O.E. Krupadanam It's Authorized Representatives R/o Vikas Nagar, Bilaspur Chhattisgarh

---- Appellant

Versus

1. Union Of India Through The Secretary, Ministry Of Mines, New Delhi,
2. Bharat Aluminium Company Ltd. Through Its Managing Director, Balco Nagar Korba, Chhattisgarh
3. M/s Sterlite Industries India Ltd. Dhanraj Mahal, 5th Floor C.S.M. Road, Appolo Bunder Coleba Mumbai, Maharashtra

---- Respondents

For Appellant : Shri Tanuj Patwardhan, Advocate

For Respondents 2 and 3 : Shri Ashish Shrivastava, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

09.01.2018

1. We have heard the learned counsel for the appellant and the learned counsel for respondents- 2 and 3 in this appeal which comes up with an application for condonation of delay.

2. Beyond the fact that the appeal is barred by limitation and that there is an application for condonation of delay, we think it appropriate to express on the sustainability of the Writ Petition and the Writ Appeal at the instance of the appellant which has described itself as Balco Officer's Association. It does not claim to be a registered organisation under any law. It has not pleaded and proved its status as a juristic person to

sustain a Writ Petition asserting legal rights in terms of the Constitution and the laws. This petition cannot be treated as a representative action merely because the petitioner has pleaded that it is an association of the Balco Officers. To our query, we are told that its members do not fall within the category of 'workmen'. Be that as it may, the learned Single Judge has dismissed the Writ Petition on the premise that the Writ Petition does not lie against Balco which has since been privatised and therefore, does not fall within the term "State" under Article 12 of the Constitution.

3. The petitioner cannot claim to be representing any group of persons for the simple reason that a representative action in such realm cannot be entertained when the persons, who would have lost their eligibility to continue in service till 62 years of age by a reason of the impugned decision of Balco are ascertainable. More importantly, the question whether each and every such person would challenge that decision is again an individual matter. There is nothing to show that the association of Officers, which going by the pleadings, is a loosely knit group which cannot be identified as a juristic person, can sustain this Writ Petition.

4. The aforesaid position notwithstanding, we also do not find any illegality in the decision of the learned Single Judge in holding that a Writ Petition does not lie against Balco which has since been privatised.

5. In the light of what we have noted above, we do not proceed to consider whether Balco's decision to roll back the age of superannuation

of its employees could be subjected to judicial review and if so, whether that requires visitation at the hands of a Writ Court.

6. For the aforesaid, the Writ Appeal fails. Therefore, we do not see any ground to condone the delay in institution of the Writ Appeal as well.

7. In the result, the application seeking condonation of delay and the Writ Appeal are dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge

padma