

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 3959 of 2006**

- The Managing Director M/s Jyoti Structures Limited Urla Industrial Area, Raipur.

---- Petitioner**Versus**

1. Chandu Lal Sahu S/o Ramcharan Sahu Fabrication Department Token No.46, R/o Village Gogaon, Raipur.
2. S.S. Thakur S/o Dilip Singh Fabrication Department Token No.97, R/o Village Gogaon, Raipur.
3. Sangram Singh S/o Lacchi Ram Fabrication Department Token No.6, R/o Village Gogaon Raipur.
4. Pyar Lal Manrakhan Sahu Fabrication Department Token No.18, R/o Village Gogaon, Raipur
5. Jitendra Sahu S/o Gulal Singh Galvanizing Department R/o Village Gogaon, Raipur
6. Radhay Shyam S/o Ramcharan Sahu Galvanising Department Token No.63, R/o Village Gogaon, Raipur.
7. Bhall Singh Thakur S/o Jagdish Singh Fabrication Department Token No.44, R/o Village Gogaon, Raipur.
8. Basant Kumar Sahu S/o Sewa Ram Sahu Fabrication Department Token No.185, R/o Village Gogaon, Raipur.
9. Baldau Sinha S/o Sant Ram Sinha Galvanising Department Token No. 58, Village Kumhari, District Durg.
10. Pawan Das Manikpuri S/o Mangal Das Galvanizing Department Token No. 37, Village Kumhari, District Durg.
11. S/o Mangli Ram Galvanizing Department Token No.224, Village Kumhari, District Durg.
12. Johan Nishad S/o Budhram P.C.O. Department Token No. 211,

Village Lodhipara, Raipur.

13. Bhavneshwar Nishad S/o Mandhu Ram Fabrication Department Token No.90, Village Mazdoor Nagar, Raipur.
14. Neelu Nayak S/o Kahar Singh Fabrication Department Token No. R/o Village Gogaon, Raipur.
15. Romay Lal Sahu S/o Tijau Ram Sahu Galvanising Department Token No.150, Village Sarora, Raipur.
16. Ramdayal Sinha S/o Bajuram Febrication Department Token No.23, R/o Village Kumhari, Durg.
17. Mohan lal Sahu S/o Ramdayal Fabrication Department Token No.56, R/o Village Sarora, Raipur.
18. Tijauram Sahu S/o Bishu Ram Sahu Fabrication Department Token No.109, Village Sarora, Raipur.
19. Girdhari Sahu S/o Ganga Ram Galvanizing Department Token No.15, Village Godhi, Raipur.
20. Mohammad Ali S/o Nohal Ali Fabrication Department Token No.70, Village Godhi, Raipur.
21. Lalit Tandon S/o Virendra Kumar Fabrication Department Token No.120, Village Godhi, Raipur.
22. Tameshwar Sahu S/o Ganpat Ram Fabrication Department Token No.62, Village Godhi, Raipur.
23. Shivcharan (Dead) through LR Rambin Bai wd/o Late Shri Shivcharan, R/o village Gudhayri, Sahu Para, Thana Gudhiyri Distt. Raipur.
24. Manharan Sahu S/o Shivcharan Fabrication Department Token No.16, Village Gudhayari, Raipur.
25. Horilal Nishad Fabrication Department Token No.35, Village Gogaon, Raipur.
26. Dev Kumar Yadav S/o Maniram Fabrication Department Token No.162, Village Sarora, Raipur.
27. Guddu Bhutay S/o Shauram Bhutay Fabrication Dept. Token No.340, Village Gogaon, Raipur.

28. Poonam Giri S/o Pachkode Giri P.C.O. Department Token No.243, Village Gudhayari, Raipur.
29. Shankar Verma S/o Raman Verma Fabrication Department Token No.108, Village Sarora, Raipur.
30. Dhan Singh S/o Sita Ram Galvanizing Department Token No.130, Village Sankara, Raipur.
31. Thanu Singh S/o Bodhan lal Fabrication Department Token No.130, Village Sankara, Raipur.
32. Krishna Kumar Sahu S/o Ganga Ram Sahu Galvanizing Department Token No.153, Village Godhi, Raipur.
33. Ghanshyam S/o Kanhaiya Lal Galvanizing Department Token No.180, Village Kumhari, Durg.
34. Netram Sahu S/o Matiram Sahu Fabrication Department, Village Sarora, Raipur.
35. Ram Narayan Verma S/o Milauo Ram Fabrication Department, Village Sarora, Raipur.
36. Yashwant Sahu S/o Kanhaiya Lal Galvanizing Department Token No.8, Village Kumhari, Durg.
37. Mohammad Yusuf S/o Mohammed Arman Khan Steel Department Token No.9.
38. Mangal Sahu S/o Ram Prasad Steel Department.
39. Shankar Lal Patel S/o Umrao Fabrication Department Village Gogaon, Raipur.
40. Hemant Kuzur S/o Augustusu Kuzur Galvanizing Department Token No. 105, Village Gondwara, Raipur.
41. Shatrughan Thakur S/o Kawal Singh Fabrication Department, Token No. 156, Village Gogaon, Raipur.
42. Narendra Gajbhiya S/o Davajee Fabrication Department Token No. 1, Village Ashoka Nagar, Raipur.
43. Kartik Ram S/o Sukhram P.C.O. Department, Village Gogaon, Raipur.

44. Santosh Rajat S/o Basant Rajat Galvanizing Department Token No. 47, Village Sarora, Raipur.
45. Sanjay Rajput S/o Sunder Singh Fabrication Department Token No. 244, Village Kota, Raipur.
46. Dev Narayan Sahu S/o Neelkant Galvanizing Department Token No. 201, Village Sarora, Raipur.
47. Hemant Sahu S/o Samaru Ram Galvanizing Department Token No. 173, Village Mazdoor Nagar, Raipur.
48. Vishnu Prasad Sahu S/o Dhana Ram Galvanizing Department Token No. 61, Village Sarora, Raipur.
49. Devmani Verma S/o Puna Ram Galvanizing Department Token No. 29, Village Gogaon, Raipur.
50. Mandal Verma S/o Ramadhar Fabrication Department Token No. 83, Village Chetuwa, Raipur.
51. Anil Kumar Verma S/o Bisaru Ram Fabrication Department Token No. 220, Village Chetuwa, Raipur.
52. Waman Ram S/o Yeshwant Rao Fabrication Department Token No. 116, Village W.R.S. Raipur.
53. Santosh Sahu S/o Kanhaiya Fabrication Department Token No. 235, Village Kherdha, Raipur.
54. Narendra Kumar S/o Deenbandhu Galvanizing Department Token No. 37, Village Urla, Raipur.
55. Harishchandra S/o Alak Ram Galvanizing Department Token No. 55, Village Ashoka Nagar, Raipur.
56. Chandra Kumar Thakur S/o Shiv Singh Galvanizing Department Token No. 38, Village Ashoka Nagar, Raipur.
57. Mannu Lal Thakur S/o Khedu Ram Fabrication Department Token No. 112, Village Murpar, Raipur.
58. Kanhaiya Sahu S/o Prem lal Sahu Fabrication Department Token No. 159, Village Godhi, Raipur.
59. Balram Shrivastava S/o Anand Fabrication Department Token No. 26, Village Godhi, Raipur.

60. Dashrath Nirmalkar S/o Sukhram Fabrication Department, Village Chetuwa, Raipur.
61. Shikhram Sahu S/o Lachhi Ram Fabrication Department Token No. 6, Village Gogaon, Raipur.
62. Rajeshwar Sahu S/o Ram Lal Fabrication Department, Village Sarora, Raipur.
63. Dilip Sahu S/o Dhansai Dispatch Department, Village Ashoka Nagar.
64. Santosh Mirwai S/o Keshav Rao Proto Department Village Ashok Nagar.
65. Ashwani Sahu S/o Nain Sahu Fabrication Department Token No. 49, Village Gogaon.
66. Nand Kumar Sahu S/o Sathu Ram Fabrication Department Token No. 13, Village Sarora.
67. Surendra Kumar Thakur Fabrication Department Token No. 131, Village Gogaon.
68. Kumar Sahu S/o Devnath Sahu Fabrication Department, Village Pahadi Chowk.
69. Ganesh Yadav S/o Dashrath Yadav Fabrication Department Token No. 203, Village Sarora.
70. Raghu Ram Sahu S/o Girdhari Fabrication Department Token No. 93, Village Sarora.
71. Akhileshwar S/o Kishan Dewangan Proto Department, Village Birgaon.
72. Prahlad Yadav S/o Faguwa Ram Fabrication Department, Token No. 9, Village Godhi.
73. Vinod Meshram Fabrication Department.
74. Mansha Ram Sahu S/o Mangal Ram Galvanizing Department, Token No. 29, Village Gogaon.
75. Bhagwati Sahu S/o Dahara Ram Galvanizing Department, Village Urkura.

76. Pati Ram Rajak S/o Basant Rajak Fabrication Department, Village Charoda.
77. Sujit Kumar S/o Maya Ram Fabrication Department, Village Godhi.
78. Lekhram Chandravanshi S/o Bisahau Fabrication Department, Token No. 148, Village Sarora.
79. Suresh Kumar Sahu S/o Ram Chandra Galvanizing Department, Token No. 9, Village Sarora.
80. Laxmi Narayan Sahu S/o Bharat Galvanizing Department, Token No. 118, Village Sarora.
81. Vinod Kumar S/o Bishambhar P.C.O. Department, Token No. 143, Village Lodhipara.
82. Talab Soni S/o Madhi P.C.O. Department, Village Kaling Nagar.
83. Dilip Soni S/o Madhi, Steel Department, Kaling Nagar.
84. Rajesh Barlay S/o Sukhram Steel Department, Village Gogaon.
85. Shiv Kumar S/o Devilal Fabrication Department, Village Godhi.
86. Pramod Dandey S/o Ashok Fabrication Department, Token No. 98, Village Gogaon.
87. Vishwanath Gaikhwad S/o Akbar Fabrication Department, Token No. 117, Village Gogaon.
88. Arvind Banjaray, S/o Jageshwar, Fabrication Deptt. Token No.111, Village Gogaon.
89. Jaleshwar Prasad S/o Ram Prasad Fabrication Department, Token No. 92, Village Mazdoor Nagar.
90. Prem Lal Verma S/o Gokul Fabrication Department, Village Godhi.
91. Rakesh Kumar S/o Jeewarakhan Galvanizing Department, Token No. 174, Village Chetwa.
92. Dhan Singh Khotaley Fabrication Department, Village Gargo.
93. Govind Ram S/o Dakalu Ram Fabrication Department, Token No.

16, Village Godhi.

94. Mahaveer Verma S/o Sukhi Ram Fabrication Department, Village Ashok Nagar.

95. Mohan Das Vaishnav S/o Umen Das Fabrication Department, Token No. 51, Village Gogaon.

96. Bhagwan Das Choubey S/o Yashwant Rao Fabrication Department, Token No. 131, Village Ashok Nagar.

97. Vijay Bhaglay S/o Chhedi lal Bhaglay Fabrication Department, Token No. 71, Village Gogaon.

98. Kamla Bai W/o Ramdas Civil Department, Village Gogaon

All C/o Chandu lal Sahu, Surya Nagar, Ward No.20, Gogaon, P.S. Sarona, Raipur.

99. State Industrial Court Of Chhattisgarh Mahanadi Khand B, Mantralaya Building, Raipur.

100. Presiding Officer Labour Court, Anand Nagar, Raipur.

---- Respondents

For Petitioner	Mr. NK Vyas, Advocate
For Respective Respondents	Mr. Sanjay Agrawal along with Mr. Parag Kotecha, Mr. Vinod Deshmukh, Mr. Raghvendra Pradhan, Mr. Shikhar Sharma, Mr. Samarth Pandey and Mr. Kanwljeet Singh Saini, Advocate on behalf of Ms. Sharmila Singhai, Advocates

Order On Board By

Hon'ble Mr. Justice Prashant Kumar Mishra

4/10/2019

1. Heard.
2. This petition under Article 226 of the Constitution of India would assail the legality and validity of the order passed by the Industrial Court (CG) on 6.7.2006 allowing the appeal preferred by 102 respondent-workmen directing their reinstatement with 33% back wages .
3. The workmen moved an application under Section 31(3) of the CG Industrial Relations Act, 1960 (in short "the Act, 1960") on 16.7.2002 on the plea that each of the workman have put in more than one year service and in every year, they have worked for more than 240 days, but yet they are not taken on duty from 4.1.2002 onwards in an arbitrary and illegal manner despite various efforts made by them or on their behalf. It was specifically pleaded that the provisions relating to retrenchment as contained under Section 25-F of the Industrial Disputes Act, 1947 (in short "the Act, 1947") has not been followed as the Management has not served one month notice or pay in lieu thereof nor any retrenchment compensation has been paid. The workmen prayed for a declaration that the termination/refusal to provide work w.e.f. 4.1.2002 be declared illegal and unjustified and they also prayed for wages for the intervening period from 4.1.2002 onwards.
4. In its reply vide Annexure P/7, the Management stated that the respondents have not put in more than one year service nor have worked for more than 240 days in the preceding calendar

year with further submission that the workmen were never employed by the petitioner/non-applicant and as such, there is no direct master and servant relationship. In substance, its plea was that the workmen were employed through a Contractor. It was also stated that the workmen are not the members of P.F. under the Code allotted to the Company. The Management admitted that it has got about 200 employees (97 workmen and 103 staff) of its own, who have been issued letters of appointment and token numbers. By way of additional submission in para 6 of the return, the Management subsequently pleaded that the employees engaged through the Contractors namely M/s. Saju, Shyam, Ashok Tiwari, Geeta, Baghel, Mahalaxmi commenced illegal strike w.e.f. 4.1.2002 and the manufacturing activities was badly disturbed. Thereafter, the matter was adjudicated before the Labour Court, Raipur, which was pleased to direct the striking workers to resume their work. Similar request was made by the Contractor but the present set of workmen did not resume the work though other workmen mentioned in para 6 (iii) of the return tendered apology and resumed their duties. According to the Management, continuance of strike after the order passed by the Labour Court and despite appeal by the Management and the Contractor, permitted the Management to disengage the applicants/respondents.

5. Both the parties examined witness in support of their respective case. While the workmen examined one Baldau

Sinha, the Management examine one Dinesh Kumar Pathak.

6. The Labour Court dismissed the application vide order dated 30.4.2005 holding that the workmen have failed to prove that they have worked for 240 days or more in the preceding calendar year, therefore, their disengagement does not amount to illegal retrenchment. The Industrial Court allowed the appeal preferred by the workmen vide its order dated 3.1.2006, re-framing the issues and sending the matter for retrial to the Labour Court. In the fresh trial, the Labour Court again passed an order on 24.2.2006, dismissing the application by reiterating its finding holding that the workmen have failed to prove that they worked for 240 days or more in the preceding calendar year.
7. By the impugned order under challenge, the appeal preferred by the workmen has been allowed holding that it was not a case of illegal retrenchment but it's a case of illegal change within the meaning of Section 34 of the Act, 1960 as the workmen have been terminated by way of punishment for their participation in the strike which could not have been done without taking any Departmental action after issuance of charge sheet.
8. Mr. NK Vyas, learned counsel for the petitioner, would submit that the plea of illegal change was not raised in the application under Section 31(3), therefore, the Industrial Court's order is illegal. He would submit that the workmen did not discharge

their burden to prove that they have worked for more than 240 days, therefore, in view of the law laid down by a Division Bench of this Court in WA No.470 of 2016 (**Pragatisheel Engineering Shramik Sangh Industrial Estate Vs. Simplex Castings Ltd. And others**) and other connected appeals, decided on 13.9.2019, the Labour Court's order has wrongly been set-aside.

9. Per contra, Mr Sanjay Agrawal along with Mr. Parag Kotecha, Mr. Vinod Deshmukh, Mr. Raghvendra Pradhan, Mr. Shikhar Shamra, Mr. Samarth Pandey and Mr. Kanwaljeet Singh Saini, Advocate on behalf of Ms. Sharmila Singhai, learned counsel for the respective respondents would submit that an illegal termination is covered within Section 31(3) of the Act, 1960, therefore, the application having been filed under the said provision, the Industrial Court was fully justified in exercising the power to grant relief to the workmen in view of the powers conferred on the Industrial Court under Sections 61 to 64 of the Act, 1960. It is further argued that the workmen have clearly stated in their application that they have worked for more than 240 days, therefore, the burden lies on the Management to disprove that they have not worked for such period.

10. The Industrial Court's order has not dealt with the issue as to whether the Labour Court's decision to dismiss the application holding that the workmen did not prove to have worked for more than 240 days in the preceding calendar year, is proper or not. It has proceeded on a wholly different issue that the action of the Management in disengaging the workmen

amounts to punitive termination without holding Departmental Enquiry.

11. In my considered view, such a case was never pleaded or proved by the workmen. There is no whisper in the application under Section 31(3) that the workmen were punished or victimised because of their participating in the strike. Similarly, there is no plea that the strike was not declared illegal by the Labour Court. In the absence of such foundation having been laid in the application, there was no occasion for the Management to reply to the said case which has been developed by the Industrial Court at the appellate stage.

12. It is settled that a party to the lis cannot be taken by surprise to wreck upon an issue which was never pleaded by the parties. This is particularly impermissible when a new issue raised requires pleadings of facts and its proof by adducing evidence. Had it been pleaded by the workmen, then, the Management could have countered in their submissions by way of filing reply and thereafter, could have led evidence to prove that the strike was declared illegal. The Industrial Court went at tangent to allow the appeal on a wholly new issue with which neither the Labour Court had an occasion to deal in both the rounds of litigation i.e. pre-remand and after-remand rounds, nor the Industrial Court has dealt with any such issue when the matter was taken up in appeal in the earlier round.

13. Now reverting back to the issue as to whether the workmen

have discharged their initial burden to prove that they have worked for more than 240 days in the preceding calendar year, it is to be seen that the only workman examined by the respondents namely Baldau Singh has not stated anything about he or any other workman having worked for more than 240 days. He would only state that they were regular workers and their PF was also deducted. Deduction of PF happens even if the workman is engaged for a few weeks . It cannot be assumed that merely because PF was deducted, the workmen have worked for 240 days or more. If the workmen were employed through the Contractor, as stated by the Management, it was very easy for the workmen to have examined the Contractor or submitted documentary proof of the Attendance Register of the Management maintained by the Contractor. They could have moved an application for a direction to the Management to submit the attendance register.

14. In the matter of **Pragatisheel Engineering Shramik Sangh Industrial Estate (supra)**, the Division Bench of this Court has held thus in para 22:

“22. For deciding the question whether the termination of service was correct or justified, it was quite fundamental for the Workmen-Union to have pleaded and proved that the worker named was engaged as an employee by the Respondents-Management. Unless the Employee-Employer relationship was established by raising specific pleadings and adducing evidence in support thereof, it was not possible for the Industrial Court to have answered the question whether the termination of such an employee by

the Managements was correct and justified or not. Once the Workmen-Union satisfies the burden as to the Employee-Employer relationship and that the workman was a person who was entitled to have protection under the statute, the burden will shift to the Management to justify their action in the matter of termination. It is in the said background, that the necessity to have continuous service of 240 days in the preceding 12 months, in accordance with relevant provisions of the statute, was also subjected to scrutiny by the Industrial Court with reference to the pleadings and evidence on record, which came to be answered against the Workmen-Union, for having failed to discharge the burden in this regard. If only the burden was discharged from the part of the Workmen-Union in this regard and the action of Management was held as wrong and illegal, would arise the next question as to the relief to be granted i.e. whether the workers should be ordered to be reinstated and the consequential benefits, if any, or whether the workers were entitled for such other benefits including payment of compensation. The Workmen-Union having failed to cross the first hurdle, it was not correct or proper for them to have contended that the 'burden of proof' was upon the Respondents-Managements to prove a 'negative fact' with regard to the contents as contended in their written statement."

15. In view of the above, when the threshold burden has not been discharged or crossed by the workmen, their disengagement by the Management cannot be termed to be amounting to illegal retrenchment. Even if other issues have been decided by the Labour Court in favour of the workmen, if they have failed to prove that they worked for 240 days or more in the preceding calendar year, no relief can be granted by the Labour Court or the Industrial Court as the same is pre-requisite for holding the

retrenchment to be amounting to illegal retrenchment. Disengagement or retrenchment being declared illegal is the very foundation to direct reinstatement, therefore, the Labour Court was fully justified in dismissing the application under Section 31(3) of the Act, 1960.

16. During pendency of the writ petition, one important development has taken place in respect of the petitioner-Company. It has gone in liquidation under the provisions of the Insolvency and Bankruptcy Code, 2016. The NCLT at Mumbai entertained a petition preferred by a Financial Creditor, State Bank of India, against the Company, wherein, the petition was admitted by the NCLT on 4.7.2017 declaring commencement of Corporate Insolvency Resolution Process (CIRP) and at the same time, appointing Ms. Vandana Gupta as Interim Resolution Professional (IRP) of the Corporate Debtor. Pursuant to a duly drawn insolvency proceeding, NCLT pronounced the order on 25.7.2018 and delivered the same on 31.7.2018. The NCLT dismissed the application, however, NCLAT at New Delhi allowed the Company Appeal to approve the final resolution plan vide its order dated 19.3.2019. Thereafter, the NCLT sanctioned the final resolution plan on 27.3.2019 in the following terms (as has been mentioned in para 9 page 4 of the application filed by the petitioner on 10.9.2019 for taking additional document on record) :

- a. The Committee of Creditors ("COC") of the Corporate Debtor on 6th April 2018 accorded its approval with a Vote

share of 81.31% to the Resolution Plan submitted by Mr. Sharad Sanghi, Resolution Applicant ("RA"). That thereafter the Resolution Professional of Petitioner Company in accordance with provisions of IBC, 2016 submitted the resolution plan approved by the COC to the Hon'ble NCLT at Mumbai, by way of a Miscellaneous Application 491 of 2018 in Company Petition No.1137/I&BP/2017.

b. Subsequently by way of MA No.1129 of 2019 in Company Petition No.1137/I&BP/2017, the Resolution Professional placed before the Hon'ble NCLT at Mumbai, the order dated 19th March 2019 passed by Hon'ble NCLAT at New Delhi in Company Appeal No.461 of 2018 and accordingly the Hon'ble NCLT at Mumbai was pleased to pass an Order dated 27.3.2019 approving the resolution plan in terms of Section 31 of IBC, 2016 as directed by the Hon'ble NCLAT at New Delhi.

17. At the beginning of hearing, learned counsel for the workmen, have argued that the provisions contained in Section 65(3) of the Act, 1960 having not been fully complied with, the petition cannot be heard on merits. However, this Court proceeded to hear the petition on merits in view of the judgment of the Supreme Court rendered in the matter of **Hindustan Zinc Ltd. Vs. Industrial Tribunal and another, (2001) 10 SCC 211**, wherein, the Supreme Court has held that even if the order under Section 17-B of the Act, 1947 had not been complied with, the writ petition has to be decided on merits by the High

Court.

18. For all the above stated reasons, the writ petition deserves to be and is hereby allowed. The impugned order is set-aside.

19. Setting aside of the order passed by the Industrial Court shall not entitle the petitioner to recover the amount already paid to the workmen in part compliance of Section 65(3) of the Act, 1960.

Sd/-

(Prashant Kumar Mishra)

Judge

Shyna