

HIGH COURT OF CHHATTISGARH AT BILASPURWPL No. 7185 of 2009

S.C.Soni S/o Late H.L. Soni, aged about 62 years, R/o Qr. No. 1A
Str.No.35, Sector-V, Bhilai Nagar, District Durg (C.G.).

---Petitioner

Versus

1. Steel Authority of India Ltd. Through - Managing Director, Bhilai Steel Plant, Ispat Bhavan, Bhilai, District Durg (C.G.).
2. Industrial Court of Chhattisgarh, Ghari Chowk, Raipur (C.G.).

---Respondents

For petitioner	:	Shri P.K.Maitra, Advocate.
For resp.No.1	:	Dr. Sourabh Kumar Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/01/2019.

1. The challenge in the present writ petition is to the two orders Annexures P/1 and P/2. Annexure-P1 is an order passed by the learned Industrial Court, Raipur in appeal case No.73/CGIR Act/A/II/2008 dated 04/07/2009 whereby the Industrial Court has affirmed the order Annexure P/2 dated 16/10/2008 passed in case number 159/CGIR Act/Civil/2005 wherein the learned Labour Court had rejected the claim application filed by the petitioner before the Labour Court under Section 31(3) of the CGIR Act, 1960.
2. The whole dispute raised by the petitioner revolves around the anomaly in the pay-scale which the petitioner was drawing as compared to one of his

junior namely Shri L. Munda working in the same post, same grade and same scale.

3. The relevant facts necessary for the disposal of the present writ petition is that, the petitioner was working as a chargeman/supervisor. The fact is that, one Shri L. Munda also was working in the same department under the respondent but was junior to the petitioner. The petitioner was promoted in L-8 grade with effect from 01.12.1988 whereas his junior Shri Munda was promoted to L-8 grade after one year i.e. on 1/12/1989. There was a wage revision implemented in the respondent establishment vide an agreement signed on 18/05/1995 which was implemented with effect from 01/01/1992. After the said wage revision was implemented, the junior to the petitioner namely Shri L. Munda was fixed at a basic salary more than that of the petitioner and this anomaly continued even when the petitioner and the said junior Shri Munda both were promoted from L-8 to S-9 grade, even though in S-9 grade, the Junior Shri Munda was promoted six months after the petitioner was promoted. In due course of time, the said Shri Munda stood retired from service with effect from 31/01/1992 whereas the petitioner retired from service with effect from 30/04/2007.

4. In between the petitioner raised a claim application before the learned Labour Court vide application under Section 31(3) of the CGIR Act, 1960 claiming for stepping up of the wages of the petitioner at par with his junior i.e. Shri L. Munda.

5. The Labour Court after the pleadings were complete and after the evidences were recorded vide its order Annexure P/2 dated 16/10/2008 rejected the claim application. The rejection by the Labour Court was on the ground that, the petitioner does not fall within the ambit of the definition of 'Employee' as defined under Section 2(13) of the CGIR Act, 1960.

6. The order to the Labour Court Annexure-P/2 was subjected to challenge in an appeal under Section 65 of the CGIR Act, 1960 vide appeal No. 73/ CGIR Act/A/II/08. The Industrial Court also vide Annexure-P/1 dated 04/07/2009 rejected the appeal preferred by the petitioner. While rejecting the appeal, the Industrial Court initially held that, the petitioner does not fall within the category of an employee under the CGIR Act. At the same time, the Industrial Court so far as the merits of the case is concerned found that, the petitioner is not entitled for benefit of stepping up of his salary for the reason that, the so called junior to the petitioner namely L. Munda was himself granted with an erroneous pay scale in excess to what Shri Munda otherwise was entitled for. The Industrial Court held that, what has been wrongly granted to Shri Munda cannot be ordered by the Court to be also granted to the petitioner. It is this order which is under challenge under present writ petition.

7. Perusal of the record would reflect that, the findings given by the Labour Court as well as by the Industrial Court so far as the issue whether the petitioner would fall within the ambit of an employee under the 1960 Act is not proper. It appears that the Labour Court as well as the Industrial Court

both have decided the said issue taking into consideration the designation which the petitioner was holding. It is by now settled principle of law that in order to ascertain whether a person is an employee or not, it is the nature of duties that he is discharging which would determine the said issue. It is also well settled by now that in order to fall within managerial category or in order to get ousted from the category of an employee it is the powers which the person enjoys in the course of discharge of his duties, that is more relevant. In order to determine whether he has managerial powers, it is to be established and proved before the Labour Court by way of cogent evidence that the petitioner did enjoy disciplinary powers as well as he had powers for granting leave to his subordinates and other like managerial functions which in the instant case is missing.

8. In the absence of any such strong evidence, only on account of the petitioner receiving a salary of more than Rs.1600/- and his designation being that of a Supervisor by itself is not sufficient to determine the issue against the petitioner holding that he does not fall within the ambit of an employee as defined under Section 2(13) of the Act of 1960. The findings of the Labour Court as well as of the Industrial Court to that extent is not sustainable and the same is held to be bad in law.

9. Now coming to the core issue as to whether the petitioner is entitled for the benefit that he has sought for, it would be relevant to consider the dispute itself.

10. The sole dispute according to the petitioner is that his junior Shri Munda was being paid a higher salary than what was paid to the petitioner inspite of the fact that the petitioner was all along senior to Shri Munda.

11. If we peruse the record it would reveal that, the management in the instant case had produced a document Ex.D1-C which is a document showing that there was an order passed by it holding that the said Munda has been erroneously granted wrong fixation of wage by virtue of which he has drawn more salary than the petitioner. D1-C also reveals that, so far as the wrong fixation and on account of which certain excess payment was paid to the Shri Munda, the Authorities have ordered for its recovery. This aspect is not in dispute by the petitioner, but it is their contention that while the said Shri Munda was in service he has been given an advantage of drawing more salary than the petitioner, and therefore, the petitioner should also be on parity given the same pay-scale.

12. It is not the case of the petitioner that he has not been paid what he is otherwise entitled for. It is also not the evidence which the petitioner has led before the Labour Court that he has been wrongly given a particular pay-scale whereas he was entitled under the wage agreement a different pay-scale/Grade pay. The sole ground for claiming the benefit by the petitioner was on account of what was paid to Shri Munda. Once when it has been pleaded by the respondents that Shri Munda has been wrongly paid the pay-scale and he has been paid certain excess amount by virtue of the wrong fixation, in-addition the respondents also taking steps for recovering of the

said excess payment is sufficient to show that the petitioner in any case would not be entitled for what was infact paid to Shri Munda.

13. The petitioner cannot claim benefit of negative equality. Only because the said Shri Munda has been wrongly granted some benefit the said cannot be extended to another person knowingly.

14. The Hon'ble Supreme Court in the case of **Kulwinder Pal Singh & Anr. v. State of Punjab & Ors. [2016 6 SCC 532]** in a very categorical terms held that, the authorities should not perpetuate illegalities and it does not envisage negative equalities. For ready reference, paragraph 16 of the said judgment is been reproduced herein under:-

“16. Learned counsel for the appellants contended that when the other candidates were appointed in the post against de-reserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In State of U.P. And Ors. v. Rajkumar Sharma And Ors. [2006 3 SCC 330] it was held as under:-

“15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha v. State of U.P. [1996 7 SCC 426], Jaipur Development Authority v. Daulat Mal Jain [1997 1 SCC 35], State of Haryana v.

Ram Kumar Mann [1997 3 SCC 321], Faridabad C.T. Scan Centre v. D.G., Health Services [1997 7 SCC 752], Jalandhar Improvement Trust v. Sampuran Singh [1999 3 494], State of Punjab v. Dr. Rajeev Sarwal [1999 9 SCC 240], Yogesh Kumar v. Govt. of NCT, Delhi [2003 3 SCC 548], Union of India v. International Trading Co. [2003 5 SCC 437] and Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority [2006 2 SCC 604].” Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality.”

15. In view of the aforesaid legal position as it stands, the claim of the petitioner not being on account of some benefit which has been denied to him which otherwise he was entitled for but being only on account of certain erroneous benefits extended to Shri Munda this Court does not find any strong case made out by the petitioner calling for an interference with the impugned orders.

16. The writ petition therefore deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE