

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 261 of 2019

(Arising out of order dated 08.02.2019 passed by the learned Single Judge in WPS No. 3829 of 2008)

- Arun Kumar Rana S/o Chhatthu Rana, Aged About 55 Years Occupation - Service S E C L Working As Mining Sardar, R/o New Colony, Dhelwadih, Qtr. No. B/157, Post Katghora, Korba District Korba Chhattisgarh.

---- Appellant

Versus

1. South Eastern Coalfields Limited, Through The Chairman - Cum - Managing Director, Head Quarter, Seepat Road, Bilaspur Chhattisgarh
2. The Director (Personnel) SECL Headquarter, Seepat Road, Bilaspur Chhattisgarh.
3. Chief General Manager SECL, Korba Area, District Korba Chhattisgarh.
4. The Superintendent Of Mines, SECL, Bagdeva Project, Post Katghora District Korba Chhattisgarh.

---- Respondents

WA No. 346 of 2019

(Arising out of order dated 08.02.2019 passed by the learned Single Judge in WPS No. 3829 of 2008)

1. S.E.C.L. Through The Chairman Cum Managing Director, Headquarter, Seepat Raod, Bilaspur, Chhattisgarh
2. The Director (Personnel) S.E.C.L. Headquarter, Seepat Raod, Bilaspur, Chhattisgarh
3. The Chief General Manager, S.E.C.L. Korba Area District- Korba, Chhattisgarh
4. The Superintendent Of Mines S.E.C.L. Bagdeva Project, Post- Katghora, District- Korba, Chhattisgarh

---- Appellants

Versus

1. Arun Kumar Rana S/o Shri Chhattu Aged About 45 Years Occupation- Servie, S.E.C.L. Ex-Mining Sardar (S.C.P.A.)r/o New Colony, Dhelwadih, Qtr. No.- B/157, Post Katghora, Korba, District-Korba, Chhattisgarh
2. The Director (Personnel) S.E.C.L. Headquarter, Seepat Road, Bilaspur, Chhattisgarh

---- Respondents

For Employee	:	Shri Ashok Kumar Shukla and Shri Atanu Ghosh, Advocates
For Employer	:	Shri H. B. Agrawal, Senior Advocate assisted by Shri Sudhir Kumar Bajpai, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

P. R. Ramachandra Menon, Chief Justice

07.08.2019

1. Both the Employer and Employee are before this Court by filing separate appeals arising out of same judgment dated 08.02.2019.
2. The grievance of the Employee is to the effect that while ordering reinstatement, backwages have been denied to him, which hence is sought for. The Management's appeal is to the effect that the reinstatement ought not to have been ordered by the learned Single Judge, as the fundamental question whether the Employee was a 'workman' or not, was never considered by the learned Single Judge, despite the clear direction given by the Division Bench in Writ Appeal No. 98 of 2014.
3. We heard Shri H.B. Agrawal, learned Senior Advocate appearing for the Appellant-Employer and Shri Ashok Kumar Shukla, learned counsel representing the Employee of the establishment.
4. The sequence of events is follows :
 - (i) The Employee concerned was stated to be working as Safety-cum-Production Assistant (Mining Sardar) in Bagdeva Colliery, District Korba (Chhattisgarh). Some allegation was levelled against him from the part of the Management, insofar as he instigated other employees to strike and agitate against the Management.

(ii) When the officers of the Management came to conduct an enquiry, it is said that such officers were assaulted by some of the workers, which blame was put on the shoulders of the Employee herein and he was simply dismissed by the Management without conducting any enquiry. This made the Employee to approach this Court by filing Writ Petition (S) No. 1716 of 2008, which was disposed off as per Annexure-P/11 judgment, whereby he was relegated to pursue the alternative remedy by way of appeal.

(iii) The appeal was considered and it was rejected by the Chairman-cum-Managing Director of the Company; which made the Employee to challenge it by filing Writ Petition (S) No. 3829 of 2008.

(iv) When the said matter came up for consideration before this Court, it was pointed out that the Employee was having a further remedy by way of raising dispute under the relevant provisions of the Industrial Disputes Act, 1947. In the said circumstance, he was relegated to move the Industrial Court, thus disposing off the writ petition without deciding the merit. The Employee felt aggrieved, who filed Writ Appeal No. 98 of 2014 before this Court.

(v) The prayer was resisted from the part of the Management, contending that the Employee was admittedly working as Safety-cum-Production Assistant (Mining Sardar) in Bagdeva Colliery, District Korba (Chhattisgarh) and hence he was not a 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947 and hence this question had to be decided first, before considering whether his claim could be considered by this Court. The said contention was accepted

and the Division Bench disposed off the appeal in following terms :

“7. There is no finding of the single judge on the point whether the Appellant was a workmen or not. The writ petition filed by the Appellant cannot be decided granting liberty to raise industrial dispute unless the Appellant was a workmen.

8. In view of above, the writ appeal is allowed and the order dated 13.01.2014 is set aside. The matter is sent back to the single Judge for deciding the question whether the Appellant was a workmen or not and thereafter, the matter may be decided afresh in accordance with law.”

(vi) By virtue of the above declaration / direction, the Division Bench set aside the verdict already passed by the learned Single Judge on 13.01.2014 and remanded the matter for fresh consideration with a specific observation to decide the question whether the Employee was a 'workman' in terms of Section 2(s) of the Industrial Disputes Act, 1947 and to proceed accordingly. This order was passed on 07.08.2014.

(vii) The fact remains that the matter was lying dormant for nearly four years and after final hearing it was decided only on 08.02.2019, whereby a finding was rendered on merit to the effect that dismissal of the Employee by the Management without following the relevant rules / norms and the known principles of natural justice; virtually violative of Article 311(2) of the Constitution of India and hence that the dismissal order was not liable to be sustained. It was accordingly that the order passed by the Management was set aside and the Employee was directed to be reinstated, however, without mentioning anything with regard to backwages. This made the Employee to feel aggrieved who approached this Court by filing writ appeal, as mentioned already, claiming for the backwages. The Management is also equally

aggrieved, insofar as the direction given by the learned Division Bench to consider the question whether the Employee is 'workman' or not was never considered.

5. After hearing both the sides, we are of the view that, insofar as the verdict passed by the Division Bench holds the field, directing the manner in which the matter was to be considered by the learned Single Judge and insofar as there is an omission to have it considered in the said manner, the matter requires to be remanded for fresh consideration.
6. Accordingly, we set aside the verdict dated 08.02.2019 passed by the learned Single Judge and restore the Writ Petition (S) No.3829 of 2008.
7. The Registry is directed to list the matter for consideration before the appropriate Bench as per the roster, to have the issue considered and finalised in terms of the verdict dated 07.08.2014 passed by the Division Bench in Writ Appeal No. 98 of 2014.
8. Both the appeals stand disposed off as above.
9. Since the dismissal of the Employee was effected way back on 18.02.2008 and different rounds of litigation have been pursued at different levels, we hope and express our earnest desire to have the matter considered and finalized, as expeditiously as possible.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge