

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 45 of 2019**

{Arising out of Order dated 09.08.2018 passed in Writ Petition No. 999 of 2006 by the learned Single Judge}

General Secretary, Chemical Majdoor Union, Rasmada, District Durg, Chhattisgarh, at present village Khapri, PO Kumhari, District Durg, Chhattisgarh.

---- Appellant

Versus

1. Chhattisgarh Distillery (Now Kedia Castle Delleon Industries Ltd) Kumhari, District Durg, Chhattisgarh.
2. The Industrial Court, Chhattisgarh, Govt. of Chhattisgarh, Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Parag Kotecha and Shri Sanjay Agrawal, Advocate.
For Respondent No. 1	: Shri Alok Kumar Sinha, Shri Praveen N. Surange and Shri Manoj Paranjpe, Advocates.

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

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice

30/07/2019

1. Challenge is against the verdict passed by a Single Judge of this Court whereby the writ petition filed by the Appellant seeking reinstatement of all the workers concerned (against the partial relief granted by the Industrial Court ordering reinstatement of only 76 workers, as against the total of 1075 workers with 50% backwages) came to be dismissed as devoid of any merit.
2. It is pointed out that the matter has not been properly examined by the Industrial Court as well as the learned Single Judge and hence, the same is sought to be pursued further, by the Appellant-Majdoor Union who is

proclaiming as representing substantial number of workers employed in the Management-Establishment.

3. The sequence of events reveals that there was cessation of employment of the workers of the Respondent-Establishment to a substantial extent, which was sought to be challenged by raising a dispute in terms of the relevant provisions of the Chhattisgarh Industrial Relations Act, 1960. The dispute was infact raised by the "Chhattisgarh Chemical Mill Mazdoor Sangh" and since the process of conciliation did not yield any positive relief, the dispute was referred to the Industrial Court by the appropriate Government in the year 1993. On getting the reference, notice was issued to both the sides, pursuant to which the "Chhattisgarh Chemical Mill Mazdoor Sangh" representing the workers, appeared and filed their claim statement. The claim was sought to be resisted by the Management. Evidence was adduced and thereafter the matter was finalised by passing an award on 16.10.1999, whereby the Industrial Court directed the Respondent-Management to reinstate the workers with 66% backwages.
4. This was sought to be challenged by the Respondent-Management by filing Writ Petition No. 5064 of 1999. After hearing both the sides, including the "Chhattisgarh Chemical Mill Mazdoor Sangh", the matter was disposed of by a co-ordinate Bench of this Court as per the verdict dated 07.07.2005, whereby the award passed by the Industrial Court was set aside and the matter was remanded to be considered afresh in the light of the observations made therein. Obviously, the present Appellant was never a party either before the Industrial Court or before this Court in the Writ Petition No. 5064 of 1999.
5. Quite strangely, the present Appellant-Majdoor Union who was never a party to the proceedings, directly moved the Supreme Court by filing Special Leave Petition (Civil) No. 8860/2005 against the verdict of this Court in

remanding the matter. It is stated that the permission to file Special Leave Petition was granted by the Apex Court as per the order dated 30.09.2005, however observing that, since it was only a matter of remand, no interference was called for and accordingly, the Special Leave Petition was dismissed on the same date.

6. In view of the turn of events, the matter was taken up by the Industrial Court as steps were being pursued accordingly. The Respondent-Management herein filed a reply statement in response to the claim statement filed by the "Chhattisgarh Chemical Mill Mazdoor Sangh" and accordingly evidence was adduced, both oral and documentary. Still, the present Appellant who had moved the Supreme Court by filing the Special Leave Petition did not find it fit or proper to move the Industrial Court by filing any petition seeking either to implead them in the party array or with any contention that they were having any right to represent any workers being members of the said Union. The matter was proceeded further in respect of the dispute between the Respondent Management and the "Chhattisgarh Chemical Mill Mazdoor Sangh" who represented the entire workers in the industry. Based on the evidence adduced as above, the Industrial Court passed Annexure P/1 award on 29.11.2005, whereby a clear finding was rendered that only 76 workers out of the total of 1075 workers were eligible to get reinstatement and it was accordingly that the said 76 workers were ordered to be reinstated with 50% backwages. The said award has been given effect to by the Respondent-Management, reinstating the aforesaid 76 workers and also disbursing 50% of the backwages, as ordered to be paid.
7. On passing the said award, the Appellant-Majdoor Union, proclaiming themselves as representing some of the workers in the Respondent-Management Establishment, sought to challenge the said award by filing Writ Petition No. 999 of 2006. The Union who had raised the dispute and contested the matter before the Tribunal i.e. the "Chhattisgarh Chemical Mill

Mazdoor Sangh" also moved this Court by filing Writ Petition No. 4238 of 2006, to the extent relief was restricted to reinstatement of only 76 persons with 50% backwages. Both the matters were pending before the very same learned Judge. After a threadbare analysis of the facts and figures with reference to the relevant provisions of law, it was held that there was absolutely no merit in the challenge raised by the Union who was representing the workers before the Industrial Tribunal and who had moved the Court by filing Writ Petition No. 4238 of 2006 and accordingly, interference was declined, dismissing the said case.

8. Coming to the writ petition filed by the Appellant herein *i.e.* Writ Petition No. 999 of 2006, it was noted by the learned Single that there was a serious challenge with regard to their 'locus' in filing the said writ petition, as raised by the Respondent-Management. However, in view of the course pursued by the learned Single Judge with regard to the main case holding that there was no merit in Writ Petition No. 4238 of 2006, the writ petition filed by the Appellant herein *i.e.* Writ Petition No. 999 of 2006 was also dismissed making it clear that the question of 'locus' was left open. It is in the said circumstances that the Appellant-Majdoor Union (Petitioner in Writ Petition No. 999 of 2006) has moved this Court by way of the present appeal.
9. We have heard Shri Parag Kotecha, the learned counsel for the Appellant-Majdoor Union and Shri Alok Kumar Sinha, learned counsel representing the Respondent No. 1-Management, at length.
10. The learned counsel for the Appellant submits that the question of 'locus' of the Appellant can no more be questioned by the Respondent-Management insofar as the Appellant was permitted to raise the challenge by virtue of the permission granted by the Apex Court to have filed the Special Leave Petition. It is said that the Appellant-Majdoor Union is representing several workers in the Management-Establishment and that many of the witnesses

examined before the Industrial Court were active members of the Appellant. The learned counsel further submits that these factual aspects were made clear in the writ petition filed before this Court, pointing that as many as 372 workers were belonging to the said Union and hence the Union had every right to represent the cause of the workers. That apart, when the Appellant-Majdoor Union was permitted to file the Special Leave Petition by the Apex Court, it is an indicator as to the 'locus' and hence, it was quite open for the Appellant to pursue the litigation, based on the said permission granted by the Apex Court and hence this appeal.

11. The learned counsel representing the Respondent No.1-Management submits that the idea and understanding of the Appellant is thoroughly wrong and misconceived. It is stated that there is nothing on record to show that the Appellant was representing any of the workers of the Management-Establishment at any point of time earlier. Specific reference is made to the 'cause title' describing the particulars of the parties concerned. As evident from the records, there is no case for the Appellant-Majdoor Union that they had filed any claim statement before the Industrial Court. The dispute was raised by the "Chhattisgarh Chemical Mill Mazdoor Sangh" and all the pleadings and proceedings were filed by them. The matter was taken up before this Court by way of a writ petition filed earlier; wherein also, the Appellant-Majdoor Union was not a party, nor was aggrieved. It is stated that the workers who were examined before the Industrial Court (in respect of whom a claim is made by the Appellant-Majdoor Union, stating that they were belonging to the Appellant-Majdoor Union) had clearly deposed that, they, in fact, were belonging to the "Chhattisgarh Chemical Mill Mazdoor Sangh" and not the Appellant-Majdoor Union. Absolutely no step was ever taken by the Appellant-Majdoor Union to file any proceedings before the Tribunal giving the particulars of the members and to get an order, to come into the party array, so as to represent such extent of workers, if any, nor

did they file any claim statement or such other proceeding, but for going by what is already available as part of the materials on record. This being the position, the Appellant-Majdoor Union cannot be heard to say that they have got something more to say, over and above what has been spoken about by the "Chhattisgarh Chemical Mill Mazdoor Sangh", who raised the dispute and was representing all the workers.

12. Section 27 of the Industrial Relations Act, 1960 refers to the two categories of Union who can represent the workers, firstly, by a Union which is a representative of the industry concerned and the second one, a Union which is having the workers engaged in the industry as their members. The Appellant herein does not satisfy any of the two requirements and admittedly, since no material was produced before the Industrial Court to establish the said vital fact, they cannot agitate in any manner, in respect of the cause, by filing any writ petition before this Court.
13. Coming to the contention made by the learned counsel for the Appellant-Majdoor Union that they were permitted to file the Special Leave Petition by the Supreme Court and hence their presence has to be deeming established and permitted to proceed with, it appears to be beyond all logical limits. Copy of the order passed by the Supreme Court reads as follows:

"Permission to file SLP granted.

Keeping in view the fact that the matter has merely been remitted, we do not intend to interfere with the impugned judgment. However, in view of the fact that both the parties are present before us, we direct the Tribunal concerned to hear out the case on the date already fixed or on such other days as per the convenience of the Tribunal, but we would request it to consider the desirability of disposing of the matter as early as possible and preferably within a period of three months from the date of receipt of copy of this order. The special leave petition is disposed of."

We earnestly believe that the factual aspect that the Appellant-Majdoor Union was not a party to the dispute either before the Industrial Court or before this Court was not seriously asserted before the Apex Court to file the Special Leave Petition, the Apex Court did not find it proper to entertain the merits as the verdict passed by this Court as it was only a remand. Accordingly, interference was declined and the Special Leave Petition was dismissed on the same day. The permission given to the Appellant to file the Special Leave Petition cannot be deemed as a permission to have their presence accepted, even deeming, in the writ petition or in the proceedings before the Industrial Court. At best, they could have contended that in view of the permission granted to file the Special Leave Petition, they might also be heard by the Tribunal as they were representing substantial number of workers. This however remains a question of fact, for which necessary petition had to be filed before the Industrial Court projecting their credentials to support the cause over and above the attempt being made by the other Union i.e. the "Chhattisgarh Chemical Mill Mazdoor Sangh". Admittedly, no such petition was ever filed, no permission was ever sought for and no materials were produced in this regard.

14. Insofar as the Appellant-Majdoor Union was never a party to the Industrial Tribunal and so far as they could not have legally represented any worker for not having obtained any permission in this regard, the writ petition filed by them i.e. Writ Petition No. 999 of 2006 was not liable to be entertained. The dismissal of the said writ petition by the learned Single Judge is mainly with reference to the merit involved as considered in the other writ petition i.e. Writ Petition No.4238/2006 filed by the Union who raised the dispute i.e. the "Chhattisgarh Chemical Mill Mazdoor Sangh". We do not require any second thought to hold that the Appellant-Majdoor Union herein has miserably failed in establishing before the Industrial Court or even before

this Court that they were representing substantial number of workers engaged in the Management-Establishment to have agitated their cause.

15. In the said circumstance, we are of the view that the Appellant-Majdoor Union is not justified in raising any challenge against the verdict passed by the learned Single Judge in Writ Petition No. 999/2006. This is more so, when the finding on merit rendered by the learned Single Judge in relation to the *lis* involved, which was also the subject matter of Writ Petition No. 4238/2006, stands intact as the Union i.e. "Chhattisgarh Chemical Mill Mazdoor Sangh" who had filed the said Writ Petition appears to be satisfied with the outcome and is no more interested to cause the same to be challenged any further. We find no tenable ground to interdict the verdict passed by the learned Single Judge, which is perfectly within the four walls of law and is not assailable under any circumstances.

16. The appeal fails and is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE