

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 227 of 2019**

- Dr. Mahendra Prasad Samal S/o Late Shri Guru Prasad Samal Aged About 48 Years R/o A-103, Vijaya Orchid, Vijayapuram, Sarkanda, Police Station Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

- Prahlad Chauhan S/o Late Shri Ram Sadan Chauhan Aged About 60 Years R/o Arvind Nagar, Imlibhata, Sarkanda, Police Station Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondent

For Petitioner : Shri SP Kale, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****08/11/2019**

1. Heard.
2. The present petition is against the order dated 17.09.2019, whereby the authority under the Payment of Wages Act, Labour Court, Bilaspur has dismissed the preliminary objection filed by the petitioner.
3. Brief facts of the case are that the respondent has filed an application under Section 15 (2) of the Payment of Wages Act, 1936 (for short 'the Act, 1936) before the authority under the payment of wages act (Labour Court). In the said application an objection was raised about the maintainability of the petition. The objection having been dismissed, it was subject of challenge in WPL No.70 of 2018. This Court in WPL No.70 of 2018 on 22.02.2018 has passed the

following order:-

- “4. Without entering into the merits of the case, once when the respondent raises a preliminary objection even if it is in respect of the maintainability of the case, it should not be thrown out outrightly by the Authority. The correct procedure would be that the Authority should have taken the preliminary objection into consideration and if it is found to be justified, the Authority should have framed an additional issue in respect of the maintainability as per the contention raised by the petitioner and then should have decided the preliminary objection first while deciding the matter on merit. In case, the preliminary objection was found not sustainable, it was only thereafter the Authority required to proceed further to decide the other issues.
 5. This Court therefore is of the opinion that ends of justice would meet if the Court below is directed to frame an additional issue of the preliminary objections which have been raised by the petitioner and to decide those preliminary objections first while deciding the matter on merits after all the evidences are complete. It is ordered accordingly. The respondent would also be entitled to raise additional issue, if any, on the next date of hearing which shall also be considered and appropriate issue be framed accordingly on that also before proceeding further.”
4. It is contended that though the specific direction was given that after the evidence is adduced, the preliminary objection should be decided but the authority under the Act, 1936 without understanding the import of the order again decided the application of preliminary objection without there being any evidence on record, which is contrary to the direction passed by this Court in order dated 22.02.2018.
 5. Perused the earlier order dated 22.02.2018. This Court while giving the direction to the labour Court has observed that the preliminary objection should be made as an additional issue and that additional issue should be decided after the evidence is recorded before the Court decide the case on merit. Subsequently, since as has been stated and the order shows that the evidence has not been recorded, the order of this Court dated 22.02.2018 has not been followed. In a result, the order dated 17.09.2019 passed by the Labour Court,

Bilaspur is set aside. The Labour Court is directed to follow the order dated 22.02.2018 passed by this Court in its entirety, meaning thereby the evidence has to be led by the parties thereafter the preliminary objection should be decided at first. It is made clear that this Court has not made any observation on the merits of the preliminary objection.

6. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu