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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 308 of 2020**

{Arising out of Order dated 10.01.2020 passed in Writ Petition (S) No. 1659 of 2013 by the learned Single Judge}

1. Ramratan S/o Vishram, aged about 58 years R/o Gyatri Nagar, Rajgamar Colliery, Post Rajgamar, District Korba Chhattisgarh
2. Sonulal S/o Jhaduram, aged about 60 years R/o Village Maldi, District Baloda Bazar-Bhatapara Chhattisgarh
3. Gandram S/o Itwar, aged about 63 years R/o Gyatri Nawagarh, District Janjgir Champa Chhattisgarh
4. Firatram S/o Shantilal, aged about 64 years R/o Village Rasota, District Janjgir Champa Chhattisgarh
5. Shiv Prasad S/o Bhokalo, aged about 61 years R/o Village Giroudpuri, District Baloda Bazar-Bhatapara Chhattisgarh
6. Sitaram S/o Parasram, aged about 59 years R/o Rajgamar Colliery, Post Rajgamar, District Korba Chhattisgarh
7. Saroj Kumar S/o Milan, aged about 38 years R/o Rajgamar Colliery, Post Rajgamar, District Korba Chhattisgarh
8. Gujraj S/o Soncharan, aged about 60 years R/o Rajgamar Colliery, Post Rajgamar, District Korba Chhattisgarh
9. Baldev S/o Nandu, aged about 59 years R/o Rajgamar Colliery, Post Rajgamar, District Korba Chhattisgarh
10. Gourishankar S/o Harisharan, aged about 65 years R/o Akaltara, District Janjgir Champa Chhattisgarh
11. Amrit Lal S/o Skhru, aged about 62 years R/o Rajgamar Colliery, Post Rajgamar, District Korba Chhattisgarh
12. Hetram S/o Bhau, aged about 62 years R/o Rajgamar Colliery, Post Rajgamar, District Korba Chhattisgarh

---- Appellants

Versus

1. Chairman-cum-Managing Director SECL, Head Office, Sipat Road, Bilaspur District Bilaspur Chhattisgarh
2. Chief General Manager SECL Korba, Korba Area East, G.M. Office Korba District Korba Chhattisgarh
3. Chief General Personal Manager SECL Korba, Korba Area East, G.M. Office Korba East, District Korba Chhattisgarh
4. Chief Finance Manager SECL Korba, Korba Area East, G.M. Office Korba East, District Korba Chhattisgarh

5. Sub Area Manager SECL Post Rajgamar, Korba East, District Korba Chhattisgarh
6. Sub Area Manager SECL Delwadih, Post Delwadih, Korba West Korba, District Korba Chhattisgarh
7. Dayaram Kumhar S/o Muniya Kumhar aged about 51 years Post Foreman, R/o Qtr. No. 57, Rajgamar Colliery, Post Rajgamar, Korba East, District Korba Chhattisgarh
8. Firatram S/o Dhanshay, aged about 57 years Post Clipmen, R/o Q. No. Dm-69, Rajgamar Colliery, Post Rajgamar, Korba East District Korba Chhattisgarh
9. Shankarlal S/o Sadhram, aged about 53 years Post Support Mistri, R/o Q. No. 840, Ompur Colliery, Post Rajgamar, Korba East, District Korba Chhattisgarh
10. Amarnath S/o Kaleshwar, aged about 58 years Post Fitter, R/o Q. No. 304, Ompur Colliery, Post Rajgamar, Korba East, District Korba Chhattisgarh
11. Lachhiram S/o Budhram, aged about 63 years Post Loder, R/o Q. No. 751, Ompur Colliery, Post Rajgamar, Korba East, District Korba Chhattisgarh

---- Respondents

For Appellants/Petitioners : Shri Govind Ram Miri, Advocate.

For Respondents No. 1 to 6/ SECL : Shri Adil Minhaj, Advocate

For Respondents No. 7 to 11 : None

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

13.07.2020

1. Claim for Travelling Allowance preferred by the Appellant/Workers that came to be turned down by the learned Single Judge, is put to challenge in this appeal. In fact, the appeal is stated as belated by 16 days which is sought to be condoned by filing an IA. Obviously, some of the writ petitioners have not joined the Appellants to prefer this appeal and in the said circumstance, they have been included in the party array as Respondents No. 7 to 11.

2. Heard Shri Govind Ram Miri, the learned counsel appearing for the Appellants/Petitioners and Shri Adil Minhaj, the learned counsel representing the Respondents/SECL, particularly on the merit as well as on the question of delay. The presence of the Respondents No. 7 to 11 (who were the Petitioners in the writ petition) is not required to condone the delay, if there is merit, as there is no conflicting interest and they were travelling along with the Appellants in the writ petition. It is accordingly, that the matter was heard on merit, as agreed by learned counsel appearing for the parties on both the sides.

3. The sequence of events reveals that the Appellants who were working as Class IV employees in the Respondent mining Company's unit at Rajgamar Colliery in the District Korba, came to be temporarily transferred alongwith several other employees (total 103) as per Annexure P/1 order dated 05.06.2010 to Dhewadih-Singhaly-Bagdeva Sub-Area with immediate effect. Pursuat to the said order, the Appellants/Writ Petitioners have been working in the transferred place. The case of the Appellants/Writ Petitioners is that they have been provided with official accommodation at Rajgamar Colliery and by virtue of the temporary transfer, they were made to work at the transferred place after commuting from the place of their residence at Rajgamar Colliery to Dhelwadih covering a distance of 98 KMs (to and fro). By virtue of the huge expenses being incurred by them in the said circumstance and in view of the eligibility to get Travelling Allowance as per Annexure P/60 (Coal India Travelling Allowance Rules, 2010), they preferred a claim for disbursement of the amount due; which however was not acted upon by the Respondent-Company. This led to the writ petition, seeking to direct the 1st Respondent to release the amounts due from the month of June 2010 with interest at the rate of 18% per annum and also to impose penalty, among such other reliefs.

4. The prayers were opposed by the Respondent-Company, pointing out that the writ petitioners were not entitled to get any 'Travelling Allowance' in terms of the relevant rules, simultaneously explaining the circumstances under which such allowance can be provided in terms of the rules, a copy of which has been produced as Annexure R/2 (Coal India Travelling Allowance Rules, 2008). The rules relied on by both the parties are substantially the same insofar as the relevant clause is concerned; but for the difference in rate. The 2008 Rules came into force *w.e.f* 03.01.2008; whereas it was replaced by the 2010 Rules *w.e.f* 01.07.2010.

5. The Respondent-Company contended that some technical defect was detected in the Rajgamar Colliery on 01.06.2010; pursuant to which the production was completely stopped and the workmen were temporarily transferred to Dhelwadih-Singhaly-Bagdeva Sub-Area. It was also pointed out that the Respondent-Company, by virtue of the service conditions, was entitled to transfer the workers, of course subject to their eligibility to get 'Transfer Allowance' payable as per the relevant rules, which was stated as paid to them as disclosed from Annexure R/2, Last Pay Certificate. The Respondent-Company also contended that the Petitioners were no more required to reside in Rajgamar Colliery and that if they were residing there, it was only at their own sweet will. The Respondent-Company also asserted that the service of the writ petitioners were later transferred permanently to the Dhelwadih-Singhaly-Bagdewa sub area as per Annexure R/4 order dated 14.07.2011 and that they were on the rolls of the Unit at the Dhelwadih-Singhaly-Bagdewa Sub Area.

6. Apart from the contention on merits, it was further contended by the Company that the writ petition was hopelessly barred by limitation, as the same was preferred with reference to the cause of action arising from Annexure P/1 dated 05.06.2010; the writ petition having been filed only on

16.05.2013. The Respondent-Company also pointed out that there was no rule to provide any conveyance facility to the workmen from one colliery to another and further that the Respondents had already paid the 'Transfer Allowance Advance' at the time of relieving the Petitioners from Rajgamar Sub-Area. The letters of the workmen were replied, informing that they were permanently transferred to Dhelwadih-Singhaly-Bagdewa Sub-Area and that they might submit their 'Transfer Allowance claim' as per the rules, though they have not submitted the same. Reliance was sought to be placed on Annexure R/6 issued in this regard. The Writ Petitioners filed a rejoinder with specific reference to clause 10.2.1 of Annexure P/60, referring to the eligibility to get conveyance allowance at the rate of Rs. 8/- per KM, pursuant to the temporary transfer order dated 05.06.2010, simultaneously reiterating the contentions raised in the writ petition.

7. After hearing both the sides, the learned Single Judge held, with reference to the pleadings and materials brought on record, that the writ petitioners had already been permanently transferred to the Dhelwadih-Singhaly-Bagdewa Sub-Area, on account of non-availability of work at the Rajgamar Colliery; which was at the verge of closure due to non-production of coal and further that they had already been provided with 'Transfer Allowance Advance' as disclosed from the last pay certificate which was sufficient to draw an inference that the Petitioners were infact transferred from one Area to another Area. After perusal of the relevant rules, it was also observed by the learned Single Judge that the difference between the allowance that is given to a person for discharging some additional charge at more than one location, where his temporary headquarter has been changed, with that of the allowance a person is paid on getting transferred from one place to another. It was held that the claim of the Writ Petitioners was not justified for the reason that they did not succeed in establishing that they were continuing on 'temporary transfer' for a short duration, whereas the

pleadings and documents produced from the part of the Respondent-Company revealed that they were permanently transferred from Rajgamar to Dhelwadih and that they were provided with 'Transfer Allowance' advance as per the Last Pay Certificate produced. It was in the said circumstance, that an observation was made that, if at all any of the employees were commuting daily from Rajgamar to Dhelwadih, they were doing so on their choice, risk and cost; thus dismissing the writ petition declining interference, which is put to challenge in this appeal.

8. It is relevant to note that there is no case for the Appellants that they are entitled to get 'Travelling Allowance' once they are permanently transferred from one unit to another and the claim is moulded contending that they were only on a 'temporary transfer' as per Annexure P/1 and were continuing accordingly at the transferred place, which in turn would enable them to get the Travelling Allowance. The Respondent-Company has categorically pleaded that the initial transfer of the Appellants/Petitioners was on temporary basis because of the closing of the Rajgamar Colliery; but later, by virtue of the power vested with the Management, the workers were permanently transferred as per Annexure R/4 order dated 14.07.2011. The contention of the Appellants is that copy of Annexure R/4 order dated 14.07.2011 was never served to them and that they were under the bonafide intention that their transfer was temporary and would be sent back to their original place of posting at Rajgamar Sub Area. It is also contended that it was only after filing of the writ petition, that the Appellants/Writ Petitioners came to know for the first time about the order dated 14.07.2011 *i.e.* Annexure R/4 order, by which they were permanently transferred to Dhelwadih Sub-Area (Grounds 'C' and 'D'). In spite of the specific pleading by the Respondent-Company that the Appellants/Writ Petitioners were permanently transferred as per Annexure R/4, the correctness of the said version of permanent transfer was never sought to be challenged by

amending the writ petition and the fact remains that the Appellants/Writ Petitioners have suffered 'permanent transfer' from 14.07.2011. As the Appellants do not have a case that they are entitled to get Travelling Allowance even after permanent transfer as per the relevant rules, the finding rendered by the learned Single Judge rejecting the contentions and dismissing the writ petition does not warrant any interference.

9. Another important aspect to be noted at this juncture is that the Appellants who belong to the category of workers, whether are entitled to get any amounts from the Respondent-Company under any legally sustainable head or whether there is any failure on the part of the Respondent-Company in effecting the payment and whether it could be realised with interest etc. are matters which involves disputed question of fact. This cannot be adjudicated in a writ petition filed under Article 226 of the Constitution, as the finding has to be rendered on the basis of the pleadings and evidence to be adduced. For this reason also, the writ petition was not maintainable. In the above facts and circumstances, we do not find any tenable ground to call for interference with the verdict passed by the learned Single Judge.

10. The appeal is devoid of any merit and it stands dismissed. However, we make it clear that if any amount is due from the Respondent-Company to the Appellants/Writ Petitioners under any legally sustainable head, dismissal of the writ petition as well as this appeal will not bar their way in pursuing any other appropriate remedy before the appropriate forum in accordance with law.

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

Sd/-
(Parth Prateem Sahu)
JUDGE