

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 28.07.2021

Order delivered on : 17.08.2021

WPS No. 2902 of 2009

- D.P. Saraf S/o Late Shri K. Anand Sharaf,
Chief Store Keeper, S.E.C.L., Korba, R/o Qr.
No. E-22, 15 Block Colony S.E.C.L. Korba
C.G.

----- Petitioner

Versus

1. S.E.C.L. Marfat, C.M.D. Seepat Road Bilapur,
C.G.
2. Chief General Manager, SECL, Korba, C.G.
3. Personal Manager, SECL Manikpur, District
Korba, C.G.
4. Regional Manager, SECL, Korba, C.G.

----- Respondents

Mr. D.P. Sharaf, petitioner in person.
For Respondents/SECL :- Mr. Abhishek Sinha,
Senior Advocate with Mr. Shailendra Shukla,
Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Order (Through Video Conferencing)

1. The petitioner has filed the instant writ

petition seeking a declaration that the respondents are not empowered to calculate 26 days for a month and prayed that payment of wages for weekly day of rest, ever since his appointment, be directed to be paid to the petitioner along with damages.

2. The respondents have filed preliminary objections as well as reply, and additional supplementary affidavit has also been filed on 22.07.2021 stating inter-alia that the petitioner joined the service in the erstwhile Western Coalfields Limited on the post of Clerk Grade-II on 14.01.1984 and retired from the post of Chief Store Keeper on 30.06.2017. It has further been pleaded that the petitioner was appointed vide order dated 14.01.1984 (Annexure P/1) on monthly salary basis governed by the provisions of National Coal Wage Agreement (in short "NCWA") and he was in the category of workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947. It has also been pleaded that Chapter-II of the NCWA VIII deals with wages and wage structure

and dearness allowance, governed daily rated employee, monthly rated employees, and piece rated employee as worked out on the basis of the agreement. It was also pleaded that the monthly rated employee i.e. the petitioner wage was calculated per month and there was no variations in the wages based on the number of working days in the month and there is also a day of weekly rest at the end of every week, which falls within the month. It is also pleaded that in case if an employee works on the weekly day of rest, he is paid twice the normal wages for that day of work. Thus, the monthly wages in respect of monthly rated employee like the petitioner is strictly in conformity with the provisions of the Mines Act and the Rules made there under particularly Section 28 and other provisions contained in Chapter VII of the Act of 1952 and there is no legal provision applicable in the case of the petitioner which may entitle the petitioner for payment of any additional amount of wage for the rest day without work on such day. A

copy of Chapter II and Chapter XII of NCWA has been annexed. Prayer has been made for dismissal of the instant writ petition.

3. Petitioner in person would submit that the petitioner is entitled for wages for the weekly day of rest and also entitled for damages and penalty and the entire action of the respondent-SECL is arbitrary and illegal. He relied upon the decision of the Supreme Court in the matter of Workman of Bombay Port Trust vs. Trustees of Port Bombay and Another.¹, the decision of the Allahabad High Court in the matter of Jawant Sugar Mills Ltd. Meerut vs. Sub Divisional Magistrate Meerut and Others² and that of the Kerala High Court in the matter of Prison Reforms Enhancement of Wages of prisoners ect. Petitioners³ in support his submission.

4. Mr. Abhishek Sinha, learned Senior counsel appearing for the respondent/SECL, would submit that the petitioner is monthly rated employee and governed by the provisions of

1 AIR 1962 SC 481

2 AIR 1960 Allahabad 724

3 AIR 1983 Kerala 261

the NCWA and throughout his career, he was a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 and he had already retired from the post of Chief Store Keeper on 30.06.2017. He would further submit that monthly wages in respect of monthly rated employee like the petitioner is strictly governed by provisions of the NCWA and, therefore, he is not entitled for the relief claimed and the writ petition deserves to be dismissed.

5. I have heard learned counsel for the parties considered their rival submissions made herein above and also went through the record with utmost circumspection.

6. It is not in dispute that the petitioner was appointed by erstwhile Western Coalfields Limited on the post of Clerk Grade-II on 14.01.1984 (Annexure P/1) and retired from the post of Chief Store Keeper on 30.06.2017. Petitioner's appointment was on monthly salary governed by the provisions of NCWA and he was workman within the meaning

of Section 2(s) of the Industrial Disputes Act, 1947. The respondent-SECL alongwith supplementary affidavit has filed the copy of Chapter II of the NCWA, in which the component of wages have been provided. Chapter 12.2.0 provides for wages for weekly day of rest which states as under:-

12.2.0. Wages for Weekly Day of Rest.

Workers in the mines and establishments governed by Mines Act or Factories Act called upon to work on the weekly day of rest of the colliery/establishment shall be allowed twice the normal wages.

The aforesaid provisions clearly provides that worker in the mines and establishments governed by the Mines Act or the Factories Act if called upon to work on the weekly day of rest of the colliery/establishment, shall be allowed twice the normal wages.

7. Since the petitioner is governed by the provisions of NCWA including Chapter 12.2.0 in which the wages for weekly day of the rest to be given only if the workmen are called upon to work on the weekly day of the

rest, they will be allowed twice the normal wages but no such provision has been brought into the notice of this Court, which entitles the wages for weekly day of rest without being called upon to work on the weekly day of rest by the management.

8. The fact remains that the petitioner is monthly paid employee under the National Coal Wage Agreement, which has the statutory force and the petitioner is not entitled for any claim over and above the wages so prescribed. Therefore, in the considered opinion of this Court, the petitioner is not entitled for any relief which has been claimed in the writ petition. The judgments cited by the petitioner in person are clearly distinguishable to the facts of the present case in view of the findings recorded herein-above.

9. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge