

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 263 of 2021**

- Bharat Aluminium Majdoor Sangh (INTUC) Through Working President (Sanjay Kumar Singh S/o Shri R.P. Singh Aged About 50 Years), Putka Pahar Road, BALCO Township, Thana BALCO, District Korba, Chhattisgarh.

---- Appellant**Versus**

1. Bharat Aluminium Company Limited, Through Its Authorized Signatory Post, Balco Nagar, Police Station Balco Korba, District Korba, Chhattisgarh.
2. Regional Director Employees State Insurance Corporation, Regional Office 107, Ramnagar, Road Near Jagannath Chowk, Kota, Raipur, District Raipur, Chhattisgarh. 492010
3. Deputy Director Employees State Insurance Corporation, Regional Office 107, Ramnagar, Road Near Jagannath Chowk, Kota, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Mr. S.P. Kale, Adv.
For Respondents	: Mr. Abhishek Sinha Senior Adv. with D. L. Dewangan, Adv.

DB : Hon'ble Shri Prashant Kumar Mishra, Acting C.J.**Hon'ble Smt. Justice Rajani Dubey**Per: Hon'ble Shri Prashant Kumar Mishra, Acting C.J.**15.09.2021**

1. In this intra Court appeal, the objection has been raised about its maintainability on the ground of jurisdiction availed before learned Single Judge against the order passed by the ESI Court which is a Labour Court at Korba. Since we are not dealing with the merits of the issue, we skip the detail reference to the facts of the matter.
2. The Labour Court was dealing with the challenge thrown by Respondent No.1 (BALCO) to demand of Rs. 45,53,68,376/-

for contribution for the period from October 2007 to 2010 under The Employees State Insurance Act, 1948.

3. In the said challenge before the Labour Court, an application for impleadment was made initially by one Sanjay Kumar Singh and, thereafter, by the present petitioner. The Labour Court disallowed the prayer by its order dated 03.02.2020 against which petitioner preferred the writ petition wherein the impugned order has been passed allowing appellant's participation at the stage of final argument, while refusing to allow *de novo* proceeding.
4. Referring to the provisions contained in Proviso to sub Section (1) of Section 2 of the Chhattisgarh High Court (Appeal to the Division Bench) Act 2006, Shri Abhishek Sinha, learned Senior Counsel would submit that in a case where the Single Judge has exercised Jurisdiction under Article 227 of the Constitution of India, writ appeal would not be maintainable. It is further submitted that order passed by the Labour Court being a judicial order, the learned Single Judge could not have exercised the power under Article 226 of the Constitution of India, therefore, the only jurisdiction available and exercisable by the Single Judge was one under Article 227 of the Constitution of India. He would refer to the judgments of Supreme Court in ***State of Maharashtra Vs. Labour Law Practitioners' Association*** reported in ***(1998) 2 SCC 688*** and ***Radhey Shyam & Another vs. Chhabi Nath & Others*** reported in ***(2015) 5 SCC 423***.
5. Shri S.P. Kale, learned counsel for the appellant submits that the writ petition preferred before the learned Single Judge

was under Article 226 of the Constitution of India and learned Single Judge having not mentioned that he has exercised the power under Article 227 of Constitution of India, the writ appeal would be maintainable. He would refer a Full Bench judgment passed by this Court in ***WPC No. 2193 of 2014. (High Court Bar Association Vs. State of Chhattisgarh & Others)***

6. Having heard learned counsel for the parties, by now, it is fairly well settled that it is a matter of consideration on the judicial side as to which jurisdiction has been exercised by the learned Single Judge. It is not the nomenclature but the substance of the order passed by the learned Single Judge and the order which was assailed before the learned Single Judge which would clinch the issue. There is no straitjacket formula which can be laid down but, at the same time, the power of the Court which has passed the order, which was challenged before the learned Single Judge, is one important factor. If the Court or Tribunal exercises judicial function while passing the order which was challenged before the learned Single Judge, a petition under Article 226 of the Constitution of India would never lie against such order as held by the Supreme Court in **Radhey Shyam** (Supra).
7. Admittedly, the order challenged before the learned Single Judge was passed by Labour Court while dealing with a case under the Employees State Insurance Act, 1948. In the matter of **Labour Law Practitioners' (Supra)**, the Supreme Court has held that Labour Court performs judicial functions as in a Court which decides disputes that are civil in nature. It

is also held therein that Labour Court Judges and the Judges of the Industrial Court can be held to belong to judicial service. This being the legal position, the order passed by the Labour Court being judicial order, jurisdiction under Article 226 of the Constitution of India was not available with learned Single Judge and the only jurisdiction exercised by learned Single Judge was one under Article 227 of the Constitution of India. This being the case, in view of Proviso to sub Section (1) of Section 2 of the Chhattisgarh High Court (Appeal to the Division Bench) Act 2006, this Writ appeal is not maintainable.

8. Accordingly, this appeal is dismissed as not maintainable.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Rajani Dubey)
Judge

V/-