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WPA 28339 of 2006

Ct. No. 25

Akd

Satish Chandra Mahato

Vs.

Union of India & Ors.

**Ms. Rakhi Shroff,
Ms. Samriddhi Majumder.
... for the petitioner.**

The learned Advocate for the petitioner submits that the petitioner has rendered service till the age of 60 years. She further submits that the issue as to whether an employee, who retired from service from M/s. Hindustan Cables Limited, would be entitled to salary and other dues for the period of two years prior to attaining the age of 60 years which was held to be a disputed question of fact in a decision of the Hon'ble Division Bench of this Court in MAT 1446 of 2015 (M/s. Hindustan Cables Ltd & Ors. vs. Tapan Kumar Sarkar & Ors. delivered on August, 17, 2016) can be decided by the Labour Courts.

She further submits that in the light of the aforesaid decision the petitioner herein may be allowed to approach the appropriate forum in accordance with law.

This Court perused the decision of the Hon'ble Division Bench in the case of Hindustan Cables Limited (supra), wherein it was observed as follows:

“58. Further, whether or not the writ petitioners, in fact, rendered service to the company beyond the age of 58 years is a question of fact that has to be established on the basis of proper evidence at a regular trial. If the writ petitioners did, in fact, render service to the company beyond the age of 58 years and till the age of 60 years, then and in that event, they should surely be entitled to receive salary for that

period along with other benefits. This is irrespective of whether or not the retirement age was ever raised from 58 years to 60 years. The company having enjoyed services of the writ petitioners, it is only fair, just and equitable that the company should pay their salaries for that period. In that event, it would not lie in the mouth of the company to take the technical plea of the retirement age being 58 years.

However, if the company is able to establish that, in fact, the writ petitioners did not render any service beyond the age of 58 years, the writ petitioners should not be entitled to any salary or other benefits beyond the age of 58 years. 'No work no pay' is an established principal of law.

59. *In our considered opinion, the documents relied upon by the writ petitioners/respondents in respect of their contention that they served the company till the age of 60 years, are not conclusive. If the company is able to establish its case that since 2003 the Rupnarainpur Unit of the company was virtually lying closed and the writ petitioners showed attendance only on papers which were also prepared by them and their colleagues, it would be unfair to foist liability on the company for paying the wages and other benefits of the writ petitioners beyond the age of 58 years. That would also result in unjust enrichment of the writ petitioners. These are questions of fact, determination whereof requires a full-fledged trial with witness action, for which the writ court is not the forum. Labour Courts have been set up to entertain and adjudicate upon precisely the kind of dispute that is involved in the present writ proceeding."*

The issue as to whether the petitioner rendered service till 60 years and also whether he is entitled to receive salary and other benefits beyond the age of 58 years is a disputed question of fact. The decision of M/s. Hindustan Cables Limited (supra) shall squarely apply to the facts of this case.

In view thereof no order can be passed in this writ petition and the instant writ petition, accordingly, stands dismissed.

The dismissal of the instant writ petition shall, however, not prevent the writ petitioner from approaching the appropriate forum for enforcement of his claim in accordance with law and the procedure contemplated.

There will, however, be no order as to costs.

(Hiranmay Bhattacharyya, J.)