

28.07.2023
Item No. 26
BR

WPA 4730 of 2009

**Ferro Scrap Nigam Ltd. Employees
Union and anr.**

-vs

Ferro Scrap Nigam Ltd. &)Ors.

**Mr. Arif Ali,
Mr. Sarban Bhattacharjee
.... For the petitioners**

**Mr. Kamal Kumar Chattopadhyay
.... For the respondent no. 1 and 2**

The writ petitioner has prayed for following reliefs inter alia that :-

(i) A writ of Mandamus, that the provisions of the ESI Act, 1948 are not applicable to the members of union, drawing wages in excess of Rs. 10,000/- per month;

(ii) A writ of Mandamus commanding the respondents to recall, rescind withdraw the order dated 6.2.2009 being annexure "P-9" and "P-10" respectively and to forbear from giving any effect or further effect to the same.

The writ petitioner contends that as per the ceiling of receivable wages, the writ petitioner union (including its members) shall not be covered under the provisions of ESI Act, 1948. In spite

of the same, the respondent company has been erroneously considering them as governed under the said Act by applying the relevant provisions, without any authority of law.

The writ petitioner has challenged such erroneous application of law against it/its members. Respondent Nos. 1 and 2 are represented. On behalf of the respondent no. 1 and 2/ the concerned company, it has been submitted that appropriate application for grant of exemption from the operation of ESI Act , 1948 has already been made before the concerned department of Government of India vide a letter dated March 12,2018. It is stated that the same is yet to be responded to by the said recipient, who is respondent no. 5 here.

No one is representing for the respondent no. 5 in this case.

Under such circumstances it is directed that respondent no. 5 shall immediately consider the letter dated March 12, 2018 of the respondent no. 1 and dispose of the same with a reasoned order, after affording adequate opportunity of hearing to all the parties concerned. Till the time the respondent

no. 5 completes the process, the protection in the form of stay of the notification dated 6th February, 2009/20th February, 2009 shall be in operation.

The respondent no. 5 shall complete the entire exercise as aforesaid ,within a period of four weeks from the date of this order positively.

With these directions, the writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Rai Chattopadhyay, J.)