

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 7386 OF 2018

Shukhdeo Pundlik Maske

Aged 60 years, Occ. Nil,

R/o Khaperkheda, Ward No.1, Near

Railway Chowk, Mehadia Bag, Tahsil

Saoner, Dist. Nagpur

...Petitioner

// VERSUS //

1. Government of India, Ministry of Labour and Employment Office of the Dy. Chief Labour Commissioner (Central), 1st Floor, CGO Complex, Block-C, Seminary Hills, Nagpur 440 006 through Secretary
2. Assistant Labour Commissioner (Central) Seminary Hills, Nagpur
3. Western Coalfield Ltd., Coal Estate, Civil Lines, Nagpur through Chairman/Managing Director
4. Chief Manager, Western Coalfield, Coal Estate, Civil Lines, Nagpur 440 001
5. Sub-Area Manager, Western Coalfield Ltd., Murpar, Sub-Area, Post Office, Kharansangi Tahsil, Chimur, District Chandrapur
6. The General Manager (P & IR), Western Coalfield Ltd., Coal Estate, Civil Lines, Nagpur 440 001
7. Shri K.M.H.Qureshi (Retired)
General Manager (Personal) of WCL At New Sabana Restaurant, Jaffar Nagar

Habab Colony, Nagpur

8. Shri Surendrasing S. Sokhi
(Personal) Manager, Western Coalfield
Ltd., Silewasa Mine, Near Khaparkheda,
Chhindawada Road, Nagpur
9. Jagdish Singh S/o Bholasingh, Secretary of
Koyla Sharmik, Sabha, Northern Cold
Field Limited R/o Sub-Station, Eletrician,
Nehru Shatabdi Chikitsalay Jayant
Project, PO Jayant, Dist. Siddhi, Madhya
Pradesh, Mob. No. 8989452361

... Respondents

Shri A.S.Shukla, Advocate for the petitioner.

Shri S.S.Ghate, Advocate for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.

DATED : 7th JULY, 2023.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In the present writ petition, the challenge is raised to the communication dated 22nd November, 2017 issued by the Assistant Labour Commissioner (Central), Nagpur, refusing to entertain the application under Section 2A read with Section 10 of Industrial Dispute Act, 1947 (in short hereinafter referred as “I.D.Act”) for grant of back wages including all other service benefits for the period from 1st

December, 2011 till 7th February, 2013 and not to treat the said period as “Dies Non”.

3. The impugned communication shows that the application of the petitioner was not entertained only on the ground that the earlier proceeding before the Industrial Court was withdrawn by the petitioner.

4. Admittedly, the earlier proceeding pending before the Industrial Court was withdrawn for filing fresh proceeding before the Labour Court.

5. However, since the dispute raised by the petitioner was not in respect of termination, dismissal, discharge, retrenchment or otherwise termination, the application under Section 2A of the I.D.Act was not accepted by Labour Court.

6. From the impugned communication it is evident that the respondent no.2 has not considered the reason for withdrawal of the earlier proceeding and the fact that the application under Section 2A of the I.D.Act was not accepted by the Labour Court for the reasons mentioned herein above.

7. The Assistant Labour Commissioner while rejecting the application has recorded the following observations:

“... Hence, the case was closed as otherwise disposed of. Since you have already withdraw your complaint hence your complaint/representation dated 22/08/2017 filed by you on the same subject matter, cannot be considered. Hence, your complaint/representation dated 22/08/2017

along with enclosures are returned herewith. Copy of ODO Report dated 17/20.07.2017 is enclosed herewith.”

8. Having considered the above referred facts particularly the circumstances in which the proceeding before the Industrial Court was withdrawn and subsequent events which compelled the petitioner to file fresh application under Section 2A of I.D. Act, before the respondent no.2, reasons recorded by the Assistant Labour Commissioner in the impugned communication dated 22nd November, 2017, are erroneous and hence, I am of the opinion that the impugned order needs to be set aside.

9. Furthermore considering the jurisdiction and scope of the Assistant Labour Commissioner to entertain application under Section 2A read with Section 10 of I.D.Act, which is a ministerial work, a refusal to entertain the application on the above referred reasons amounts to exceeding the jurisdiction. Accordingly, I pass the following.

- i. The writ petition is **allowed**;
- ii. The impugned communication dated 22nd November, 2017 issued by the Assistant Labour Commissioner (Central), Nagpur is hereby quashed and set aside;
- iii. The respondent no.2 is directed to decide the application afresh after hearing both the parties.

[ANIL S. KILOR, J.]