

WPA 12848 of 2021

Munna Singh
Vs.
State of West Bengal & Ors.

Mr. Chittapriya Ghosh,
Mr. Somesh Kumar Ghosh,
Ms. Priyanka Saha.

... for the Petitioner

Mr. Ranjay De,
Mr. Basabjit Banerjee,
Mr. Adityajit Abel Bose.

... for the respondent nos. 2-5

1. The writ petitioner has been directed to be superannuated. This has given rise to his grievance that his date of birth has been wrongly recorded in his service book, which requires immediate correction. Also that he would be entitled to join in duties as a 'Foreman' at Tara (East) & (West) Coal Mines and vide an order of this Court, this may immediately be materialized. Immediate release of all unpaid salary of him is the other prayer, to redress his grievance that his salary has been illegally withheld by the respondent Corporation. Hence, this writ petition.

2. The writ petitioner's case as has been made out in the instant writ petition may be summarized in a nut-shell as herein below:-

The petitioner has been an employee of M/s. EMTA Coal Limited and he is said to

have been posted at Tara (East) & (West) Coal Mine, in the capacity of a Foreman.

By dint of an order dated 31/03/2015, the said M/s. EMTA Coal Limited was allotted to the West Bengal Power Development Corporation Limited/respondent no. 2. Along with allotment of the coal mine to the respondent no. 2, the entire work force too, was allocated to respondent no. 2.

One M/s. Bozon Technologies Private Limited/respondent no. 7 was entrusted for detail verification of data relating to all the employees, who have been working under M/s. EMTA Coal Limited and have been allocated to respondent no. 2/Corporation. This was by dint of a communication dated 07/05/2015. Thus, the writ petitioner submitted the self declaration verification form on 26/08/2015, declaring therein, his date of birth, as 22/04/1972.

The petitioner says that his employment with the respondent no.2/Corporation, since after allocation of him to the said Corporation with effect from 01/04/2015, was peaceful, uninterrupted and duly accomplished.

On 17/08/2020, the writ petitioner had refused to join in duties on the ground that he has reached the age of superannuation and shall be retired from service, hence forth.

This was not commensurate with the date of birth of the writ petitioner. As such he was aggrieved and submitted representation for redress before the Deputy Labour Commissioner, Asansol. The conciliating proceeding was initiated by the Deputy Labour commissioner, Asansol vide memo

dated 13/11/2020. The petitioner states that as per version of the M/s. Bozon Technologies Private Limited/respondent no. 7, the superannuation age of the writ petitioner would be on 17/08/2020.

In terms of Coal Mining Agreement dated 27/10/2016, the service of the writ petitioner as the part of the present work force of Tara (East) & (West) Coal Mining was handed over to respondent no. 6, that is, M/s. Sical Mining Limited. The liability for the existing work force has also been handed over to the said respondent no. 6, i.e, M/s. Sical Mining Limited.

According to the writ petitioner respondent no. 6/ M/s. Sical Mining Limited asserted before the Deputy Labour Commissioner in the said conciliation proceeding regarding the actual date of birth of the writ petitioner, i.e, 22/04/1972. He has submitted that in view of such fact respondent no. 6 has also agreed for his reinstatement in service. The petitioner was consequently reinstated and released salary for the months of January 2021 and February 2021. However, with effect from 30/06/2021, the Coal Mining Agreement with the private respondent no. 6 as a Mine Developer and Operator of the said Coal Mine had ceased to operate. The management of the said Coal Mine along with its work force was then entrusted with the respondent no. 7/M/s. Bozon Technologies Private Limited. It is stated that though the employees who were paid salary till February 2021, were taken over by M/s. Bozon Technologies

Private Limited, but arbitrarily and illegally, the writ petitioner was not allowed to join in duties. Also further that, in spite of receiving salary for the month of February 2021 and thus being eligible to be absorbed, within the terms and conditions of the agreement of respondent no. 2/Corporation with respondent no. 7/M/s. Bozon Technologies Private Limited, he has been rendered deprived of any such benefit.

The writ petitioner has expressed his grievance through written representation before the respondent Corporation with the request to allow him to join in duty and also to release his unpaid salaries, but to no avail. Thus, being aggrieved he has preferred this writ petition.

- 3.** Mr. Ghosh, representing the writ petitioner has submitted that the Tara (East) & (West) Coal Mine at which the writ petitioner was engaged as a Foreman, has always been under the direct supervision and control of the respondent no. 2/Corporation. Hence, the Corporation owes the responsibility of maintaining its employees in terms of the settled rules and laws. Mr. Ghosh submits that in case of the present writ petitioner the respondent Corporation has unjustifiably discriminated him from the service benefits and the actual years of service and thus the vital statutory as well as the constitutional rights of his client is jeopardized. By referring to the documents annexed with the writ petition, Mr. Ghosh has submitted that the actual date of birth of the writ petitioner is

something else than it has been considered to be, by the said respondent and his actual date of birth, i.e, 02/04/1972 is duly recorded through the appointed agent of the respondent no. 2/Corporation in the records. Accordingly, he says, that the respondent corporation has erred and acted illegally in not considering the duly recorded actual date of birth of the writ petitioner. Thus, the superannuation of the writ petitioner is premature and illegal. Mr. Ghosh has insisted that the writ petition may be allowed by issuing necessary directions as regards correction of date of birth of the writ petitioner, his reinstatement with the respondent Corporation, as well as release of his salaries.

4. Mr. De, is representing the respondent no. 2/Corporation. The contentions and prayers of the writ petitioner has been vehemently objected to by him. Mr. De has stated on behalf of the Corporation that the service of the writ petitioner was allocated with different private respondents at different points of time and that he has never been an employee under the respondent/Corporation. As such, Mr. De has urged that the writ petitioner cannot claim any relief as against his client in any manner whatsoever. He has pointed out that since after allocation by the Central Government of M/s. EMTA Coal Limited to the respondent Corporation/respondent no. 2 vide allotment order dated 31/03/2015, the operation of the coal mine under M/s. EMTA Coal Limited has always been entrusted with

the respective “Mine Developer and Operator”. Thus, the entire work force was remobilized towards the “Mine Developer and Operator” as was engaged from time to time, including the respondent no. 6 (M/s. Sical Mining Limited) and respondent no. 7 (M/s. Bozon Technologies Private Limited).

5. A report has also been file in the form of an affidavit, to show that after cessation of the Coal Mining Agreement, last in line, one “Gangaramchak Mining Private Limited” has been appointed as a “Mine Developer and Operator” at Tara (East) & (West) Coal Mine, on the basis of a duly executed tender process.
6. Mr. De has further submitted that in absence of any employer-employee relationship between the present writ petitioner with the respondent no. 2/Corporation, the present writ petition by the said petitioner, would not be maintainable. Grievance, he says, if any is there regarding the employment of the writ petitioner and its conditions, must therefore be raised before the appropriate forum as provided under the law, for a work man of a private concerns.
7. Mr. De has relied on two judgments as follows:-

- (i) ***The Premier Aotumobiles Ltd. vs. Kamlakar Shantaram Wadke & Ors.*** reported in ***AIR 1975 SC 2238***,

(ii) ***Bharat Coking Coal Limited & Ors. vs. Shyam Kishore Singh*** reported in **(2020) 3 SCC 411.**

8. Mr. De has stated that if there is no employer-employee or master-servant relationship between the Corporation and the respondent, as it is in the present case, petitioner's remedy lies either before the industrial dispute forum, if the dispute is an industrial dispute in terms of the applicable statute or before the civil Court if not the dispute is an industrial dispute as per law. He says that the writ petitioner would not have any relief in a Court of equity in the present writ petition. On this he has relied on the judgment in ***The Premier Automobiles Ltd. (supra)***.

9. Mr. De has further stated that an endeavour by the incumbent to correct the date of birth at the fag end of his career, has always been deprecated by the Courts. In support of his submission as above he has relied on the judgment of ***Shyam Kishore Singh (supra)***.

10. The writ petitioner in this case has sought relief against the respondent corporation basically on the ground of his having a relationship of employer and employee with the said respondent corporation. However, it is noted that since after allocation of M/s. EMTA Coal Limited and the Coal Mine under it, i.e, Tara (East) & (West) Coal Mine, the respondent no. 2/Corporation has proceeded on the basis of a policy of entrustment of the entire management and liability to run the

said Coal Mine, on the companies, duly entrusted of this purpose, by execution of agreement. This process has continued since the time of allotment of the Coal Mine to the Corporation by the Government of India in the year 2015, till the present. The service of the writ petitioner being the employee in Tara (East) & (West) Coal Mine has therefore been allocated from M/s. EMTA Coal Limited to the respondent no. 2/Corporation and since thereafter to the several Mine Developer and Operator, as appointed by dint of duly executed agreement with the respondent no. 2/Corporation. It is an admitted and accepted fact that during this entire period the writ petitioner has been paid salary by the respective Mine Developer and Operator, under whose direct control, he has discharged duties.

- 11.** To seek an equitable relief on the allegation of violation of a statutory right of a person, he has to come up with the case that the respondent, who is a "State" within the four corners of law, has violated any of his rights, which it was otherwise obliged to acknowledge and perform. In the factual background of this case in particular, the writ petitioner was obliged to bring on record sufficient material to show that the respondent no.2/Corporation has been his parent employer. Any such sufficient documents are not available in this case. Instead, there are ample materials to conclude that the service of the writ petitioner has been time to time entrusted with the

“Mine Developer and Operator” as appointed from time to time. That has been done under a duly executed agreement by dint of which the relationship of employer and employee between the writ petitioner and the respondent no.2/Corporation is found to have been severed. In the considered opinion of this Court, therefore, the writ petitioner would have very limited or no scope at all to raise any grievance against the respondent no.2/Corporation, more so, in the event of his not challenging entrustment of management, with the “Mine Developer and Operator”.

12. Even if, for the sake of argument, this Court accepts the contentions of the writ petitioner that it had employer-employee relationship with the respondent no.2/Corporation, his grievance would lie before an appropriate forum which would determine his relationship as above and the merits of his claims. The Court of equity shall have no role to play in adjudication of writ petitioner’s said dispute which would include questions of fact, to be determined on evidence. Even dispute is there, if any, those would involve numerous factual questions which cannot be gone into by a writ Court. On this score also, the prayer of the writ petitioner should fail.

13. The writ petitioner is aggrieved with the alleged wrongful entry regarding his date of birth, in his service records, which fact is disputed by the respondent no. 2/Corporation. This, on one hand, would involve questions of fact as well as on the

other, would be barred from the purview of consideration of this Court in view of the ratio of the judgment of ***Shyam Kishore Singh (supra)*** as referred to on behalf of the respondent corporation.

- 14.** On the above premise, this writ petition should fail.
- 15.** Hence, the writ petition being WPA 12848 of 2021 is dismissed along with all applications, if any.
- 16.** Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay, J.)