

**25.03.2025.
08
Ct.No.654.
as**

WPA 818 of 2012

**Anjanarani @ Anjana Das
Vs.
M/s. Eastern Coal Fields Ltd. & Ors.**

Mr. Dyutiman Banerjee,
Mr. Bodhisattya Haldar.

...for the Petitioner.

Mr. Shiv Shankar Banerjee,
Ms. Sanchita Barman Roy.
...for the Respondents.

1. A widow, the spouse of a Mining Sardar employed with M/s. Eastern Coal Fields Ltd., has invoked the extraordinary jurisdiction of this Court, seeking the issuance of a writ of mandamus commanding the respondents to disburse the wages due to her deceased husband for the period from January 10, 1998, to October 9, 1998. According to her, these wages have been unjustly withheld by the respondent authority.

2. The crux of the dispute that has led to the filing of this writ petition is that, at the time of his entry into service, the petitioner's husband declared his actual date of birth as September 10, 1998, as reflected in the 'B' form, which was prepared and maintained by the respondents in accordance with the norms followed in the respondent company's establishment. However, the recorded date of birth was later altered without the petitioner's knowledge, based on

the date of birth mentioned in the Sirdarship certificate, which was prepared and maintained under the Mines Act. Following this alteration in the 'B' form, a superannuation notice was served on the petitioner's husband, forcing him to retire on January 10, 1998.

3. Seeking a decree of declaration that the alteration of his date of birth and the issuance of the superannuation notice by the respondents were illegal, the petitioner's husband instituted a suit, Title Suit No. 122 of 1999, before the Court of the learned Civil Judge (Junior Division), Additional Court, Asansol, against the respondents. The suit was decreed on the contest, declaring that the plaintiff's actual date of birth was September 10, 1938. Additionally, the Court declared that the superannuation notice issued by the defendant company was illegal and unlawful.

4. By a letter dated June 20, 2000, addressed to the Agent of Amritnagar Colliery, the petitioner's husband requested the authority to release the wages for the relevant period. In response, the Personnel Manager, by a communication dated August 4, 2000, addressed to the Agent of Amritnagar Colliery, sought information regarding the factual position of the payment made to the petitioner's husband in accordance with the decree passed in Title Suit No. 122 of 1999. However, despite this, the issue remained unaddressed for several years, prompting the petitioner to approach this Court by filing the present writ petition.

5. Mr. Banerjee, learned advocate representing the petitioner, submits that the suit was decreed on contest,

and since it was not challenged before the appellate forum, it has attained finality and is binding on both the petitioner and the respondents. In light of this, he argues that the respondents cannot refuse to make the payment of wages for the specified period. He prays for an appropriate direction from this Court to the respondents for the disbursement of the wages due to the petitioner's husband for the period from January 10, 1998, to October 9, 1998.

6. Mr. Shiv Sankar Banerjee, learned Advocate representing the respondents, submits that by filing this writ petition, the petitioner has effectively sought to have the decree executed by this Court. He points out that during the pendency of the suit, an interim order was passed staying the operation of the superannuation notice. That interim order was challenged in an appeal, and the operation of the interim order was subsequently stayed. He defends the respondents' actions by arguing that in issuing the superannuation notice and withholding the wages, the respondents did not act unlawfully, as their actions were based on an interim order passed by a Court of Law.

7. He submits that employment is fundamentally a contract between the employee and the employer. If the respondents breach any of the terms and conditions of this contract, the appropriate remedy would be to claim damages, provided the petitioner can prove that such a breach caused a loss. He further submits that the issue involved in the writ petition is based on disputed questions of fact, and the computation of accounts also needs to be

undertaken to the resolve that issue. Therefore, it would not be appropriate for this Court to interfere in this writ petition.

8. He also points out that the issue of whether the petitioner is entitled to back wages for the relevant period was framed by the learned civil court, but no specific answer or declaration was provided on that issue. Therefore, he argues that the principle of constructive res judicata applies, and the petitioner cannot raise this issue again. Mr. Banerjee submits that, before passing any direction for the payment of wages for that period, it should be noted that the petitioner's husband did not render any service during that time.

9. Heard the learned advocates for the respective parties. Peruse the materials on record placed before this Court.

10. Admittedly, in the 'B-Form,' the date of birth of the petitioner's husband was recorded as September 10, 1990, and this entry was later altered based on the date recorded in the Sirdarship certificate. A competent civil court, by passing a decree, declared that the alteration was invalid and that the superannuation notice issued to the petitioner's husband, which ultimately forced him to retire from service effective from 10.01.1998, was illegal.

11. Undeniably, this decree of declaration has not been challenged by either party before any appellate forum. Therefore, it is evident that the decree is binding upon both parties. The learned court below, having framed Issue No. 5 based on the pleadings of the respective parties, did not

make any specific observations on that issue. In this context, Mr. Banerjee has raised the issue that after considering all aspects, the learned court refused to make any declaration on the issue, thereby preventing the petitioner from re-agitating the matter before any forum. However, the fact remains that the superannuation notice was declared illegal. As such, the right to remain in service, which is guaranteed under Article 16 of the Constitution of India, was unlawfully taken from the petitioner's husband.

12. The issue of payment of wages for any prior period or back wages upon re-instatement of an employee who had been wrongly removed from service came for consideration before the Hon'ble Supreme Court on number of occasions. Normally, when an employee is dismissed or removed from service illegally and when the Court direct re-instatement of such employee in service, then a Court is called upon to decide a claim of back wages. Needless to state that such claim is defended raising the plea that since the employee did not render any service, it would not be appropriate to give direction upon the employer to pay any money for that period based on the principle of 'no work, no pay'.

13. Very recently, in 2019, in the case of *Jayantibhai Raojibhai Patel vs. Municipal Council, Narkhed & Ors.*, reported in (2019) 17 SCC 184, the Hon'ble Supreme Court, while considering the principles set forth in the judgment of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* (2013) 10 SCC 324, and also taking into account the principle of 'no work, no pay,' held that no rigid

formula can be applied universally, and each case must be decided based on its unique facts and circumstances. However, in cases of unlawful removal from service, the normal rule is to direct reinstatement with continuity of service and payment of back wages. If it is found that the employer has acted in gross violation of statutory provisions, the principles of natural justice, or is guilty of victimizing the employee or workman, the court or tribunal will be fully justified in ordering the payment of full back wages.

14. It is a well-established principle that in cases of wrongful and/or illegal termination of service, the wrongdoer is the employer, and the sufferer is the employee. There is no justification for excusing the employer from the burden of paying the employee's dues as a result of the employer's wrongful actions. While this proposition was originally laid down in the context of back wages upon reinstatement after setting aside an illegal termination, removal, or dismissal, this principle can be applied to the present case. In the case at hand, the petitioner's husband was forced to retire based on an illegal superannuation notice.

15. By issuing an illegal superannuation notice, the fundamental right of the petitioner's husband to remain in service, as enshrined in Article 16 of the Constitution of India, was violated. As a result of this unlawful notice, the petitioner's husband suffered harm. If the Court finds that an illegality has occurred, the only appropriate remedy is

restitution. Otherwise, the injury caused cannot be properly addressed or remedied.

16. The records indicate that the authority itself initiated an inquiry regarding the status of payment of terminal benefits and other dues to the petitioner's husband. In light of this, I find it appropriate to dispose of this writ petition by directing the respondents to consider the petitioner's claim for her husband's wages for the period from January 10, 1998, to September 10, 1998, in accordance with the decree passed in Title Suit No. 122 of 1999 and in light of the observations made in this order. This should be done within a period of three weeks from the date of receipt of a copy of this order.

17. It is also clarified that if the decision is made in favour of the petitioner, a direction shall be issued for the immediate payment of wages for that specified period. However, if the decision goes against the petitioner, despite considering the decree and the observations made in this order, a reasoned order shall be passed, and the same must be communicated to the petitioner within one week of from the date of issuing that order.

18. It is further clarified that the timeline specified for carrying out this order is mandatory, as the petitioner is a senior citizen. The records indicate that immediately following the illegal superannuation, the petitioner's husband raised the issue with the authority by submitting a

letter. However, this issue has remained unaddressed since 1998, resulting in an inordinate and unexplained delay.

19. With the observations and order, this writ petition is disposed of. However, there will be no order as to costs.

(Partha Sarathi Chatterjee, J.)