

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 14528 of 2026

Bharat Coking Coal Limited & Anr.

Vs.

Union of India & Ors.

For the petitioners	: Mr. Puspall Chakraborty, Mr. Saptarshi Mukherjee, Mr. Tirthankar Nandi.
For the Union of India	: Mr. Raj Kumar Gaurisaria, (Through VC) Mr. Pradip Kr. Kundu.
Judgment reserved on	: 28.07.2026
Judgment delivered on	: 04.08.2026

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging an **order of reference dated 31st March, 2009** and the Award dated 24th September, 2025 passed by the Central Government learned Industrial Tribunal-cum-Labour Court, Asansol in Reference Case No. 16 of 2009.
2. The petitioner's case is that the Petitioner No. 1, namely Bhojudih Coal Washery (Washery Division), is a unit of Bharat Coking Coal Limited (BCCL), a Government Company.

3. The petitioner further states that that by an order of reference dated 31st March, 2009, the Ministry of Labour and Employment, Government of India (hereinafter referred to as "the Central Government"), in exercise of powers conferred under clause (d) of sub-section (1) read with sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred an alleged industrial dispute between the management of Bhojudih Coal Washery (Washery Division), Bharat Coking Coal Limited, and certain workmen represented by the Respondent No. 3 to the Central Government Industrial Tribunal-cum-Labour Court, Asansol (hereinafter referred to as "the Tribunal"), being Respondent No. 2 herein, for adjudication.
4. The issues in reference are as follows:-

“The Schedule

Whether the demand of Rashtriya Colliery Mazdoor Sangh for regularisation of Sri Bistu Das and 11 (eleven) other contract labourers with effect from July 1993 with the management of Bhojudih Coal Washery of M/s. B.C.C.L. is legal and justified? If so, to what relief the claimants (concerned workmen) are entitled for?"
The said reference was registered as Reference Case No. 16 of 2009 before the learned Tribunal.”

5. Upon receipt of a copy of the Statement of Claim dated 20th May, 2009, filed by the President of Respondent No. 3 purportedly on behalf of the concerned contract labourers, the petitioner became aware of the principal allegations and

contentions raised therein, which are, inter alia, summarised below:-

*“(i) That the 12 (twelve) concerned workmen have allegedly been working in Bhojudih Coal Washery **since July, 1993.***

*(ii) That the concerned workmen have allegedly been performing work of **permanent and perennial nature** under the direct control and supervision of the management).*

*(iii) **That the concerned workmen have allegedly been engaged in cleaning and maintenance of the marshalling yard of Bhojudih Coal Washery.***

*(iv) **That the work relating to cleaning and maintenance of the marshalling yard, which was previously** undertaken by the Railways, was discontinued and, from July, 1993 onwards, the management allegedly commenced such work under its direct supervision and control.*

(v) That since July, 1993 the said work has allegedly been performed continuously and regularly under the direct supervision and control of the management and that all tools, implements and materials required for

execution of the work were supplied by the management.

(vi) That the said work forms an integral part of the washery operations from production to despatch of washery products and that the management allegedly lacked sufficient permanent workmen to perform such duties.

(vii) That although the concerned workmen are alleged to be employees of the management in substance, they were paid wages substantially below the rates prescribed under the National Coal Wage Agreement (NCWA) through contractors/intermediaries; however, deductions towards Coal Mines Provident Fund (CMPF) contributions were allegedly made from their wages and CMPF account numbers were allotted to them (Paragraph 9).

(viii) That the management allegedly failed to maintain statutory records in respect of the concerned workmen and denied them benefits available to regular workmen by projecting them as employees of contractors or intermediaries (Paragraph 11).

(ix) That neither the management allegedly possessed the requisite registration nor the alleged contractors

held valid licences under the Contract Labour (Regulation and Abolition) Act, 1970, and, therefore, according to the Respondent No. 3, the contract labour arrangement was not genuine and was merely a camouflage (Paragraph 12).

On the basis of the aforesaid allegations, the Respondent No. 3, acting on behalf of the said 12 (twelve) workmen, prayed before the learned Tribunal for an award directing their regularisation in the services of the petitioners with retrospective effect from July, 1993, together with all consequential benefits.”

- 6.** The petitioner in the said written statement filed on 25.07.2012 challenged the maintainability of the order of reference and stated therein that no relationship of employer-employee either direct or indirect existed at any material point of time between the management and the persons named in the terms of reference.
- 7.** It is the further case of the petitioner that the said persons were never engaged, appointed or employed by the management.
- 8.** It is the further case of the petitioner that the said workers were engaged by independent contractors for execution of persons works entrusted to such contractors by the management. The said persons received their wages and other service benefits

from the contractors. Their attendance and service records were maintained by the contractors, and the management exercises no control or supervision over their day-to-day employment. **It was further contended that, in the absence of the concerned contractors being impleaded as parties to the proceeding, the adjudication could not effectively proceed.**

9. It is thus stated that as no employer-employee relationship exists between the management and the concerned persons, no obligation arises on the part of the management to absorb or regularise such persons in its establishment.
10. **Mr. Chakraborty** appearing for the petitioner submits that the reference in this case leaves no scope for adjudication by the tribunal, as to whether there exists any employer-employee relationship between the principal employer (petitioner) and the contractual workers, as the same has already been decided/held by the appropriate authority/Government **without any basis, thus causing severe prejudice to the petitioner,** who submits that, when it is an admitted fact that the petitioner is the principal employer of the private respondents, there clearly does not exist any employer-employee relationship between them and as such **the issue framed, is not in accordance** with law and thus the reference as a whole is liable to be quashed and set aside.

11. On completion of the hearing, the reference case ended in an award in favour of the private respondent no. 4. It appears that the order of Reference in the present case is dated 31.03.2009.

The petitioner herein has raised the issue of maintainability of the reference after 17 years and that too after the reference has already ended in an award. As such the challenge as to maintainability of the reference raised at this stage cannot be entertained by this Court in view of the extraordinary and unexplained delay. On perusal of the said judgment referred to in ***The Steel Authority of India Ltd. IISCO Steel Plant Versus The State of West Bengal & Ors., in WPA 20373 of 2008 dated 24.11.2025,*** this Court finds that the said judgment as such is not applicable to the facts and circumstances in the present case.

12. **The learned Central Government Industrial Tribunal, Asansol,** vide the impugned award relied upon the judgment of the Supreme Court in ***Jaggo Versus Union of India [2024 SCC Online Sc 3826]*** held as follows:-

*“Drawing wisdom from the decision of the Hon'ble Supreme Court of India and in view of the settled position of law discussed above, I hold that this is a fit case where the enlisted employees who are still alive be regularized in the service of Bhojudih Coal Washery, BCCL forthwith. **They shall be entitled to their pecuniary benefits at par with the permanent employees of the company** and would be entitled to continuity of service for*

the period they are in service and the same would be counted for their post-retired benefits.”

Hence,

ORDERED

That the Industrial Dispute is allowed on contest. The management of Bhojudih Coal Washery of Bharat Coking Coal Limited is directed to regularize the enlisted workmen in their employment forthwith who are still alive and serving, maintaining their continuity of service from the period they are serving the company. Let an award be drawn up in their of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.”

- 13.** Learned counsel for the petitioner has relied upon the following judgments:-

- i. Range Forest Officer Versus S.T. Hadimani (2002) 3 SCC 25;**
- ii. The Joint Secretary, Central Board of Secondary Education vs Raj Kumar Mishra & Anr., in Civil Appeal No. of 2025, (@SLP (Civil) No. 19648 of 2023), decided on 17th March, 2025.**

- 14.** Considering the facts and circumstances in the present case, this Court finds that though the petitioner herein has pleaded in the written statement before the learned Tribunal that the persons named in the reference were never engaged by the management but were engaged by the contractors to execute the work order as are awarded by the management, it appears from the said written statement that **no details of the**

contractors under whom allegedly the said workmen were engaged there, has been mentioned. There is absolutely no reference to the details of the contractors who supposedly engaged the said workers to execute the work order as were awarded by the management. The said statement made in the written statement thus prima facie proves that the workmen were engaged to carry out the work of the management, but the existence of contractors at this stage is seriously in doubt.

15. It further appears that the said statement which proves that the workman were engaged either thorough contractors or directly by the management as per the issue in reference, were **engaged since 1993**. The said fact of being engaged from 1993 has also not been denied in the written statement filed by the management before the tribunal. As such it is prima facie proved that the workmen referred to herein were engaged in the year 1993.
16. The next point being that there is absolutely **no details of any contractors** which was mentioned by the management in their written statement to substantiate their argument that the workmen were employed through the said contractors.
17. Be that as it may, even if the workers were engaged through contractors, the workmen might have worked under various

contractors since 1993. It is the contention of the management that it is the principal employer of the said workmen. It is thus the contention of the management that as it is the contractors who are the employers, the petitioner herein has no liability whatsoever as directed by the impugned award, being in no way connected in the engagement of the said workers and also not having any supervision over them nor in respect of payment of their wages.

18. Admittedly, it appears that no details of the said contractors was provided by the management before the tribunal. As such this prima facie proves that the said stand of the management that the contractors are the employers, is a veil or a shield vide which the petitioner management is trying to shirk its responsibility in respect of the workmen. Even if it has taken that the said workers were employed through contractors, the petitioner would always be liable as the principal employer in the absence of the contractors, which in this case appears to be a case where there is **no whereabouts of the contractors** and as such the tribunal rightly held that there was a relationship of employer and employee relationship between the workmen and the petitioner management herein and the case of there being contractors, was only a veil for the petitioner to avoid its liability in respect of the workers.

19. It further appears that the learned CGIT had, relying upon the judgment of the Supreme Court in **Jaggo Versus Union of India, 2024 SCC OnLine SC 3826**, directed regularisation of the said workmen. The relevant paragraph on which the learned tribunal based its order of regularisation is as follows:-

“27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”

20. It appears from the said observation of the Hon'ble Supreme Court, that the Hon'ble Court was of the view that government institutions by ensuring fair employment practice could reduce the burden of unnecessary litigation, promote job security and uphold the principle of justice and fairness, by setting a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practice in the country.

21. It also appears that in the said judgment, the Hon'ble Court further observed that the judgment in ***Secretary State of Karnataka versus Uma Devi [(2006) 4 SCC 1]*** was a judgment where there is an explicit engagement of cases, where regularization is appropriate.
22. The Court in **paragraph 26** of ***Jaggo versus Union of India (Supra)*** held **that cases where appointments are not illegal but merely lack adherence to procedural formalities should not be indiscriminately rejected.**
23. **In the present case**, admittedly the employees were engaged since 1993, carrying out their job, being perennial in nature for about **17 years**. The petitioner as the management submits that they are not liable to comply with the award of the Tribunal on the ground, that there is no employer employee relationship between the parties, as the workers were employed through contractors, **details of which are not available.**
24. Be that as it may, the petitioner either as an employer or the principal employer in the absence of the contractors whose details are not provided, is liable for the welfare of the workers and the legitimate right of the said workers.
25. This Court in its judgment ***dated 09.07.2026 passed in WPA 6006 of 2009 Steel Authority of India Limited ISSCO Plant versus State of West Bengal***, considered a case of similar

nature, wherein the tribunal had directed regularization of long term employees.

26. This Court relied upon the judgment of the Supreme Court in ***Steel Authority of India Ltd. vs. Workmen of Steel Authority of India Ltd. & Anr., in Civil Appeal Nos. 902-903 of 2023 dated 07.02.2023.***

27. It appears from the impugned award **in the present case**, that the learned CGIT has clearly held as follows:-

“Having considered the pleadings of the parties, evidence on record and argument advanced by Mr. Das, learned advocate for the management of BCCL, I find that the management of Bhojudih Coal Washery has admitted that the enlisted workmen performed work at Bhojudih Coal Washery and were engaged through the contractor. In respect of the claim in the written statement that all the 12 workmen performed cleaning and maintenance of the Marshalling Yard and Railway Tracks at Bhojudih Coal Washery since July, 1993 has not been denied by the management. The management being the custodian of all records did not suggest any alternative case that the workmen engaged during any other period or that their identities could not be verified. It is therefore clear that the 12 workmen named in the Reference were engaged for performing cleaning and maintenance of Marshalling Yard and Railway Tracks at Bhojudih Coal Washery. The work performed was invariably permanent and perennial in nature which transpires from the fact that all these workmen have served the management of Bhojudih Coal Washery uninterrupted and continuously since 1993 and Coal Mines Provident Fund accounts were maintained in their names. Cleaning and maintenance of Marshalling Yard and Railway Tracks are integral part of activity of a Coal Washery as functional Railway Tracks are essential

for importing raw materials and dispatch of Washery products. I, therefore, hold that the concerned workmen are in continuous employment for a long period and in regular manner at Bhojudih Coal Washery. For the purpose of deciding the question as to regularization, the twin test which needs to be satisfied are as follows: Firstly, it is to be ascertained as to who was making the payment of monthly wages to the workman and Secondly, under whose supervision they were working.

Under the Bharatiya Sakshya Adhiniyam, 2023, the burden of proving the facts specially within the knowledge of the management of BCCL lies upon the employer management. It has been claimed by the principal employer that the 12 workmen were engaged through contractors but the management has not produced any document to prove the terms of engagement of the petitioners through contractor firms and the duration for which it had assigned the work of cleaning and maintenance to the different firms. The management failed to produce any license of the contractor firms engage for the work which is essential under the Contract Labour (Regulation & Abolition) Act, 1970. The fact and circumstances clearly indicate that the engagement of the 12 workmen under contractors was a mere adjustment in paper to coverup the fact that 12 workmen actually under the supervision and control of the management of Bharat Coking Coal Limited, rendering long and uninterrupted service. The concerned workmen have been performing their assigned duties without any break and there is no case of the management that they have been inducted in their work in any illegal manner. They also received their wages through their Bank accounts. The workman enjoyed the Health Benefits from BCCL which is evident from the Health Cards issued in the name of the workmen by the Assistant Manager (P), Bhojudih Coal Washery, Santaldih, Purulia.

It appears to me that the role of the employees is essential for proper maintenance of the Coal Washery

and their sustained contributions in the service of the employer establishment extending for a long period goes to prove that the nature of job performed by them is indispensable for the employer establishment and their work is perennial in nature. There is no adverse record against any of the said workmen. Therefore, the workmen who are alive are entitled to equitable treatment of regularization in their service. Denial of such benefit would amount to injustice and must be redressed.

It is imperative for the management of Bharat Coking Coal Limited, a public undertaking, to provide fair and stable employment to a person who is rendering utility service for a long period. Workmen engaged on a temporary basis but for extended period are integral to the organization's functioning amounts to contravention of labour standards and unfair labour practice.”

28. In the present case, the members of the respondent no. 3 being 12 workmen, started working as **contract labour** w.e.f. from **July 1993** with the management of the Bhojudih Coal Washery of M/s. B.C.C. Ltd.
29. The **reference** in this case is dated **31.03.2009**.
30. The case of the union is that though the workmen are employees of the management, the management of Bhojudih Coal Washery have been paying wages to the workmen, far below the permissible rate provided under National Coal Wage Agreement (hereinafter referred to as NCWA) and Coal Mines Provident Fund (hereinafter referred to as CMPF) contributions are deducted from the wages of the employees and they have CMPF Account Numbers.

31. According to the union, the engagement of workmen through contractors are merely for the purpose of paper arrangement which is done by preparing work-orders in the name of contractors, Attendance Register, Payment Sheets, etc. The apparent engagement of the workmen through contractors is actually sham and with the object to camouflage the fact that the workmen are actually under the supervision and control of the principal employer i.e., the management of Bhojudih Coal Washery.

32. The workmen herein have put in almost 17 years of service, perennial in nature.

33. The learned tribunal also held:-

“10. Under the Bharatiya Sakshya Adhiniyam, 2023, the burden of proving the facts specially within the knowledge of the management of BCCL lies upon the employer management. It has been claimed by the principal employer that the 12 workmen were engaged through contractors but the management has not produced any document to prove the terms of engagement of the petitioners through contractor firms and the duration for which it had assigned the work of cleaning and maintenance to the different firms. The management failed to produce any license of the contractor firms engage for the work which is essential under the Contract Labour (Regulation & Abolition) Act, 1970. The fact and circumstances clearly indicate that the engagement of the 12 workmen under contractors was a mere adjustment in paper to coverup the fact that 12 workmen actually under the supervision and control of the management of Bharat Coking Coal Limited, rendering long and uninterrupted service. The concerned workmen have

been performing their assigned duties without any break and there is no case of the management that they have been inducted in their work in any illegal manner. They also received their wages through their Bank accounts. The workman enjoyed the Health Benefits from BCCL which is evident from the Health Cards issued in the name of the workmen by the Assistant Manager (P), Bhojudih Coal Washery, Santaldih, Purulia.”

34. The learned tribunal also relied upon the judgments of the Supreme Court:-

*“13. In the case of **Jaggo Vs. Union of India 2024 SCC OnLine SC 3826**], the Hon'ble Supreme Court of India referring to the judgment in the case of **Secretary, State of Karnataka Vs. Uma Devi [(2006) 4 SCC 1]** observed as follows:-*

"26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."

- 35. Finally the tribunal,** answered the reference in the positive and directed regularization and benefit at par with permanent employees of the company with continuity of service and post retiral benefit.
- 36.** The judgment in ***Range Forest Officer (Supra)*** and ***Raj Kumar Mishra & Anr. (Supra)*** are not applicable to the fact and issue in the present case.
- 37.** Thus from the materials on record it appears that:-
- i. The workmen joined in July, 1993 through contractors (as mentioned as 'contract labours' in the reference herein dated 31.03.2009).**
 - ii.** It thus appears that the workmen had put in almost 17 years of service on the date of reference.

38. The workmen though could not produce any documents to show that they were engaged by the petitioner directly, the issue is now not under consideration, as the reference notes that the workmen herein are contract labours and the same was not challenged.
39. There is also no evidence to show that the workmen had put in 240 days of work in a year but admittedly they have put in almost 17 years when the reference was made and are still in service, working for the petitioner herein.
40. **The tribunal held that they worked in jobs, which was continuous, permanent and perennial in nature and are still working except the workmen who have expired.**
41. This Court relied upon the following judgments in **WPA 6006 of 2009, Steel Authority of India Limited IISCO Steel Plant vs The State of West Bengal & Ors., decided on 09.07.2026:-**
- i. The Hon'ble Supreme Court in **Hussainbhai v. Alath Factory Thezhilali Union, AIR 1978 Supreme Court 1410**, held:-

“Where a worker or group of workers, labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the Employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid

off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking out the conspectus of factors governing employment, it is found, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor".

This case law is very much applicable here."

- ii. In **Civil Appeal No. 902-903 of 2023, order dated February 07, 2023, in Steel Authority of India Limited vs Workmen of Steel Authority of India Limited & Anr., the Hon'ble Supreme Court observed:-**

"10.The concept of regular employment is not a sine qua non for the purpose of granting the statutory benefits admissible to a workman under various social welfare legislations and in accordance with the service regulations/terms and conditions of employment which are uniformly applied by an employer qua all its employees.....

15.the instant appeals have been decided keeping in view the peculiar facts and circumstances of this case owing to the long pendency of the dispute coupled with the fact that out of 159 workmen, 32 have already died and only one workman remains in service while the others have attained the age of superannuation, and it shall not be taken as a precedent for other similar matters, if any, pending before different forums."

Thus the findings and observations of the Hon'ble Court is taken as a guidance herein, the issue being similar and also in the interest of justice.

42. In the present case also the tribunal has examined in depth the issue whether the workmen were employed by the petitioner or they were contractual employees and held that the workmen were actually the employees of the petitioner herein, as there is no existence of any contractor for a long period and no such evidence is also on record.

43. Thus relying upon the judgment of the Supreme Court in:-

a) Secretary, State of Karnataka & Ors. vs Umadevi (3)

& Ors., (2006)4 SCC 1,

b) Jaggo vs Union of India & Ors., (2024 INSC 1034),

decided on 20th December 2024,

c) Steel Authority (Supra) order dated February 7, 2023,

the impugned award dated 31st March, 2009 passed by the Central Government learned Industrial Tribunal-cum-Labour Court, Asansol, is modified as follows:-

- a)** The order as to regularization of the services of the workmen is set aside.
- b)** The workmen irrespective of their present status shall be entitled to the following service benefits:-

(i) Pay-scale at par with the employees who are on the roll of the appellant – Authority;

(ii) The benefit of provident fund;

(iii) The benefit under the Gratuity Act;

(iv) The other service benefits including the medical allowance which the appellant – Authority as granted to its employees under the Service Regulations or through administrative decisions from time to time. Such benefits will be admissible from the cut-off date determined by the Tribunal.

44. WPA 14528 of 2026 is accordingly disposed of.

45. Connected application, if any, stands disposed of.

46. Interim order, if any, stands vacated.

47. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]