

(1992) 03 CAL CK 0035
In the Calcutta High Court
Case No : Matter No. 2264 of 1990

Coal Employees Union and Others

APPELLANT

Vs

Coal India Ltd. and Others

RESPONDENT

Date of Decision : 19-03-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (1992) 2 CALLT 261 : (1992) 65 FLR 922 : (1993) 1 LLJ 646

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by Coal Employees' Union and its General Secretary Sukdeb Sarkar praying inter alia for a writ of mandamus to command the respondents to withdraw and/or cancel the impugned order No. CIL/Civil/2.08 (Z)/249 dated July 9, 1990 issued by the Executive Engineer (Civil) being Annexure "C" to the writ petition, on the ground that the service condition of the petitioner to work for five days a week has been sought to be changed asking them to work for six days a week in contravention of Section 9-A of the Industrial Disputes Act. Section 9-A of the Industrial Disputes Act provides inter alia that no employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the 4th Schedule, shall effect such change:

"(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within 21 days of giving such notice: provided that no notice shall be required for effecting any change-

(i) where the change is effected in pursuance of any settlement or award; or

(ii) where the workmen likely to be affected by the change are persons to whom

the Fundamental and Supplementary Rules, Civil Services (Classifications, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code or any other Rules or Regulations that may be notified in this behalf by appropriate Government in the Official Gazette, apply"

2. The main grievance of the petitioners is that while they were working under Coal India Limited at different places they were having five days a week and upon being transferred to the present establishment they were allowed to work for five days and by the main notice they have been asked to work for six days a week and such an attempt is in violation of the Service Conditions and it infringes the statutory protection as envisaged u/s 9-A of the Industrial Disputes Act.

3. The writ petition is seriously contested by the Coal India Authorities. In paragraph 9 of the affidavit-in-opposition it is disclosed inter alia that the employees of Coal India Limited availed themselves of the facilities of the working days in a week depending on the factory where they are posted. The persons who are posted in the Coal India Ltd. Guest House, i.e., at Lord Sinha Road, Calcutta and Salt Lake, B-Sector, Calcutta and Stockyards situated and approximately at 69 places in India including West Bengal and performing their duties for six days a week and eight hours per day. Then at Coal India Ltd. Headquarters the security personnel are required to work six days a week for eight hours a day. It is further placed on record that it is incorrect to state that every where in Coal India Ltd. Establishment the system of five days working is prevailing. It is only at the administrative office of Coal India Ltd. where five days a week system is prevalent. In all other establishments of Coal India Ltd. six days a week system is in vogue. This specific averment in the Affidavit-in-opposition has not been properly disputed, denied and/or controverted. In paragraph 8 of the Affidavit-in-Reply it is stated that the contentions in the writ petition have been repeated and reiterated and it is denied that the employees perform duties in other offices six days a week and eight hours per day. Other averments remain uncontroverted.

4. Admittedly, the petitioners on their own representation have been posted at the Guest House. By the impugned circular the workmen have been directed to work six days a week since the said establishment provides six days working, this Court does not find that there is any attempt to change the service condition and the provisions of Section 9-A of the Industrial Disputes Act have been infringed. Finding no merit to interfere in the writ petition, the writ petition is dismissed without any order as to costs. Interim order, if any, is vacated.

5. All parties to act on a signed copy of the operative part of this judgment on the usual undertaking.