
(2020) 05 JH CK 0098
In the Jharkhand High Court
Case No : Writ Petition(S) No.1191 of 2019

Jharkhand Van Shramik Union

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 27-05-2020

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2020) 05 JH CK 0098

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rajesh Kumar, Mukesh Kumar Sinha

Final Decision : Dismissed

Judgement

1. Heard Mr. Rajesh Kumar, the learned counsel appearing for the petitioner and Mr. Mukesh Kumar Sinha, the learned counsel appearing for the respondent-State.
2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.
3. The petitioner has preferred this writ petition for a direction upon the respondents to pay the arrears of wages @ Rs.290/- to the skilled labourers and Rs.210/- to unskilled labourers in between November, 2017 to till date.
4. Mr. Rajesh Kumar, the learned counsel appearing for the petitioner submits that the petitioner is a Union and the writ petition is being represented by the President on behalf of the forest labourers of the District of Palamau. He further submits that the members of the Union are the daily wages labourers (Trekks) appointed for the protection of wild-life and forest. He further submits that the Department of Labour, Employment, Training & Skill Development, Government of Jharkhand vide Notification dated 14.08.2015 revised the minimum wages of

daily wages of skilled and unskilled labourers @ Rs.290/- and Rs.210/- respectively. He further submits that it has been clarified in that notification that the rate will be effective from the date of notification. In this regard the then Forest Conservator and Range Director, Palamau Tiger Project sought information from the office of the respondent no.2 as to whether daily rated labourers be paid @ Rs.225/- per day or not. The respondent no.2 vide letter dated

21.01.2016 clarified that the daily rated labourers will be paid @ Rs.212.47 per day since 01.10.2015. He further submits that the payment of daily wages is being paid pursuant to letter issued by Ministry of Environment, Forest and Climate Change, Project Tiger Division, Government of India dated 20.06.2018 whereby it has been clarified that administrative approval of the competent authority to the continuance of the scheme "Project Tiger" in Palamau Tiger Reserve will be shared on 50-50 basis by the Government of India and Government of Jharkhand. The remaining cost of the scheme will be treated as 60% Central assistance of the Government of India and 40% assistance by the Government of Jharkhand. He further submits that in view of Notification dated 14.08.2015 the members of the petitioner are entitled for that remuneration which has not been paid.

5. Per contra, Mr. Mukesh Kumar Sinha, the learned counsel appearing on behalf of the respondent-State submits that the daily wage labourers (Trekks) in Palamau Tiger Reserve, South Division do not come under the definition of skilled labourer as described in letter dated 14.08.2015 which was issued under the signature of Under Secretary to the Government, Department of Labour, Employment, Training and Skill Development. He further submits that the letter itself described about the skilled labourers wherein it is mentioned that Driver, Computer Operator, Data Entry Operator, Security Guard and any other category where certain experience is required for the disposal of job will be treated as skilled. The daily wage labourers employed under the Forest Department are being paid Rs.221.61 with effect from 01.04.2016 which is in view of the communication of Additional Principal Chief Conservator of Forest, Department of Forest, Environment and Climate Change, Government of Jharkhand vide letter dated 22.04.2016. The daily wagers are engaged in the filed on temporary basis according to the requirement. He further submits that they are not entitled for any arrears. He further submits that the labourers (Trekks) in Palamau Tiger Reserve, South Division do not come under the definition of skilled labourers as described in the letter dated 14.08.2015. He further submits that there is disputed question of fact in the writ petition and the writ Court may not decide the disputed question of fact in its writ jurisdiction under Article 226 of the Constitution of India. He further submits that for proving the fact that the petitioners are skilled, the evidence needs to be led to prove that which cannot be done in the writ jurisdiction.

6. Having heard the learned counsels appearing on behalf of the parties this Court finds that the petitioner members are employed under the Government of

India and Government of Jharkhand scheme. It is an admitted fact that the petitioner-members are getting sum of Rs.221.61 in terms letter dated 22.04.2016. The nature of job of the petitioners are Trekker. It is not clear whether they are doing any skilled job or not in view of letter dated 14.08.2015. In a case of this nature where serious disputed question of fact is raised, the Court comes to a conclusion that it is not proper for this Court to invoke or pass any order under Article 226 of the Constitution of India. In a large number of decisions, the Hon'ble Supreme Court as well as the High Court have categorically held that it is not open to a High Court to exercise its discretion under Article 226 of the Constitution of India either to frame a scheme by itself or to direct the State to frame a scheme for payment of such wages to the daily wage employees who had not been appointed in terms of the extant service rules framed either under the statute or under the proviso to Article 309 of the Constitution.

7. For the reasons aforementioned, this Court is not inclined to pass any positive order in favour of the petitioner and, accordingly, W.P.(S) No.1191 of 2019 stands dismissed.

8. It is open to the petitioner if so advised it may raise dispute under the Industrial Disputes Act, 1947.