
(2017) 07 JH CK 0065
In the Jharkhand High Court
Case No : 5599 of 2010

Piyashi Devi

APPELLANT

Vs

M/s Central Coalfields Limited & Ors.

RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 18](#) & [Section 9-A](#) - Persons on whom settlements and awards are binding

Citation : (2017) 07 JH CK 0065

Hon'ble Judges : Rajesh Shankar

Bench : SINGLE BENCH

Advocate : Amit Kumar Sinha, Anoop Kumar Mehta

Final Decision : Disposed of

Judgement

1. Present writ petition has been filed by the petitioners for quashing the office order dated 24.08.2010 (Annexure-3 to the writ petition) issued under the signature of respondent no. 4 (Project Officer, Godhur Colliery, BCCL), whereby the Project Officer has directed the respondent no. 5 (Manager, Godhur Colliery, BCCL) to utilize the services of the petitioners on surface and not to give them any underground work. It has further been prayed for issuance of writ of mandamus commanding upon the respondents to make payment of monthly underground allowance as also its arrears from the date it was illegally stopped.

2. Learned counsel for the petitioners submits that all the petitioners were working as underground munshi under the respondent- Bharat Coking Coal Ltd. The service condition of the petitioners are governed by National Coal Wages Agreement (hereinafter referred as "NCWA" in short) which is a settlement in terms with Section 18 of the Industrial Disputes Act 1947 (hereinafter referred as "the Act"). Chapter IV of the NCWA deals with underground allowances which provides that underground allowance shall be treated as wages and will be taken into account for the purposes mentioned in chapter IV of the NCWA.

3. It is further submitted that the petitioners used to receive underground allowance continuously @ 12.5% of the basic pay till 24.08.2010 without any break. However, the respondent no. 4 (Project Officer, Godhur Colliery) vide his office order dated 24.08.2010, without giving any prior notice to the petitioners, directed the respondent no. 5 (Manager, Godhur Colliery, BCCL) to utilize the services of the petitioners on surface and not to give them any underground work. After issuance of the office order dated 24.08.2010, all of them were posted on surface duty and they have not been paid their monthly underground allowance w.e.f. 25.08.2010 and their wages have substantially decreased, which is evident from the pay slips issued to them. It is also submitted that the action of the respondents is in violation to Clause 23.1 of the Certified Standing Orders applicable to the petitioners which reads as follows:- "23.1 Employees may be transferred due to exigencies of work from one station to another, from one coal mine to another or from one unit/department/section to another within the company provided that the pay, grade and other conditions of service including continuity of service of the employer are not adversely affected by such transfer and provided further that, if an employee is transferred from one job to another, the job should be similar in nature and such as he is capable of doing and provided further that (i) except in case of emergency minimum notice of two weeks is given of such transfers and (ii) reasonable joining time is allowed in case of transfers from one station to another."

4. It is also submitted that the petitioners' service condition have been adversely affected by issuance of the impugned order and their salary have been substantially decreased which is even against the Certified Standing Orders applicable to them. Learned counsel for the petitioners further submits that the action of the respondents is in gross violation of Section 9-A of "the Act", as no notice of change in the condition of service has been given to the petitioners and as such the impugned office order dated 24.08.2010 passed by the respondent no. 4 is liable to be set aside.

5. Per contra, learned counsel for the respondents submits that the present writ petition is not maintainable, as the petitioners have efficacious remedy against the alleged violation of Section 9-A of "the Act" by way of invoking industrial adjudication before the Industrial Tribunal/Labour Court. It is further submitted that a circular bearing ref No. BCCL/D(T)PP/F-43/2010/998-1003 dated 14.07.2010 was circulated to the respondents by which Tub Munshies/Pit Munshies were declared to be surplus on account of conversion of piece rated workers to time rated jobs and accordingly for gainful utilization of such munshies in clerical jobs, they were engaged in the surface. Underground allowance is only an incentive like other allowances, to be paid to the employees working in the underground. If the workman is not working in the underground and is working on the surface, underground allowance is not payable. Since, there was no requirement of piece rated workers in the underground, the munshies namely Tub/Pit Munshies had become surplus and therefore they were placed on the Surface for gainful utilization of their service. Clause 23.1 of the

Certified Standing Orders relates to transfer of a workman. The petitioners are working as munshies and therefore, there is no change in their job except that they are working on the surface. In fact the respondents have not altered the service condition of the petitioners. The petitioners are performing the same nature of job on the surface also and since the petitioners are working on the surface and not underground, they are not entitled to any underground allowance. Thus the impugned order does not warrant any interference by this Court.

6. Having heard learned counsels for the parties and on perusal of the relevant documents placed on record, it appears that vide impugned office order dated 24.08.2010 the services of the petitioners were utilized on surface and they were not given any underground work. The effect of the said order was that the petitioners who were being paid underground allowance @ 12.5% of their basic pay was stopped, as there had been no provision for payment of underground allowance to the employees working on surface, may be engaged on the same post. Underground allowance is paid to the employees working underground in terms with Chapter IV of the NCWA which is quoted hereinafter for better appreciation of the issue involved :- Chapter-IV Underground Allowance- 4.1.0. The Underground allowance shall continue to be paid to those employees working underground as defined under the Mines Act, 1952 and Regulations framed thereunder.-

4.2.0.

4.3.0..... 4.4.0 The Underground allowance shall be treated as Wages as hitherto and will be taken into account for the following purposes:

(a) Calculation of Earned Leave/ Annual Leave wages, (b) Payment for notional/ festival holidays,

(c) Sick leave/Casual Leave with wages, (d) Overtime Allowance,

(e) Gratuity and Post Retirement Benefit Scheme (f) Contributions towards CMPF/ other contributory Provident Fund

(g) Injury on duty

7. On perusal of Clause 4.4.0. it would be evident that the underground allowance has been treated as wages to be paid to the employees working under the respondents (Bharat Coking Coal Ltd.). Further, the 4th Schedule of "the Act" reads as under:- Condition of service for change of which Notice is to be given

1. Wages, including the period and mode of payment; 2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;

3. Compensatory and other allowances; 4. Hours of work and rest intervals;

5. Leave with wages and holidays; 6. Starting, alteration or discontinuance of

shift working otherwise than in accordance with standing orders;

7. Classification by grades;

8. Withdrawal of any customary concession or privilege or change in usage;

9. Introduction of new rules of discipline, or alteration of existing rules, except insofar as they are provided in standing orders;

10. Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control)

8. As per Entry 1 of the 4th Schedule of "the Act", wages come under the category of condition of service for change of which notice has to be given. On combined reading of clause 4.4.0. of NCWA, Section 9-A with Entry 1 of the 4th Schedule of "the Act", there remains no doubt that payment of underground allowance is to be treated as wages which is the part of the service condition of the employees working under the services of respondent-Bharat Coking Coal Ltd. and therefore, before stopping underground allowance to the employees, it is mandatory on the part of the employer (B.C.C.L.) to give notice of such change in the condition of service as mandated in Section 9-A of "the Act".

9. So far as contention of the respondents regarding the maintainability of the writ petition is concerned, I am of the view that the non-compliance of statutory provisions of Section 9-A of "the Act" is gross infringement and also consequential violation of the principles of natural justice which is itself sufficient to eliminate objection raised regarding the maintainability of the writ petition on the ground of alternative/efficacious remedy. The Hon'ble Supreme Court in the case of Whirlpool Corporation vs. Registrar of Trade Marks reported in (1998) 8 SCC 1 at paragraph nos. 14 and 15 has held as under:- 14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the

principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

10. In the case of violation of Section 9-A of "the Act" by the employer, it is not reasonable to expect that the employees would raise the industrial dispute and wait indefinitely for ultimate conclusion of the industrial adjudication. Thus, I am unable to sustain the objection raised by the respondents for maintainability of the writ petition on the ground of alternative remedy.

11. Now coming back to the issue of violation of Section 9-A of the Act, the Hon"ble Supreme Court while discussing the objects and purposes of Section 9-A of the Act, in the case of Tara Iron and Steel Company Ltd. vs. The Workmen reported in (1972) 2 SCC 383 has held at paragraph no. 12 as under:-
"12..... The real object and purpose of enacting Section 9-A seems to be to afford an opportunity to be workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic cooperation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital".

Aforesaid view was also considered and affirmed by the Hon"ble Apex Court in the case of Management of Indian Oil Corporation LTD. Vs. its Workmen reported in (1975) 4 SCC 477.

12. In an another case, i.e. Indian Overseas Bank Ltd. vs. Their Workmen reported in (1968) Comp. Case 395 The Hon"ble Suprme Court has held thus:-
"..... But since this allowance came into existence in the Indian Overseas Bank after the matter was raised by the Indian Overseas Bank Employees Union before the Regional Labour Commissioner at Madras and was accepted by the bank as a gesture of goodwill it must be treated as a term and condition of the service of Om Prakash Gupta to whom it was admissible. Once we reach this position it is clear that under Section 9-A of the Industrial Disputes Act, read with rule 34 of the Industrial Disputes (Central) Rules, 1957, a notice of change in the conditions of service applicable to Om Prakash Gupta had to be given in Form E appended to the Rules. Section 9-A says that no employer who proposes to effect any change in the conditions of service applicable to any workman a notice in the prescribed manner of the nature of the change proposed to be effected. Schedule IV includes item 3, which is "compensatory and other allowances". It would, therefore, appear that Section 9-A applied to the case....."

13. In the facts of the present case, admittedly no notice under Section 9-A of "the Act" was given by the respondent no. 4 before issuing the impugned office order dated 24.08.2010, by reasons of which the service conditions of the petitioners were changed, as their services were directed to be utilized on surface in place of underground work in which they were continuing for a considerable period. By the said change, the underground allowances @ 12.5% of the basic pay which were also being paid to the petitioners have been stopped. Therefore, in view of the aforesaid discussions and judicial pronouncements, it can be concluded that the said change effected through impugned office order dated 24.08.2010 violates the provisions of Section 9-A of "the Act".

14. Thus, the said impugned office order dated 24.08.2010 issued by respondent no. 4 cannot be legally sustained, which is accordingly quashed and set aside. The respondent-Bharat Coking Coal Ltd. is directed to pay the monthly underground allowance to the petitioners including its arrears w.e.f. 25.08.2010 within a period of three months from the date of receipt/production of a copy of the order, failing which, the respondent-Bharat Coking Coal Ltd. shall be liable to pay interest over the said amount @ 8 % per annum till it is paid.

15. The writ petition is disposed of with aforesaid observations and directions.