

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHCIRCUIT BENCH AT RANCHIREGN.NO.:OA/051/00055/2017Date of Order:- 07.08.2018C O R A M

HON'BLE MR. K.N.SHRIVASTAVA, MEMBER (ADMN.)

HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)

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1. Tara Devi, wife of Late Lalan Singh, resident of Quarter No. 1/175, New Colony, Near Labour Court, PO-Jagjivan Nagar, PS-Saraidhela, District – Dhanbad-826003.
2. Mary Hembrom, wife of Late Robin Hembrom, resident of village-Kalla, PO & PS-Asansol, District-Burdwan-713340.
3. Jacob Hembrom, son of Late David Hembrom, resident of Qr. No.A/200, Bhulinagar, PO & PS-Bhulinagar, District-Dhanbad-828104.
4. Shambhu Modak, son of Late Tara Modak, resident of Police Line, Maira Para, PO, PS & District-Dhanbad-826 003.
5. Jagdish Mishra, son of Late Ganesh Mishra, resident of C/o M.Mondal, Lohar Kuli, PO-CCWO, PS-Saraidhela, District-Dhanbad-826004.
6. Jai Prakash Roy, son of Late Shivdhari Roy, resident of Co-operative Colony, Krishna Nagar, Nutamdih, PO-Koyala Nagar, PS-Saraidhela, District-Dhanbad-826 005.
7. Jai Govind Prasad, son of Late Chandrika Prasad, resident of Quarter No.A/267, Bhulinagar, PO & PS-Bhulinagar, District-Dhanbad-828104.
8. Laxman Thakur, son of Late Bishwanath Thakur, resident of Quarter No.B/119, Bhulinagar, PO & PS-Bhulinagar, District-Dhanbad-828 104.
9. Raj Kumar Sao, son of Late Harihar Sao, resident of Quarter No.C/52, Block-C, Bhulinagar, PO & PS-Bhulinagar, District-Dhanbad-828104.
- 10.Chandra Kant Lal Das, son of Late C.N.L.Das, resident of Bapu Nagar, Near Karmik Nagar, PO-ISM, PS-Saraidhela, District-Dhanbad-828104.

.....Applicants.By Advocate:- Mr. Ratnesh Kumar.

Vs.

1. The Union of India through the Secretary, Government of India, Ministry of Coal, Shram Shakti Bhawan, PO & PS-Parliament Street, New Delhi-110 001.

2. The Officer on Special Duty, Government of India, Ministry of Coal, Kalyan Bhawan, PO & PS-Jagjivan Nagar, District-Dhanbad, Jharkhand-826003.
3. The Special Officer (W), Office of Officer on Special Duty, Ministry of Coal, PO & PS-Jagjivan Nagar, District-Dhanbad, Jharkhand-826003.
4. The Senior Accounts Officer, Regional Pay and Accounts Office, Ministry of Coal, Kalyan Bhawan, PO & PS-Jagjivan Nagar, District-Dhanbad, Jharkhand-826 003.

.....**Respondents.**

By Advocate:- Mr. A.K.Sharma, Addl. Standing Counsel.

O R D E R (ORAL)

K.N.Shrivastava, Member (Admn.) :- Through the medium of this OA filed under Section 19 of Administrative Tribunals Act, 1985, the applicants have prayed for the following relief:-

“8(A) For issuance of a direction upon the respondents for grant of pro-rata pension including arrears with compound interest as the petitioners are similarly situated to the petitioners of W.P.(S) No. 1288 of 2012 (Mohan Mahto & others) who have already been given the benefit of pro-rata pension including arrears with compound interest pursuant to the order dated 7th February, 2014 passed by the Hon’ble Jharkhand High Court in W.P.(S) No. 1288 of 2012 (Mohan Mahto & Ors. vs. UOI & Ors.).

2. The factual matrix, as noticed from the records, is as under:-
 - (i) The applicants joined Coal Mines Labour Welfare Organisation (for short, CMLWO) between the years 1981-82; the details of which are furnished in Para 4.04 of the OA. CMLWO was under the administrative control of Department of Coal. CMLWO was owning various hospitals, including a Central Hospital at Dhanbad. For myriad reasons,

CMLWO was closed on 30.09.1986 and all its hospitals were taken over by various subsidiaries of Coal India Limited (CIL). All these applicants are employees of the Hospitals of CMLWO.

(ii) In order to resolve the service related matters of the employees of erstwhile CMLWO, the Central Government created a post of OSD in the Department of Coal and another post of Special Officer (Welfare) in the Office of OSD, Department of Coal, who was stationed at Dhanbad.

(iii) It is stated that all the employees of CMLWO were given one of the options of getting absorbed in the service of CIL. These applicants opted for it and, accordingly, were absorbed in CIL w.e.f 01.10.1986, except applicant no.9 whose absorption in CIL was made effective from 01.10.1983.

(iv) These applicants have been craving for getting the proportionate pensionary benefits for the period of service rendered by them in CMLWO.

3. Shri Ratnesh Kumar, learned counsel for the applicants submitted that these applicants are identically placed with the petitioners in WP(S) No.1288/ 2012 (Mohan Mahto & Ors. vs. Union of India & Ors.) which was adjudicated by the Hon'ble High Court of Jharkhand and vide its order dated 07.02.2014 in the ibid writ petition, the Hon'ble High Court issued the following directions to

the respondents therein, who are also the respondents in the present case:-

*“10. From the facts of the case, it is clear that the case of the present petitioners was remanded to the respondent-authority for taking a fresh decision. The order passed in OA No. 83 of 2005 was challenged in WP(S) No.762 of 2008 however, the writ petition was dismissed by order dated 09.07.2008. The said order has become final. From the order dated 13.07.2009 passed by the respondent no.2 it is apparent that the respondent no.2 has not taken into consideration the previous service of the petitioners with CMLWO whereas, the fact that the petitioners were working with CMLWO as contingent workers is not denied. The order of absorption of the petitioners in CMLWO itself makes it apparent that in recognition of their services, the petitioners were absorbed in the service of CMLWO. Further, it does not appear from the order dated 13.07.2009 passed by the respondent no.2 that he has made any effort to verify the basis or genuineness of the certificates issued by the Junior Engineer (Headquarters), CMLWO to the petitioners. The respondents have reiterated the stand in the present proceeding which they had already taken in the previous proceeding. Merely because there is no endorsement in the service book of the petitioners that they were working on monthly paid contingent basis prior to their absorption in CMLWO, the claim raised by the petitioners has been disbelieved by the respondent no.2. The learned Central administrative Tribunal has also fallen in error while accepting the stand taken by the respondents. The learned Tribunal has failed to examine the correctness of order dated 13.07.2009 passed by the respondent no.2, inasmuch as, the admitted fact that the appellants were working as contingent workers in CMLWO prior to their absorption has not been considered by the respondent no.2. The learned Tribunal further fell in error in observing that no document has been produced by the applicants. In earlier proceeding, a specific direction was issued to the respondents to verify the claim of the applicants based on the certificates issued by the Assistant Engineer (Headquarters), CMLWO and therefore, the respondents were required to plead and prove by producing some evidence for not believing the certificates issued by the said authority. **Merely because the present petitioners could not produce any document in support of their claim, their claim could not have***

been rejected particularly, in view of the orders dated 23.06.1981 and 30.06.1981 by which the petitioners were absorbed in the service of CMLWO. (emphasis supplied)

11. We find sufficient grounds for interfering with the impugned order dated 08.03.2011 and accordingly, the impugned order dated 08.03.2011 is set aside. The matter is remitted back to the respondent no.2 for considering the claim of the petitioners afresh."

4. Shri Ratnesh Kumar, learned counsel further stated that the respondents have since implemented the direction of the Hon'ble High Court in respect of the petitioners of WP(S) No. 1288 of 2012, whose claim was earlier rejected by the Tribunal in OA No. 200 of 2009 vide order dated 08.03.2011 filed by them against which those petitioners had filed the said writ petition before the Hon'ble High Court.

5. On the issue of delay and laches, learned counsel for the applicants placed reliance on the following two judicial pronouncements:-

(i) Judgment of the Hon'ble Apex Court in the case of **State of Uttar Pradesh & Ors. vs. Arvind Kr. Shrivastava & Ors.**

[(2015) 1 SCC 347], wherein it has been held as under:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both the appellants as well as the respondents, can be summed up as under.

22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in

*service matters more emphatically as service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. **Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*** (emphasis supplied).

22.2 However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C.Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

(ii) Order dated 17.11.2014 in OA No. 115 of 2012 (Gopal Prasad vs. Union of India & Ors.), wherein it has been observed by this Tribunal as under:-

“4. The respondents, especially the office of OSD, Coal at Dhanbad have repeatedly been given direction to see that all such cases of similarly placed persons are brought to some logical conclusion. The number and names etc. of CMLWO employees who got absorbed must be known to the organization. The office should make some concerted effort to examine all cases and complete the matter rather than waiting for direction from the Tribunal. We also note that different stands are taken at times by respondents. In one case the Tribunal even gave suggestion to fix a cut off date but the same has perhaps not been considered by the respondents. We fail to understand how such claims are repeatedly arising on some pretext or the other. This needs a serious investigation into the matter. In fact, by now all matters should have been brought to finality and if required, office of OSD should have been closed if its only job is to resolve merger related issues.

5. We, therefore, direct respondent no.1, Secretary, Department of Coal, Govt. of India to depute a senior level officer, at least in the rank of Joint Secretary to Govt. of India in that Department to inquire into the entire gamut of issues related to abolition of CMLWO and absorption of employee in Coal India and its subsidiaries specially the issue of sanction of pro-rata pension or interest on arrears and submit report to Secretary who shall then issue appropriate directions in the matter. This exercise may be completed within six months from the date of receipt of a copy of this order.”

6. Learned counsel for the applicants thus, argued that the order of the Tribunal is the order in rem and, hence in terms of ratio laid down by the Hon’ble Apex Court in Arvind Kumar Srivastava (supra), this OA is not hit by delay and laches.

7. Per contra, Shri A.K.Sharma, learned counsel for the respondents argued that the muster rolls of the relevant period, when these applicants are purported to have worked as casual labourers in CMLWO, are not available and, hence it is difficult to reckon the periods of service rendered by them as casual labourers. He, however, fairly submitted that records in respect of two applicants, namely, applicants' no. 2 & 3, are available which are placed at pages 8 to 11 of the written statement and marked as Anenxure-R/1. He emphatically stated that except in respect of these two applicants no records are available in regard to the remaining applicants for the services rendered by them as casual labourers.

8. Shri Ratnesh Kumar, learned counsel, however, contested the documents at pages 10 & 11 of the written statement stating that there are some cuttings and over-writings which could put the authenticity of this document under question mark.

9. We have considered the arguments of the learned counsel for the parties and also perused the pleadings. Admittedly, all these applicants are employees of erstwhile CMLWO and on the closer of CMLWO they all have been absorbed in different subsidiaries of CIL. It is also not in dispute that their services were regularized in CMLWO and at the time of their absorption in CIL one of the options given to them was to accept the service conditions of CIL which they readily accepted.

10. As regards granting them the pensionary benefits for the services rendered by them in CNLWO is concerned, and for which the period of service is required to be reckoned, including the periods of service rendered by them as casual labourers, this issue is no more res integra in light of the judgment of the Hon'ble Jharkhand High Court in Mohan Mahto & Ors. (supra). The direction of the Hon'ble High Court is very clear that in absence of non availability of the records with the respondents, the certificates issued by the concerned officials of CMLWO under whom these applicants have worked, are to be relied upon. Taking cognizance of this judgment, this Bench of the Tribunal vide its order dated 17.11.2014 in OA No. 115 of 2012, referred to herein above, had issued certain directions which are mentioned in para 5(ii)(supra). From a bare reading of those directions it would be evident that those directions are to be made applicable to all employees of erstwhile CMLWO, even though some of them might not have knocked the door of any judicial forum. Hence, it is rightly argued by the learned counsel for the applicants that the ibid order of the Tribunal is the order in rem and hence, applicable to the instant case as well.

11. In the conspectus, we dispose of this OA with the following directions to the respondents:-

- (i) The respondents shall verify from records in regard to the service rendered by these applicants as casual labourers when they were working under CMLWO and, accordingly, reckon their qualifying years of service for grant of pensionary

benefits to them for the service rendered in the CMLWO. In case the records are not available then the period of service rendered by these applicants as casual labourers shall be reckoned on the basis of certificates issued by the concerned officers of CMLWO under whom these applicants would have worked.

(ii) The applicants shall be entitled to the pensionary benefits as has been granted to the petitioners in Mohan Mahto & Ors. vs. Union of India & Ors.

(iii) The respondents shall determine the proportionate pension of the applicants within a period of three months and shall release the arrears within a month thereafter. The applicants shall be entitled for arrears of the pension as well as interest as has been given to the petitioners in Mohan Mahto & Ors. (supra).

Sd/-
(Jayesh V.Bhairavia)
Member (Judl.)

Sd/-
(K.N.Shrivastava)
Member (Admn)

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