

**IN THE HIGH COURT OF JHARKHAND AT RANCHI****W.P.(L) No. 175 of 2010**

Employers in relation to the Management of Kustore Area of M/s Bharat Coking Coal Limited, P.O. Kustore, P.S. Jharia, District-Dhanbad, through Sri Suresh Prasad Singh, Son of Late Ram Rakshya Singh, General Manager, Kustore Area of M/s. B.C.C.L., resident of G.M. Bunglow, P.O., P.S. Kenduadih, District-Dhanbad.

... .. **Petitioner**

Versus

Their workmen being represented by Member of Executive Committee, Janta Mazdoor Sangh, having its office at Katras More, P.O. P.S. Jharia, District- Dhanbad. ... .. **Respondent**

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**CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

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For the Petitioner : Mr. Anoop Kumar Mehta, Advocate  
: Mr. Shubham Malviya, Advocate  
For the Respondents : Mr. Shekhar Prasad Sinha, Advocate

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**32/12.05.2026**

1. Heard the learned counsel appearing on behalf of the parties.
2. This writ petition has been filed by the petitioner for quashing the Award dated 27.08.2009 of the Central Government Industrial Tribunal No.1, Dhanbad in Reference No. 94 of 2003 (Annexure-4) whereby and whereunder the learned Tribunal has been pleased to direct regularization of Sri Ashok Ram and 29 other concerned workmen named in the order of reference retrospectively with effect from 01.01.1995 with 50% back wages.
3. Learned counsel for the petitioner has already advanced his arguments which has been recorded vide order dated 05<sup>th</sup> May, 2026 which is as under: -
  - i. As per the written statement filed on behalf of the workmen, the specific case of the workmen in paragraph 11 was that the management had terminated the services of the concerned workmen with effect from January, 1995 by stopping them to work without assigning any reason and without complying the mandatory provision. Learned



counsel submits that there is a huge gap between the termination in 1995 and the reference in year 2003 and once the workmen stood terminated, there was no scope for passing any direction for regularization.

- ii. Learned counsel has relied upon the Hon'ble Supreme Court reported in *(2015) 4 SCC 71 [Oshiar Prasad and Others vs. Employers in Relation to Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited, Dhanabd Jharkhand]* to submit that no industrial dispute existed with regard to absorption/regularization as the concerned workmen in the present case, who were already terminated way back in the year 1995 as per their own case. He submits that under such circumstances, the impugned award directing regularization of the concerned workmen is perverse and calls for interference.

4. *The learned counsel for the respondent* has submitted that there is no scope for interference in the impugned award and there is no perversity in the impugned award. He has further, in response to paragraph 11 of the written statement filed by the concerned workmen, has submitted that the workmen were discontinued from service without assigning any reason and without complying with the mandatory provision of law with effect from January, 1995 but no termination letter was issued to them. He has submitted that the order of regularization with effect from 01.01.1995 with 50% back wages has been rightly made.

5. Learned counsel for the respondent has referred the judgment passed by the Hon'ble Supreme Court reported in *(2008) 12 SCC 275 [General Manager, ONGC, Silchar vs. ONGC Contractual Workers Union]* and has referred paragraph 10, 15, 16 and 18 which are quoted as under: -

*“10. It has also been submitted that the Industrial Tribunal was fully justified in delving into the facts of the case to see the nature of employment of the workmen i.e. as to whether*



*they were employees of ONGC or of the contractor, and the Tribunal having done so, the learned Single Judge was not justified in making a reassessment on facts. For this argument, the learned counsel has relied on R.K. Panda v. Steel Authority of India [(1994) 5 SCC 304 : 1994 SCC (L&S) 1978] and Steel Authority of India Ltd. [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121]*

*15. We have examined the arguments advanced by the learned counsel. This Court has held time and again that the High Court had the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an error apparent on the face of the record. The observations in Trambak Rubber Industries Ltd. case [(2003) 6 SCC 416 : 2003 SCC (L&S) 890] are to this effect and it has been highlighted that the High Court would be fully justified in interfering with an award of an Industrial Court on account of a patent illegality. In Seema Ghosh case [(2006) 7 SCC 722 : 2006 SCC (L&S) 1758] this Court observed that the High Court's interference under Articles 226 and 227 of the Constitution with an award of the Labour Court was justified as the award had been rendered contrary to the law laid down by this Court and as a measure of "misplaced sympathy", and was thus perverse. The other judgments cited by Mr Dave lay down similar principles and need not be dealt with individually. It will be seen therefore that the interference would be limited to a few cases and as already noted above, in the case of a patent illegality or perversity. On the contrary, Mr Sanyal's reliance on Sadhu Ram case [(1983) 4 SCC 156 : 1983 SCC (L&S) 507 : AIR 1984 SC 1467] is more appropriate to the circumstances herein. It has been observed as under: (SCC p. 158, para 3)*

*"3. ... The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in*



*interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management.”*

*16. We are therefore of the opinion that in the light of the facts that have come on record we find no perversity or patent illegality in the award of the Industrial Tribunal and on the contrary must appreciate that it has minutely examined the evidence in arriving at its decision. In this view of the matter, it was inappropriate for the learned Single Judge to have reappraised the evidence and come to a different conclusion.*

*18. There are several observations which do suggest that a workman who has put in 240 days or is a contractual worker, is not entitled automatically to regularisation. We, however, believe that the present case is not one of regularisation simpliciter such as in the case of an ad hoc or casual employee claiming this privilege. The basic issue in the present case is the status of the workmen and whether they were the employees of ONGC or the contractor and in the event that they were employees of the former, a claim to be treated on a par with other such employees. As would be clear from the discussion a little later, this was the basic issue on which the parties went to trial, notwithstanding the confusion created by the ill-worded reference. The Division Bench has examined the evidence on this aspect and has endorsed the finding of the Industrial Tribunal. We also find that the observations in R.K. Panda case [(1994) 5 SCC 304 : 1994 SCC (L&S) 1978] are significant: (SCC p. 310, para 7)*

*“7. It is true that with the passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularisation in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of*



*labourers through a contractor is a mere camouflage and a smokescreen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for the High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits. It need not be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them.”*

**6.** *After hearing the learned counsel for the parties,* this Court finds that by order of reference dated 22.08.2003 the Central Government in the Ministry of Labour made the following reference to the Central Government Industrial Tribunal No.1, Dhanbad under Section 10(1) (d) (2A) of the Industrial Disputes Act 1947. The terms of reference is quoted as under:-

*“Whether the demand of Janta Mazdoor Sangh from the management of Kustore Area for regularization/permanent to Sri Ashok Ram and 29 others as per annexure is legal and justified? If so, what relief the concerned workmen are entitled and from which date?”*

**7.** The reference was essentially relating to regularization or granting the relief of permanency to one Ashok Ram and 29 others which was demanded by the Union namely Janta Mazdoor Sangh. However, the workmen, when they filed their written statement, raised specific plea that the management had terminated their services with effect from January, 1995 by stopping them from working without assigning any reason and without complying with the mandatory provision of law. Paragraph 11 of the written statement filed by the concerned workmen is quoted as under:-



*“11. That, the repeated insistence for regularization had annoyed the Management to the extent of terminating the services of the concerned workmen w.e.f. January, 1995 by stopping them from work without assigning any reason and without complying the mandatory provision of law.”*

8. This Court finds that it has been rightly pointed by the learned counsel for the petitioner that as per the case of the workmen themselves they were terminated from service with effect from January, 1995. But no reference was made with respect to legality and validity of the alleged termination with effect from January, 1995. Rather, the reference was for regularization of the concerned workmen and the award has been passed for regularization of the concerned workman with effect from 01.01.1995 with 50% back wages although, their services, as per the concerned workmen, stood terminated with effect from January, 1995, which is much prior to the date of reference.

9. This Court finds that although the stand of the workmen has been recorded by the learned labour court, but the learned labour court has completely lost sight of the fact that the concerned workmen, who were already terminated way back in 1995, could not have been regularized considering the terms of reference which was essentially for regularization of the concerned workmen.

10. In this regard, the learned counsel for the petitioner has rightly referred to the judgment passed by the Hon'ble Supreme Court reported in *(2015) 4 SCC 71 [Oshiar Prasad and Others vs. Employers in Relation to Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited, Dhanabd Jharkhand]* paragraphs 22 to 27 which is quoted as under:-

*“22. It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when “industrial dispute exists” or “is apprehended between the parties”. Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference*



*while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference.*

*23. Coming now to the facts of this case, it is an admitted case that the services of the appellants and those at whose instance the reference was made were terminated long back prior to making of the reference. These workers were, therefore, not in the services of either the Contractor or/and BCCL on the date of making the reference in question. Therefore, there was no industrial dispute that “existed” or “apprehended” in relation to the appellants' absorption in the services of BCCL on the date of making the reference.*

*24. Indeed a dispute regarding the appellants' absorption was capable of being referred to in reference for adjudication, had the appellants been in the services of the Contractor or/and BCCL. But as said above, since the appellants' services were discontinued or/and retrenched (whether rightly or wrongly) long back, the question of their absorption or regularisation in the services of BCCL, as claimed by them, did not arise and nor could this issue have been gone into on its merits for the reason that it was not legally possible to give any direction to absorb/regularise the appellants so long as they were not in the employment.*

*25. It is a settled principle of law that absorption and regularisation in service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and the employer. Once it comes to an end either by efflux of time or as per the terms of the contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.*

*26. In our considered opinion, the only industrial dispute, which existed for being referred to the Industrial Tribunal for adjudication was in relation to termination of the appellants' employment and whether it was legal or not? It is an admitted fact that it was not referred to the Tribunal and, therefore, it attained finality against the appellants.*

*27. In our considered opinion, therefore, the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, the same was misconceived.”*



11. In the aforesaid judgment, the Hon'ble Supreme Court has categorically observed in paragraph 26 that in the facts of the said case only the industrial dispute which existed for being referred to the Industrial Tribunal for adjudication was in relation to termination of the concerned workmen and no such industrial dispute was referred and therefore, it was held that the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, was itself misconceived.

12. This Court is of the view that on the face of the admitted fact of the concerned workmen that they were terminated from service way back in 1995, no relief of regularization could have been granted to the workmen with effect from 01.01.1995.

13. It has been brought to the notice of this Court, the order passed in *W.P(L) No. 6195 of 2002 [Janta Mazdoor Sangh vs. Union of India through Secretary, Ministry of Labour and Others]* vide order dated 18.06.2003 wherein the order of Union Government refusing to refer the dispute for adjudication was set aside and the appropriate government was directed to reconsider the matter and pass an appropriate order.

14. This Court, from the perusal of the earlier order, finds that the fact that the workmen were terminated in the year 1995 was not brought to the knowledge of this Court and the fact that they stood terminated from January, 1995 was brought before the learned Labour Court by none less than the workmen themselves by making a specific statement in the written statement that they were terminated by the management in the year 1995 itself.

15. Accordingly, the order passed in *W.P.(L) No. 6195 of 2002 (Supra)* does not help the respondent in any manner.

16. In aforesaid circumstances, the impugned award of regularization of the concerned workmen dated 27.08.2009 passed in Reference No. 94 of 2003 by learned Central Government Industrial Tribunal No.1, Dhanbad although those workmen, as per their own case were terminated way back in the month of January 1995, is



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perverse being contrary to the law laid down by the Hon'ble Supreme Court in *(2015) 4 SCC 71 (supra)* and the same is hereby set aside.

**17.** Accordingly, this writ petition is allowed.

**18.** Pending interlocutory application, if any, is dismissed as not pressed.

**(Anubha Rawat Choudhary, J.)**

12.05.2026

Rakesh/-

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