

THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT,
JABALPUR

NO. CGIT/LC/C/11/2017

Present: P.K.Srivastava
H.J.S. (Retd)

Shri Shanker lal Chouhan
S/o Late Shri Shiv Prasad Chouhan
R/o Village Post Malajkhand,
Tehsil Baihar, District, Balaghat(M.P.)
& 08 Others.

Applicants'

Versus

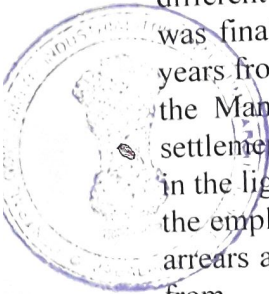
The Union of India
Minsitry of Mines,
New Delhi.
& Two Others

Respondents'

ORDER

(Passed on this 25-7-2022)

1. Applicant Shanker lal Chouhan and Eight Others have filed joint petition under Section 33(C)(2) of the Industrial Disputes Act, 1947, hereinafter referred to by the word 'Act' with a case that a memorandum of statement under Section 12 (3) and Section 18(3) of the Act during conciliation proceedings executed before the Chief Labour Commissioner(Central) New Delhi, regarding revision of wages and other benefits/service conditions of the applicant workman working in different production units of management of Hindustan Copper Limited was finalized between the parties on 9-3-2016 valid for the period of 5 years from 1-11-2012 to 31-10-2017 and accepted by both the parties but the Management did not take any action for implementation of this settlement and did not give benefits to the applicant and other employees in the light of these settlements inspite of several representations made by the employees including the applicants for releasing payments regarding arrears and fitment as well as payments of arrears for the period starting from 1-11-1997 to 1-11-1999. The Management replied to the representations stating that it will decide the quantum of arrears and fitment and mode of payment by considering the payment capacity of the Company but till now they have not been fully paid the arrears according to the settlements. Even after lapse of considerable time which shows that the management is not willing to honour the settlement and make payments according to the settlement to the applicant workman inspite of the fact that the company is continuously gaining profit since 2010 to 2016. According to the balance sheets filed for the period 2010 to 2016



for

with the petition, the company has earned profit of Rs.6759.84 lakhs in the last year itself. The applicants have also attached the calculation sheet of the arrears to which they are entitled and have further stated that after forming a society of such applicant workman, they first approached the Hon'ble High Court by way of filing Writ Petition No.19619/2016 for the same relief but they had to withdraw it with a liberty to file petition before this Tribunal under Section 33-C(2) of the Act. The applicants have accordingly prayed that direction be issued to the management to pay the arrears and other wages attached to the calculation sheet to them. The application is supported with an affidavit, copy of memorandum of settlement dated 9-3-2016, copy of memorandum of settlement dated 19-4-2006, copy of balance sheet and profit and loss account of years 2010 to 2016, copy of individual representations dated 21-11-2016 submitted by applicant workman to the Management. Copies of separate calculation sheet and copy of order of High Court passed in W.P.No.19619/2016 has been filed with the petition.

2. The case of the Management in respect to the application filed by OP Management through its learned counsel is mainly that the Management first admits the settlement between the parties dated 9-3-2016. The Management further claims that payment are being made according to the payment capacity of the Management. The applicants have been paid certain dues as per statement of 9-3-2016 for the period November-2012 to July-2014 and efforts are being made for payment of dues for the remaining period. As regards the claim of payment of arrears within the period of December-1999 till October-2012 it is not covered in the settlement of 9-3-2016, hence the applicant workman are required to raise a separate dispute in this respect. The management further claims that the balance sheets showing profit have no relevance with respect to payment in the light of clause 10.2 which specifically provide that "Modalities of payment shall be discussed and shall be decided by Chief Managing Director." He has already instructed for payment. The management has filed documents to show that payments from November-2012 to July-2014 have been made to the applicant workman.

3. The applicants have not filed any rejoinder to the counter/reply. None was present from the parties at the time of arguments. Parties were given time to file written arguments but no written arguments have been filed. I have perused the record.

4. It comes out from the respective pleadings of parties that settlement of 9-3-2016 is admitted between the parties and its terms and conditions are also admitted. Para 10.2 which the management has referred is an excuse for non-payment/late payments which is being reproduced as follows:-

"The matter of payment of arrears for the period from 1-11-2012 to 29-2-2016 and modalities of payment shall be discussed and decided by Chief Managing Director



separately keeping in view the paying capacity of the company.”


5. The case of the Management that it has paid the dues for the period November-2012 to July-2014 is not disputed by the applicants, hence now the dues are confined only for the period from August-2014 to February-2016 which have admittedly not been paid by the Management. The petition was filed in the year 2017 and is pending till date. There is nothing on record to show that the remaining arrears as mentioned above has been paid by Management. Hence it is held that the arrears from August-2014 to February-2016 have still not been paid by the Management as per the statement dated 9-3-2016 and Management is under obligation in law to pay it.

6. As regards the claim of the applicant workman with respect to settlement between the parties reached on 19-4-2006, it should have been filed within the period of one year when the date of claim became due as provided under Section 33-C(2), hence the claim for this period is held barred by limitation. Similar will be the fate of claim for the period November-1997 to November-1999 because they are subject matter of settlement of 9-3-2016. The management cannot be permitted under law to take refuge of Para 10.2 indefinitely withholding the arrears as mentioned above which are admissible to the applicant/workman as per their calculation chart for the period August-2014 to February-2016. Moreover, when the company is continuously earning huge profit, this action of Management will fall under the category of unfair labour practice as defined in Chapter V Section 25T of the Industrial Disputes Act, 1947.

7. Accordingly the Management is held liable to pay the arrears of dues admissible to the applicant workman as per the calculation sheet filed in the case for the period August-2014 to February-2016 within the period of 30 days from the date of receipt of this order to Management, failing which the amount shall attract interest @ 12% per annum from the date on which it became due till date of payment.

8. The petition stands disposed of accordingly.

No order as to costs.


(P.K. SRIVASTAVA)
PRESIDING OFFICER

Date:-25-7-2022