

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 121 OF 2005

PARTIES: Kapildeo Jha
Vs.
Management of Bhanora Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 30.05.2024

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A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/450/2004-IR(CM-II)** dated 01.09.2005 has been pleased to refer the following dispute between the employer, that is the Management of Bhanora Colliery under Sripur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Bhanora Colliery of M/s. E.C.L. in denying regularization and denying payment of differences of wages in respect of Sh. Kapildev Jha is legal and justified? If not to what relief the workman is entitled? ”

1. On receiving Order **No. L-22012/450/2004-IR(CM-II)** dated 01.09.2005 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 121 of 2005** was registered on 23.09.2005 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. Rakesh Kumar, the General Secretary of Koyala Mazdoor Congress filed written statement of Kapildeo Jha on 10.06.2010. The Agent of Girmint/Bhanora Colliery filed their written statement on 24.08.2016. The fact of the case disclosed in the written statement of the workman is that Kapildeo Jha was a General Mazdoor at Bhanora West Block Colliery under Sripur Area of Eastern Coalfields

Limited (hereinafter referred to as ECL). In 1997 he was deployed to work as a Pit Clerk along with others and the competent authority of ECL approved the placement of Kapildeo Jha to work as Pit Clerk, Grade-II. The management paid him difference of wages for rendering service as Pit Clerk, Grade-II. He was deployed to work as Pit Clerk as per order No. GM/SA/C-6D/6(Gen.)/97/97 dated 11/12.03.1997 which was communicated by the Agent of Bhanora (R) Colliery on 14.04.1997. According to the guidelines followed by the company, if any worker was deployed in a higher post, he would be entitled to higher pay but in the case of Kapildeo Jha initially he was not paid the difference wages. It is claim on behalf of the workman that he should be paid the difference of wages for working as a pit clerk till the date of regularization as Pit Clerk, Grade-II.

3. Further case of the union is that if a workman performed any underground work for 190 days or 240 days on surface, then the person would be entitled to be regularized in the said post in which he works for such duration. The management did not follow the norms and did not regularize him in the post after working for several years. According to the union the management of Bhanora Colliery paid the difference of wages to Kapildeo Jha only for one year and stopped the payment of difference of wages thereafter without any reason.

4. Some of the workmen who were deputed to work as Pit Clerk along with Kapildeo Jha were regularized as Pit Clerk on the basis of the direction passed by the Hon'ble High Court at Calcutta but the cases of Kapildeo Jha and few others have not been considered by the management without any reason. According to the prevailing practice of the company if any workman is permanently working in a particular work, then he shall be regularized in the same work in which he is working, but the policy has not been followed in the case of Kapildeo Jha. The relief sought for in this case is for regularization of Kapildeo Jha, Explosive Carrier at Bhanora Colliery to the post of Pit Clerk, Grade-II with notional seniority in

Clerical Grade, after one year from the date of deployment as Pit Clerk and the second relief claimed on behalf of the workman is payment of difference of wages to the workman for working as a pit clerk.

5. Management contested the case by filing written statement. It is the case of the management that the concerned workman raised a dispute claiming regularization as Pit Clerk. It is their case that the Hon'ble High Court at Calcutta in Writ Petition No. 88 of 2006 filed by Mahendra Kumar Paswan and Others was pleased to direct the management to hear the writ petitioners and to take decision. The case of the writ petitioners for regularization was considered. It is further contended that for the purpose of regularization to any substantive post, notification of competent authority is necessary. The post of Pit Clerk, Grade-II is an entry level post of the Clerical Grade and the same requires financial approval by the competent authority. With introduction of Mechanization process Bhanora west Block Colliery has reduced the loader strength and no Pit Clerk is required. Therefore, claim for regularization of the workman to the post of Pit Clerk is not tenable and has no foundation. The concerned workman is not entitled to any relief and the Industrial Dispute is liable to be dismissed.

6. The short point for consideration is whether denial of regularization of Kapildeo Jha to the post of Pit Clerk and denial of payment of difference of wages is justified and legally tenable and to what relief the workman is entitled?

7. In support of his case the workman filed affidavit-in-chief and faced cross-examination by the management. The witness produced the following documents:

- (i) Copy of the Office Order dated 11/12.03.1997 issued by the General Manager of Sripur Area has been produced as Exhibit WW-I, wherein it is stated that Kapildeo Jha along with others were deployed to work

as Pit Munshi / Clerk and posted at Bhanora West Block Colliery and they would be entitled to difference of wages for the period.

- (ii) Copy of the Office Order dated 15.01.2011 issued by the Personnel Manager (I/C), Sripur Area for regularization of eleven T.R. Employees as Clerk Grade-III, as Exhibit WW-II (collectively in two pages).
- (iii) Copy of the letter dated 14.01.2011 issued by the Office of the Chief General Manager, Kajora Area, as Exhibit WW-III. In the letter addressed to the Deputy Personnel Manager (Admin), Kajora Area it is evident that on recommendation of the Departmental Promotion Selection Committee constituted at Headquarters level, the competent authority has accorded approval for regularization of 9 T.R. Employees as Clerk, Grade-III with immediate effect.

8. On 14.11.2022 Mr. P. K. Das, learned advocate for the management of ECL submitted before the Tribunal that the management does not want to examine any witness.

9. Mr. Rakesh Kumar, Union representative advancing his argument submitted that Kapildeo Jha, who was a General Mazdoor at Bhanora West Block Colliery was deputed to work as a Pit Clerk, Grade-II on the basis of an Office Order dated 11/12.03.1997 (Ext. WW-I). He was never reverted to his earlier post of General Mazdoor and paid the difference of wages for one year. It is submitted that the workman had filed L. C. Application No. 01/2008 under Section 33 (C)(2) of Industrial Disputes Act, 1947, praying for payment of difference of wages to the workman for the post of Pit Clerk, Grade-II for the period from 14.04.1998 till date of filing of application. The L. C. Application was disposed of by an Award dated 30.01.2023, where the management agreed to pay Rs. 23,892.12/- as difference of wages from 04/1998 to 03/2000. Mr. Kumar submitted that the

concerned workman has superannuated from his work w.e.f. 01.05.2023 and urged that the workman is entitled to difference of wages from 01.04.2000 until his retirement on 30.04.2023. No submission is made regarding the claim for regularization of the workman.

10. In reply Mr. P. K. Das, learned advocate for the management argued that the claim for regularization has become infructuous on superannuation of the workman from service w.e.f. 01.05.2023. It is also argued that the workman is not entitled to any difference of wages as he has not been regularized to the post, in respect of which he has claimed difference of payment of wages.

11. I have considered the facts and circumstances of the case, argument advanced by the contending parties and evidence adduced by the workman. The management has not disputed the fact that Kapildeo Jha was deputed as Pit Clerk on the basis of Office Order dated 11/13.03.1997. On a perusal of the Office Order, it appears that the competent authority, in the office order had observed that due to shortage of Pit Clerk at Muslia / New Ghusick / Bhanora / K.D. Incline, 12 persons were deployed to work as Pit Munshi / Clerk and posted accordingly. They would be on training for the period of 1 year in their existing category and shall be paid difference of wages for the period they will be working as Pit Munshi / Clerk and after completion of 1 year's training period they can be considered for regularization. From the available documents on record, I find that W. P. No. 88 of 2006 was filed by Mahendra Kumar Paswan and 5 Others and by order dated 19.09.2007 the Hon'ble Single Bench of the Hon'ble High Court at Calcutta considered the prayer of petitioners and directed that Respondent No. 4 i.e. the Director (Personnel), ECL shall, after giving an adequate opportunity of hearing to the writ petitioners, shall take a decision in the matter within a period of 8 weeks from the date of communication of the order and shall take into consideration the documents annexed to the writ petition and the affidavit, in

reply, filed by the writ petitioners. It was further directed that if the same was found genuine, suitable steps were to be taken and the decisions so taken by the respondent be communicated to the writ petitioner within a period of fortnight. In the instant case Kapildeo Jha did not figure as a writ petitioner and as the Industrial Dispute raised by him was pending before this Tribunal, the management did not consider his regularization. From the materials on record and Award in L.C. Application 01 of 2008, I find that the workman has been paid the difference of wages till 03/2000. A workman who has rendered service in a higher post cannot be deprived of equal pay allocated for the post. The management has not taken any plea that the workman has been reverted to the post of General Mazdoor. Therefore, the workman is entitled to the difference of pay from 01.04.2000 till 30.04.2023 i.e. his last working day.

12. So far as the question of regularization to the post of Pit Clerk, Grade-II has concern, the workman having superannuated from his service there is no scope for his regularization to the post at this stage. The competent authority had no occasion to consider the question of his regularization due to pendency of the Industrial Dispute. Therefore, it cannot be said with assertion that the workman would have qualified for his regularization. The process of consideration was inchoate.

Hence,

ORDERED

that the Industrial Dispute raised on behalf of Kapildeo Jha is allowed in part. The management of ECL is directed to make payment of difference of wages to the workman from 01.04.2000 till 30.04.2023 within a period of two (2) months

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from the dated of communication of the Notification of the Award. The question of regularization not having been considered during the tenure of service, it cannot be said with assertion that there was any illegality on the part of the management. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.