

**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. 16 OF 2009

PARTIES: Bistu Das and 11 Others
Vs.
Management of Bhojudih Coal Washery, BCCL

REPRESENTATIVES:

For the Union/Workmen: None.
For the Management of BCCL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal
STATE: West Bengal.
Dated: 24.09.2025

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-22012/133/2008-IR(CM-II)** dated 31.03.2009 has been pleased to refer the following dispute between the employer, that is the Management of Bhojudih Coal Washery of Bharat Coking Coal Limited and their workmen for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the demand of Rashtriya Colliery Mazdoor Sangh for regularization of Shri Bistu Das and 11 other contract labour w.e.f. July 1993 with the management of Bhojudih Coal Washery of M/s. B.C.C.Ltd. is legal and justified? To what relief the claimants are entitled for? ”

1. On receiving Order **No. L-22012/133/2008-IR(CM-II)** dated 31.03.2009 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 13.04.2009 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.

2. President, Rashtriya Colliery Mazdoor Sangh, Dhanbad filed written statement on behalf of the 12 aggrieved workmen on 20.05.2009. Fact of the case in brief as disclosed in the written statement is that Bistu Das and eleven others namely, Karmu Mahato, Nitai Mahato, Balaram Mahato, Durga Charan Mahato, Gandhari Mahato, Nitai Mahato, Mohan Mahato, Bhiswa Mahato, Muruli Mahato,

Kalipada Mahato and Adhir Gorain are working at Bhojudih Coal Washery under Bharat Coking Coal Limited (hereinafter referred to as BCCL) since July, 1993 and were engaged in the work for cleaning and maintenance of the Marshalling Yard of Bhojudih Coal Washery which was previously performed by the Railways. The management of the Washery bore the expenditure incurred for cleaning and maintenance of Marshalling Yard since inception of Bhojudih Coal Washery. After the Railways discontinued the cleaning and maintenance work, management took up the job of cleaning and maintenance of Marshalling Yard through the aforementioned workmen under its direct supervision and control since July, 1993. The workmen were engaged in the cleaning and maintenance work, performed their work on regular basis and continuously as the job is of permanent nature. Further case of the union is that the concerned workmen are rendering service for several years in uninterrupted manner and their job is an integral part of Coal Washery's operation which is engaged with the production and dispatch of washery products. Though the workmen are employees of the management, the management of Bhojudih Coal Washery have been paying wages to the workmen through contractors, far below the permissible rate provided under National Coal Wage Agreement (hereinafter referred to as NCWA) and Coal Mines Provident Fund (hereinafter referred to as CMPF) contributions are deducted from the wages of the employees and they have CMPF Account Numbers. According to the union the engagement of workmen through contractors are merely for the purpose of paper arrangement which is done by preparing work-orders in the name of contractors, Attendance Register, Payment Sheets, etc. The apparent engagement of the workmen through contractors is actually sham and with the object to camouflage the fact that the workmen are actually under the supervision and control of the principal employer i.e., the management of Bhojudih Coal Washery. In the instant case under reference the union has prayed for regularization of the workmen under the management of Bhojudih Coal Washery w.e.f. July, 1993 and for payment of all pecuniary benefits / entitlement and back wages.

3. Management filed their written statement on 14.08.2012 denying the material assertions and claims made by the union. The facts disclosed in the written statement is that there is no employer - employee relationship between the management and the concerned workmen and the claim of the union that the concerned workmen are entitled to be regularized as permanent employees is not legally tenable. According to the management the persons named in the Order of Reference were never engaged by the management and they were engaged by the contractors to execute the work-orders issued by the management. The concerned workmen received their wages and all benefits from the contractors and their attendance used to be maintained by the contractors. The management denied having any obligation towards the contractual workmen and urged that the management is justified in not regularizing the concerned workmen and they are not entitled to any relief.

4. Union filed a rejoinder on 01.01.2013. It is claimed by the union that the workmen at Bhojudih Coal Washery are under direct control and supervision of the management of BCCL and that they are performing their job for several years which would indicate that the work performed by the workmen is permanent in nature and only to avoid regularization of the workmen as employees of BCCL the management has engaged contractors to camouflage the relationship.

5. In the present case Mr. Dipak Kumar Majee, Secretary of Rashtriya Colliery Mazdoor Sangh, Bhojudih Unit has adduced evidence on behalf of the workmen. He filed an affidavit-in-chief in support of the claim of the union. In his affidavit-in-chief the witness stated that the referred workers namely, Bistu Das and eleven others are performing the job at Bhojudih Coal Washery since 1993 and their work is of permanent and perennial nature. The workmen performed their work under the supervision and control of management of Bhojudih Coal Washery on regular basis and sometimes even on Sundays and holidays on the instruction of

management. The witness further stated that their job is of permanent nature and their contribution towards CMPF is deducted from their wages. The witness prayed for regularization of the workmen for their long and continuous service rendered for cleaning and maintenance of Marshalling Yard and Railway Tracks of Bhojudih Coal Washery.

6. On cross-examination it transpires that the concerned workmen are members of union namely, Rashtriya Colliery Mazdoor Sangh, Bhojudih Unit. During his cross-examination on 24.08.2016 the witness stated that Karmu Mahato has expired and other workmen are alive. From the copy of Death Certificate in the record it appears that Bishwa Mahato, another employee has expired on 13.02.2014. It may be presumed that the rest of the employees are alive and still working. No evidence has been adduced by the management to the contrary. Initially, the case was being conducted by Mr. N. Ganguly, learned advocate, who appeared for the union. Subsequently, the union went unrepresented from 26.08.2024. Management adduced no evidence in this case, though Mr. P. K. Das, learned advocate for the management participated on all dates.

7. Advancing his argument, learned advocate for the management of Bhojudih Coal Washery submitted that the workmen did not adduce any evidence to establish their relationship with the management of Bhojudih Coal Washery, as their employer. Therefore, by no stretch of imagination it can be held that there was an employer-employee relationship between the respondent company and the 12 workmen. It is further argued that the union has failed to prove their case and did not produce any document to prove the period for which the workmen rendered continuous service at Bhojudih Coal Washery. Mr. P. K. Das argued that the workmen have participated periodically for cleaning and maintenance of Marshalling Yard and Railway Tracks and they had worked under the contractor

firms to whom the maintenance work was assigned. It is argued that there was no supervision or control of the management of BCCL over the 12 workmen, as such the prayer of the union for regularization of the workmen is not tenable and they are not entitled to any relief.

8. No argument has been advanced on behalf of the union after the case was fixed up on 05.03.2025 and thereafter 11.03.2025 for hearing of argument.

9. Having considered the pleadings of the parties, evidence on record and argument advanced by Mr. Das, learned advocate for the management of BCCL, I find that the management of Bhojudih Coal Washery has admitted that the enlisted workmen performed work at Bhojudih Coal Washery and were engaged through the contractor. In respect of the claim in the written statement that all the 12 workmen performed cleaning and maintenance of the Marshalling Yard and Railway Tracks at Bhojudih Coal Washery since July, 1993 has not been denied by the management. The management being the custodian of all records did not suggest any alternative case that the workmen engaged during any other period or that their identities could not be verified. It is therefore clear that the 12 workmen named in the Reference were engaged for performing cleaning and maintenance of Marshalling Yard and Railway Tracks at Bhojudih Coal Washery. The work performed was invariably permanent and perennial in nature which transpires from the fact that all these workmen have served the management of Bhojudih Coal Washery uninterrupted and continuously since 1993 and Coal Mines Provident Fund accounts were maintained in their names. Cleaning and maintenance of Marshalling Yard and Railway Tracks are integral part of activity of a Coal Washery as functional Railway Tracks are essential for importing raw materials and dispatch of Washery products. I, therefore, hold that the concerned workmen are in continuous employment for a long period and in regular manner at Bhojudih Coal Washery. For the purpose of deciding the question as to

regularization, the twin test which needs to be satisfied are as follows :

Firstly, it is to be ascertained as to who was making the payment of monthly wages to the workman and

Secondly, under whose supervision they were working.

10. Under the Bharatiya Sakshya Adhiniyam, 2023, the burden of proving the facts specially within the knowledge of the management of BCCL lies upon the employer management. It has been claimed by the principal employer that the 12 workmen were engaged through contractors but the management has not produced any document to prove the terms of engagement of the petitioners through contractor firms and the duration for which it had assigned the work of cleaning and maintenance to the different firms. The management failed to produce any license of the contractor firms engage for the work which is essential under the Contract Labour (Regulation & Abolition) Act, 1970. The fact and circumstances clearly indicate that the engagement of the 12 workmen under contractors was a mere adjustment in paper to coverup the fact that 12 workmen actually under the supervision and control of the management of Bharat Coking Coal Limited, rendering long and uninterrupted service. The concerned workmen have been performing their assigned duties without any break and there is no case of the management that they have been inducted in their work in any illegal manner. They also received their wages through their Bank accounts. The workman enjoyed the Health Benefits from BCCL which is evident from the Health Cards issued in the name of the workmen by the Assistant Manager (P), Bhojudih Coal Washery, Santaldih, Purulia.

11. It appears to me that the role of the employees is essential for proper maintenance of the Coal Washery and their sustained contributions in the service of the employer establishment extending for a long period goes to prove that the nature of job performed by them is indispensable for the employer establishment

and their work is perennial in nature. There is no adverse record against any of the said workmen. Therefore, the workmen who are alive are entitled to equitable treatment of regularization in their service. Denial of such benefit would amount to injustice and must be redressed.

12. It is imperative for the management of Bharat Coking Coal Limited, a public undertaking, to provide fair and stable employment to a person who is rendering utility service for a long period. Workmen engaged on a temporary basis but for extended period are integral to the organization's functioning amounts to contravention of labour standards and unfair labour practice.

13. In the case of **Jaggo Vs. Union of India [2024 SCC OnLine SC 3826]**, the Hon'ble Supreme Court of India referring to the judgment in the case of **Secretary, State of Karnataka Vs. Uma Devi [(2006) 4 SCC 1]** observed as follows :

“ 26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit

acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”

14. Drawing wisdom from the decision of the Hon'ble Supreme Court of India and in view of the settled position of law discussed above, I hold that this is a fit case where the enlisted employees who are still alive be regularized in the service of Bhojudih Coal Washery, BCCL forthwith. They shall be entitled to their pecuniary benefits at par with the permanent employees of the company and would be entitled to continuity of service for the period they are in service and the same would be counted for their post-retired benefits.

Hence,

ORDERED

that the Industrial Dispute is allowed on contest. The management of Bhojudih Coal Washery of Bharat Coking Coal Limited is directed to regularize

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the enlisted workmen in their employment forthwith who are still alive and serving, maintaining their continuity of service from the period they are serving the company 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.

Sd/-

(ANANDA KUMAR MUKHERJEE)

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