

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L). No.5587 of 2017

Sanjay Karpri @ Sanjay Kumar Kapri, son of Late Jagarnath Kapri, resident of Village Kasba, P.O. Hansdiha, P.S. Saraiyahat, District Dumka Petitioner

Versus

1.The State of Jharkhand.
2.Gomdi Rout son of Late Raju Raut, resident of Village Bamankheta, P.O. and P.S. Hansdiha, District Dumka Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Vijay Shankar Jha, Advocate
: Mr. Manish Kumar, Advocate
: Mr. Abhishek Sharan, Advocate
For the State : None
For the Resp. No.2 : Mr. Rishav Kumar, Advocate

10/Dated:04th September, 2024

Heard Mr. Vijay Shankar Jha, learned counsel for the petitioner and Mr. Rishav Kumar, learned counsel for the Respondent no.2. None appears for the State.

2. This writ petition has been filed on behalf of the petitioner challenging the judgment dated 22.06.2017 passed by learned Presiding Officer, Labour Court, Deoghar in W.C. Case No.28 of 2011 by which the petitioner has been directed to deposit the cheque of compensation amount of Rs.3,36,000/- within three months.

3. Learned counsel for the petitioner has submitted that the impugned judgment dated 22.06.2017 passed by the learned Labour Court is illegal, arbitrary and not sustainable in the eye of law. It is submitted that the learned Labour Court below has given wrong finding that the petitioner is the Owner of the Tractor in

question and was the employer of the deceased son of the Respondent no.2. It is submitted that even the petitioner has admitted during his evidence, in cross-examination at para-13 and 14 that he had neither seen the Tractor nor seen any other person at the place of occurrence. It is submitted that the Court below has declared the petitioner as the Owner of the Tractor in question although no charge sheet was submitted against him by the police, however, the learned Magistrate had taken cognizance against him and as such the learned Labour Court by relying upon the order taking cognizance has allowed the claim of the Respondent No.2 illegally.

4. It is submitted that the petitioner had already been acquitted in the criminal case vide judgment dated 12.01.2018 in S.T. No.13 of 2015 by the learned District and Additional Sessions Judge-IV, Dumka and as such the judgment passed by the learned Labour Court is not sustainable in the eye of law and it may be set aside in the interest of justice.

5. On the other hand, learned counsel for the Respondent No.2 has opposed the prayer of the petitioner and submitted that the writ petition is not maintainable. It is submitted that as per the provision of Section 30(1)(a) of the Employee's Compensation Act, 1923, the judgment passed by the learned Labour Court in W.C. Case No.28 of 2011 is appealable. However, the writ petitioner instead of filing appeal has filed this writ petition only in order to avoid payment of compensation. It is submitted that the Appeal should have been filed by depositing the amount of compensation and after obtaining the certificate of the Commissioner but instead of doing the same, he has preferred the writ petition only to avoid payment of compensation.

6. Learned counsel for the Respondent No.2 in support of his contention has relied upon the judgment reported in **2019 SCC OnLine Pat 564 (Frontline (NCR) Business Solutions Private Limited through its General Manager vs. Anita Devi and others)**, the order dated 02.04.2024 passed in C.W.P No.11289-1998 (**State of Punjab and others vs. Rajvir Kaur and others**) by the High Court of Punjab and Haryana at Chandigarh and **2023 SCC OnLine SC 1852 (India Glycols Limited and Anr. vs. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri and Ors.)** (para-5 and 10). It is submitted that in view of the above the writ petition may be dismissed.

7. Having heard learned counsel for both the sides and going through the records, this Court finds that a compensation case bearing W.C. Case No.28 of 2011 was filed by the Respondent No.2 against the petitioner for grant of compensation of Rs.5,00,000/- along with due wages from 15.10.2010 to 21.10.2010 @ Rs.100/- per day . It has been claimed that the deceased-Kumod Rout, who was the son of the Respondent No.2, was engaged by the petitioner- Sanjay Karpri on 21.10.2010 for carrying stones on his Tractor No.JHE 1835 and in course of the loading stones at Amaya Pahari, the deceased who was aged around 20 years, sustained injury from the stone and he died on the spot.

8. Thereafter, the Respondent No.2 had instituted a case bearing Saraiyahat P.S. Case No.224 of 2010 on 21.10.2010 under Section 304 IPC and allied section of the IPC and also under the provisions of Mines and Explosive Act. However, copy of the FIR has not been enclosed in the writ petition.

9. It appears from the impugned judgment that although the petitioner was not charge sheeted, yet the learned Judicial

Magistrate had taken cognizance under Section 304 IPC and on the basis of that finding, the learned Court below has proceeded against the petitioner and after giving notice to both the sides to lead their evidence, the Court below by the impugned judgment dated 22.06.2017 directed the petitioner to pay compensation of Rs.3,36,000/- within three months. However, the petitioner has filed the present writ petition instead of filing the appeal under the provisions of Section 30(1)(a) of the Employee's Compensation Act, 1923.

10. For better appreciation of the case, Section 30(1)(a) and 2 of the Employee's Compensation Act, is being quoted herein:-

“30.Appeals-(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;”

[Provided that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]

(2) The period of limitation for an appeal under this section shall be sixty days.”

11. It appears that as per the provisions of the Section 30(1)(a) of the Employee's Compensation Act, the appeal will be maintainable as an alternative remedy instead of filing writ petition.

12. Even the Hon'ble Patna High Court observed in the case of ***(Frontline (NCR) Business Solutions Private Limited through its General Manager vs. Anita Devi and others)***, reported in ***2019 SCC OnLine Pat 564*** that the appeal will be maintainable instead of filing writ petition.

13. The Punjab and Haryana High Court vide order dated 02.04.2024 passed in C.W.P No.11289-1998 (***State of Punjab and others vs. Rajvir Kaur and others***) at para-4 and 7 has held as follows:-

“Para-4:- Learned Senior Counsel further points out that the writ petition against the said award is not maintainable because as per Section 30(1)(a) of the Act, the order passed by the Commissioner is appealable and according to the third proviso, the appeal would not be maintainable until it is accompanied by a certificate of the Commissioner to the effect that the appellant has deposited with him the amount payable under the impugned order.

Further submits that contention of the petitioners in Paragraph 12 of the writ petition, wherein, it has been specifically stated that petitioners are left with no other remedy except to invoke extra-ordinary writ jurisdiction of this Court, is totally misconceived, same being totally contrary to the facts and circumstances of the present case.

For reference, paragraph No.12 of the writ petition is reproduced as under:-

“12. That the petitioner has left with no other remedy except to invoke extra-ordinary writ jurisdiction under Article 226/227 of the Constitution of India in this Hon’ble High Court.”

Para-7:- Furthermore, this Court cannot lose sight of the fact that the petitioners herein, against whom the impugned award has been passed, are State Government and/or its authorities, i.e. (1) State of Punjab, (2) Secretary to Government Punjab, Information and Public Relation Department, and (3) District Public Relation Officer, Bathinda. On the basis of mere technicalities, the petitioners, who are well acquainted with law, its lengthy procedure and aims and objects of the Statute, i.e. Workmen’s Compensation Act, cannot be expected to sit idle with closed eyes, and not to pay the awarded amount of compensation to the needy family. Moreover, a frivolous attempt has been made by filing present writ petition before this Court, without pointing out any special reason

of doing so, merely to avoid deposit of the compensation amount, for not filing appeal.

Looking at the conduct of the petitioners, this Court is constrained to impose cost amount of Rs.1,00,000/- (Rupees one lac only), against the petitioners/State of Punjab, to be deposited with the Punjab and Haryana High Court Bar Association Lawyers Family Welfare Fund, in State Bank of India, Current Account No.41564846387, IFSC Code: SBIN0050306, within a period of two weeks from today.

Copy of the receipt of deposit of cost amount, be also produced on the adjourned date.”

14. It has been held by Hon’ble Supreme Court in the case of ***India Glycols Limited and Anr. vs. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri and Ors.*** reported in ***2023 SCC OnLine SC 1852*** at para-5 and 10 as follows:-

“Para-5:- In an appeal by the second respondent, the Division Bench by its judgment dated 21 March 2023, reversed the view of the Single Judge. The Division Bench has come to the conclusion that the writ petition instituted by the appellant was not maintainable in view of the specific remedies which are provided under the special statute. The High Court held that the appellant ought to have taken recourse to the remedy under Section 34 of the Arbitration and Conciliation Act, 1996² and having failed to do so, a writ petition could not be entertained. The observations of the High Court are set out in paragraph 38 of the impugned judgment which is extracted below:

“38. Insofar maintainability of the writ petition is concerned, when respondents No. 2 and 3 had an adequate, efficacious and alternate remedy under Section 34 of the 1996 Act, learned Single Judge ought not to have entertained the writ petition. While maintainability of a writ petition is one aspect, entertainability is the relevant question. Considering the objective of the MSME Act and the provisions of Sections 15 to 23 thereof, learned Single Judge erred in entertaining the writ petition.

Para-10:- *In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has*

deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the Act of 1996 are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSMED Act, 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue.”

15. In view of the specific provisions of Section 30(1)(a) of the Employee’s Compensation Act, 1923 and also in view of the law laid down by the Hon’ble Supreme Court and the Hon’ble Punjab and Haryana High Court, this Court finds that the writ petition is not maintainable

16. Accordingly, this writ petition is dismissed, however, the petitioner will be at liberty to file the appeal, if so advised.

(Sanjay Prasad, J.)

Saket/-

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