IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 27TH OF JULY, 2023

MISC PETITION NO. 3562 OF 2019

BETWEEN:-

SHIV DAS, S/O MANGLOO MEHRA (DECEASED) REPRESENTED BY HIS LRS.

1. **SMT. NAUMA BAI ALIAS NAUMI BAI MEHRA, WD/O LATE SHIV DAS MEHRA, AGED ABOUT 57 YEARS, R/O WARD NO. 10, H.NO. 237, BADKATOLA PYARI NO.1, PYARI TEHSIL, KOTMA, DISTRICT ANOOPPUR (M.P.).**

2. **SMT. RAMWATI JHARIYA, D/O SHIV DAS, S/O MANGLOO MEHRA, W/O HEERALAL JHARIYA, AGED ABOUT 44 YEARS, R/O H.NO. 181, WARD NO. 14, SAMNA TOLA, BHAGHA, BIJURI, TEHSIL KOTMA, DISTRICT ANOOPPUR (M.P.)**

....PETITIONERS

(BY SHRI MUKHTAR AHMED WITH SHRI P.C. JAIN - ADVOCATES)

AND

SOUTH EASTERN COALFIELD LTD. THROUGH SUB-AREA MANAGER, J & K BHADRA, PO BHADRA,(DISTT. SHAHDOL) NOW DISTRICT ANOOPPUR (M.P.).

.....RESPONDENT

(BY SHRI ANOOP NAIR – ADVOCATE)

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Reserved on : 16.06.2023

Pronounced on : 27.07.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

This petition is under Article 227 of the Constitution of India questioning the validity of the order dated 28.05.2019 (Annexure P/5) whereby the Presiding Officer, Central Government Industrial Tribunal (CGIT) Jabalpur has allowed the respondent/management to prove the charge of misconduct by leading evidence even after the death of the workman during pendency of proceeding before the CGIT.

2, Although, the objection was raised by the claimants/workman side that after the death of workman misconduct cannot be proved and no permission to lead evidence can be granted to the management. The claimants therefore, refused to cross-examine the witnesses produced by the management because, according to them in view of the circular issued by the Central Government, the misconduct cannot be proved after the death of workman. The circular dated 20.10.1999 provides that the disciplinary proceeding, to prove the misconduct after the death of workman, should be closed.

3. Finally the CGIT closed the right of the claimants to cross-examine the witnesses produced by the management. Thus, this order is under challenge by filing this petition saying that the Tribunal should not have allowed the management to produce the evidence or to prove the misconduct by leading evidence under the existing circumstances.

4. The challenge is made mainly on the ground that once the order was passed by the Tribunal on 12.12.2012 restraining the management

to produce the evidence and closed their right to lead the evidence, the said order cannot be reviewed in the same proceeding further and any order permitting management to lead the evidence cannot be passed by the same authority. The petitioners have also prayed that the enquiry must be closed after the death of workman against whom charge of misconduct is levelled by the management.

5. Shri Nair counsel for the respondent has opposed the submission and submitted that this petition is not maintainable because the Supreme Court in number of cases has observed that against the interim order in a pending proceeding before the CGIT, the writ petition is not maintainable. He further submits that the Supreme Court has also observed that after the death of workman proceedings are not abated and therefore whatever right exists with the workman when he is alive, the same right would be continued even after his death. Leading evidence and permitting the management to lead the evidence and the order passed in that regard cannot be said to be illegal. He further submits that sub-section (8) of Section 10 of the Industrial Disputes Act, 1947 (For short 'Act, 1947') postulates that the proceedings would be continued even after the death of workman. Shri Nair further submits that the order dated 12.12.2012 has been passed by the CGIT because in the written statement of the management they did not claim for leading the evidence and as such that right was refused and opportunity was not granted to the respondent-management to lead the evidence.

6. Learned counsel for the petitioner further submits that during the course of proceedings they also moved an application for closing the enquiry due to the death of the workman and they placed an order passed in the case of **Mangal Prasad vs. OFK Jabalpur.** However, Shri Nair submits that the said order has no application because that

order was passed in a different proceeding in which Central Government was the management-respondent and they govern by the circular issued by the Central Government whereas the circular issued by the Central Government and the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity "Rules, 1965"). are not applicable upon the present respondents i.e. SECL.

7. After hearing learned counsel for the parties and perusal of record of the case, the core question emerges to be adjudicated as to whether the departmental enquiry facing by the employee for a charge of misconduct can be continued after his death.

8. Learned counsel for the petitioner has challenged the order dated 28.05.2019 solely on the ground that the Tribunal committed mistake in permitting the management to adduce evidence and also closing right of the claimants to cross-examine the witnesses because, according to the claimants, after death of the workman the enquiry pending against him is lapsed and cannot be continued.

9. Shri Ahmed submits that the claimants refused to cross-examine the witnesses produced by the management on the ground that the employee against whom charge of misconduct had to be proved in a departmental enquiry since died during the pendency of the said enquiry and therefore the enquiry, according to him, lapsed and could not be continued. He has also relied upon an Office Memorandum dated 20th October, 1999 which has been issued by the Government of India, Ministry of Personnel, Public Grievance & Pensions (Department of Personnel & Training), New Delhi in which it is mentioned that the disciplinary proceedings should be closed immediately on the death of the alleged government employee against whom enquiry is pending under the CCA Rules, 1965.

10. However, Shri Nair appearing for the respondent submits that the said memorandum is not applicable upon the respondent because the services of the petitioner are not governed with the CCA Rules, 1965 and are governed with the Standing Orders. He has also submitted that sub-section (8) of Section 10 of the Act, 1947 clearly provides that merely because the Workman died during pendency of the enquiry, the proceeding does not lapse.

11. For the sake of convenience, sub-section (8) of Section 10 is reproduced as under:-

> "**sub-section (8)** No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government."

12. To strengthen his argument, Shri Nair has also relied upon the judgment of the Supreme Court reported in **(1994) 1 SCC 292 – Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi vs. Management of Sangramgarh Colliery and other** in which the Court has observed that if workman dies in a pending enquiry the reference does not abate and the Tribunal does not become *functus officio.* Shri Nair has further relied upon in the case of **V.Veeramani vs. Management of Madurai District Cooperative Supply and Marketing Society Ltd. And another** reported in **1995 Supp (3) SCC 557** in which the Supreme Court has taken a view that the death of a Workman during pendency of enquiry does not result in abatement of dispute. The Supreme Court has also relied upon the view already taken in the case of **Rameshwar Manjh (supra).**

13. In the case of **Rameshwar Manjhi (supra)**, the Supreme Court

has decided the reference made and answered the question "Whether an industrial dispute survives when Workman concerned dies during its pendency?" and "Can the proceedings before the Tribunal/Labour Court be continued by the legal heirs/representatives of the deceased workman?". It is to be mentioned here that while deciding the reference there were several judgments of the High Courts taking different view and the Supreme Court finally observed as under:-

> "**8.** We are not inclined to agree with the view taken by the learned Judges of the Assam, Patna, Delhi and Orissa High Courts.
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> 9. The Assam High Court has primarily gone on the interpretation of the expression "industrial dispute" under Section 2(k) of the Act. It is not necessary for us to examine the reasoning of the Assam High Court any further because by insertion of Section 2-A into the Act with effect from December 1, 1965, any dispute or difference between an individual workman and his employer, connected with or arising out of discharge, dismissal, retrenchment or otherwise termination of his services, is deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is party to the dispute. It is thus obvious that Section 2-A of the Act makes an individual dispute, though not taken up by the union, an industrial dispute within the ambit of the Act. The judgment of the Assam High Court is, thus, no longer an authority on the point.
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> **10.** Patna High Court fell into patent error in relying upon clauses (*c*) and (*d*) of Section 18(3) of the Act for reaching the conclusion that the heirs of a deceased workman are not entitled to be substituted in the proceedings before the Tribunal. Section 18(3) of the Act enumerates the parties who are bound by the settlement arrived at in the manner provided therein. Clause 18(3)(*c*) refers to a party to the settlement who is an employer and further provides that the settlement shall be binding not only on the employer but his heirs, successors or assigns in respect of the establishment to which the dispute relates. The said provision is obviously to safeguard the interest of the workmen in the sense that after the death of the employer his heirs, successors or assigns may not say that they are not bound by the settlement. It was not necessary to make similar provision in Clause 18(3)(*d*) because the party referred to in the said clause is composed of workmen and as such the death of an individual workman cannot have

any effect on the binding nature of the settlement. The provisions of Section 18(3) of the Act have been enacted by the legislature with a view to give continuity to the binding effect of the settlements reached between the parties under the Act. Patna High Court was not justified in relying upon the provisions of the said section for the purpose of denying a right to the heirs of a deceased workman to be substituted in a pending industrial dispute.

11. We do not agree with the viewpoint of Delhi and Orissa High Courts to the effect that the claim for computation under sub-section (2) of Section 33-C of the Act dies with the death of the workman. It is difficult to understand why a claim of money which became payable to the deceased workman should not be claimable, upon satisfaction of other relevant conditions, by the heirs of the deceased workman by making a claim under sub-section (2) of Section 33-C of the Act. Having regard to the well-established principle that all causes of action — except those which are known as dying along with the death of a person — must survive to his heirs, the cause of action created in favour of workman under sub-section (2) of Section 33-C of the Act should in normal circumstances survive to the heirs. We approve the reasoning of the Bombay High Court in *Sitabai case* [1972 Lab IC 733 : 73 Bom LR 749 : (1972) 1 LLJ 290 (Bom)] .

12. The maxim '*actio personalis moritur cum persona*' though part of English Common Law has been subjected to criticism even in England. It has been dubbed as unjust maxim, obscure in its origin, inaccurate in its expression and uncertain in its application. It has often caused grave injustice. This Court in a different context, in considering the survival of a claim for rendition of accounts, after the death of the party against whom the claim was made, in *Girja Nandini Devi* v. *Bijendra Narain Choudhury* [AIR 1967 SC 1124, 1131 : (1967) 1 SCR 93] observed as under:

> "The maxim '*actio personalis moritur cum persona*' — a personal action dies with the person — has a limited application. It operates in a limited class of actions *ex delicto* such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages *ex delicto*, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory."

13. It is thus obvious that the applicability of the maxim '*actio personalis moritur cum persona*' depends upon the 'relief claimed' and the facts of each case. By and large the

> industrial disputes under Section 2-A of the Act relate to the termination of services of the concerned workman. In the event of the death of the workman during pendency of the proceedings, the relief of reinstatement, obviously, cannot be granted. But the final determination of the issues involved in the reference may be relevant for regulating the conditions of service of the other workmen in the industry. Primary object of the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman. Even otherwise there may be a claim for back wages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman."

Further, the Supreme Court in the case of **V. Veeramani (supra)** relying upon the case of **Rameshwar Manjh (supra)** has reiterated the same view and observed as under:-

> "The Division Bench has obviously taken a view which as is pointed out above has since been reversed by this Court in the aforesaid in the aforesaid judgment in *Rameshwar Manjhi case*. What is more it appears that in the meanwhile the Act was also amended by inserting sub-section (2-A) in Section 10 of the Act, the relevant last provisio to which reads as follows:
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> > "Provided also that no proceedings before a Labour Court, Tribunal or national Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed."
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> That amendment came into force from 21.08.1984. The objects and reasons for introducing the said proviso states as follows:
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> > "There have been conflicting decisions about the right of legal heirs of a workman in the event of the death of the latter pending proceedings before the authorities under the Act. Provision is being made to make it clear that pending disputes will not abate in the event of the death of the workman."
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> **3.** This makes it clear that although the amendment came into operation from 21.08.1984 the Legislature by the said amendment only wanted to make clear the law on the

> subject which according to it was prevalent from the very inception. Thus it is clear that the industrial dispute would neither abate nor otherwise come to an end merely because the workman who was a party to the dispute had died pending the adjudication of the dispute."

14. In view of the provision made in sub-section (8) of Section 10 of the Act, 1947 and also the law laid down by the Supreme Court in cases referred hereinabove, I am of the opinion that the submission made by the learned counsel for the petitioners does not have any legal substance and therefore the same is rejected. However, in the facts and circumstances of the case, the right of the petitioners/claimants closed by the Tribunal of cross-examining the witnesses produced by the management is set aside and one more opportunity is granted to the petitioners/claimants to cross-examine the witnesses produced by the management.

15. With the aforesaid, the order dated 28.05.2019 (Annexure P/5) is accordingly modified to the extent that the petitioners/claimants be given one more opportunity to cross-examine the witnesses produced by the management and if the same is not done by the petitioners/claimants then it is for the Tribunal to proceed in accordance with law and the Tribunal can close the right of the petitioners/claimants to cross-examine the witnesses.

16. Accordingly, the petition is allowed in part clarifying that the enquiry may be continued but one more opportunity be provided to the claimants to cross-examine the witnesses produced by the prosecution.

(SANJAY DWIVEDI)
JUDGE

Raghvendra