

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 18th OF APRIL, 2023

WRIT PETITION No. 17220 of 2020

BETWEEN:-

1. **NIRPAT LAL BAGHEL AND OTHERS S/O LATE SHRI S.L. BAGHEL, AGED ABOUT 66 YEARS, VILLAGE BIRSA, WARD NO. 21, MALAJKHAND, BALAGHAT MP (MADHYA PRADESH)**
2. **DEBANGSHU SAMADDAR S/O LATE SHRI AVINASH SAMADDAR, AGED ABOUT 65 YEARS, QUARTER NO. B-1/73 MALAJKHAND COPPER PROJECT (MADHYA PRADESH)**
3. **UDAL SINGH INWATI S/O LATE SHRI BENI SINGH INWATI, AGED ABOUT 65 YEARS, WARD NO. 7 COMPOUNDER TOLA BAIHAR (MADHYA PRADESH)**
4. **AJIT KUMAR S/O LATE SHRI BALDEO PRASAD, AGED ABOUT 65 YEARS, B-1 198 QTR. HCL TOWNSHIP MALAJKHAND (MADHYA PRADESH)**
5. **YASHPAL CHOUHAN S/O LATE SHRI DILYA CHOUHAN, AGED ABOUT 65 YEARS, WR. NO. B-2 31 HCL TOWNSHIP MALAJKHAND (MADHYA PRADESH)**
6. **CHANDRABHUSHAN SINGH S/O LATE SHRI DURYODHAN SINGH, AGED ABOUT 65 YEARS, QR. NO. B1-78 HCL TOWNSHIP MALAJKHAND (MADHYA PRADESH)**
7. **DURAB BAIG S/O LATE SHRI ILAHI BAIG MIRZA, AGED ABOUT 64 YEARS, QR. NO. B3-135 HCL TOWNSHIP MALAJKHAND (MADHYA PRADESH)**
8. **BHUWAN LAL CHOURASIYA S/O LATE SHRI BABULAL CHOURASIYA, AGED ABOUT 65 YEARS, B5-28 HCL TOWNSHIP MALAJKHAND (MADHYA PRADESH)**

(BY SHRI VIKRAM SINGH - ADVOCATE)

AND

1. HINDUSTAN COPPER LIMITED THR. ITS CHIEF MANAGING DIRECTOR REGISTERED OFFICE TAMRA BHAWAN 1, ASHUTOSH CHOUDHARY AVENUE KOLKATA (WEST BENGAL)
2. GENERAL MANAGER HINDUSTAN COPPER LIMITED MALAJKHAND COPPER PROJECT POST MALAJKHAND (MADHYA PRADESH)
3. MANAGER (HR AND A) HINDUSTAN COPPER LIMITED MALAJKHAND COPPER PROJECT POST MALAJKHAND (MADHYA PRADESH)
4. DIRECTOR (PERSONNEL AND ADMINISTRATION) TAMRA BHAWAN ASHUTOSH CHOUDHARY AVENUE KOLKATA (WEST BENGAL)

.....RESPONDENTS

(BY SHRI S.M.GURU - ADVOCATE)

This petition coming on for orders this day, the court passed the following:

ORDER

This writ petition is filed by the petitioners, who were employees of Hindustan Copper Limited, Malajkhand Copper Project, District Balaghat. Petitioners after attaining the age of superannuation were offered contract employment. The terms and conditions of the order of contract employment were that they will be entitled to the monthly emoluments detailed in Table-1/Table-2 or the last drawn basic pay, whichever is higher as is evident from Annexure P/2. Petitioners were given offer of appointment as contained in Annexure P/3 wherein it is mentioned that they will be paid a consolidated monthly emoluments of last drawn basic pay i.e.28,750+15% Conveyance Allowance as monthly remuneration during this contract period and no

additional payment will be made as monthly remuneration. A settlement was arrived at between the Management and the Union and it was to be applicable to all the workmen, whose names were recorded in the attendance register of the Company as on 1.11.2012. Since the pay revision settlement was effected subsequently with effect from 1.11.2012 as is contained in Annexure P/4 and the memorandum of compromise is of the year 2016 but it has been applied retrospectively, therefore, the petitioners' contract salary also deserves to be revised in view of the fact that they were offered reemployment on contractual basis and were offered last drawn basic pay+15% Conveyance Allowance as salary.

It is submitted by learned counsel for the petitioners that in the first round of litigation, Petitioner No.2 Debangshu Samaddar had filed Writ Petition No.19519/2018, which came to be disposed of by a Coordinate Bench of this Court vide order dated 8.3.2019 directing the respondents/Director Personnel to decide the representation of the petitioners within eight weeks from the date on which certified copy of this Court's order is placed before it.

Shri S.M.Guru, learned counsel for the respondents opposes the prayer made by learned counsel for the petitioners and submits that once the terms and conditions of the contract were settled and it was directed that the petitioners will be entitled to a particular set of emoluments, which has been defined in the offer of appointment then there cannot be any going back in the terms and conditions of the contract and the petitioners are not entitled to claim any additional benefit.

I have heard learned counsel for the parties and gone through the material available on record.

Firstly, what is of primary importance to decide this case is the

stipulation contained in Annexure P/2 dated 30.8.2011 by which the scheme for awarding jobs through contractual appointment on full time fixed tenure basis was prepared. The scope and object of the policy is to provide engagement of retired personnel on fixed tenure contract basis as a temporary measure to meet specific job requirements of limited duration, which cannot be handled by the regular employee of the Company for want of requisite expertise or due to manpower turnover. The scheme in Clause No.14 deals with remuneration to the candidates awarded jobs under the scheme. Clause No.14(a)(iii) provides that in case of retired PSU employees, monthly emoluments shall be as detailed in Table-1/Table-2 or last drawn basic pay whichever is higher.

When the stipulation in the scheme for awarding jobs through contractual appointment on full time fixed tenure basis itself provides for payment of emolument as per Table-1 or Table-2 or last drawn basic pay, whichever is higher and once the basic pay was revised in terms of the wage settlement from a retrospective date i.e.1.11.2012 then such higher basic pay will be admissible to the contract employees inasmuch as the stipulation in the scheme is to pay higher benefit out of three options, namely, emoluments mentioned in Table-1/Table-2 or the last drawn basic pay. Once the last drawn basic pay is enhanced retrospectively, the contract salary upon contract appointment will also stand enhanced and, therefore, the petitioners are entitled to claim benefit of last drawn revised basic pay+15% of that basic pay towards conveyance allowance for local travel.

Accordingly, this writ petition deserves to and is hereby allowed. The impugned decision of the General Manager, Hindustan Copper Limited, Malajkhand Copper Project, Post Malajkhand, District Balaghat as contained in

order dated 4.8.2020 Annexure P/11 is hereby set aside as the authorities have failed to take into consideration this very aspect of the matter that there is a stipulation of grant of last drawn basic pay and once that last drawn basic pay stood revised then the emoluments are required to be revised accordingly. Had there been no stipulation in the scheme for paying the last drawn basic pay then the petitioners would not have been benefited but against their own scheme, the respondents cannot discriminate the petitioners.

In above terms, this writ petition is allowed & disposed of.

amit



(VIVEK AGARWAL)
JUDGE