IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 406 of 2023

Employer in relation to the Management of M/s Hindustan Copper Limited, a Government of India Enterprise, Indian Copper Complex, Mosabani Group of Mines, P.O. & P.S. - Mosabani Mines, District - East Singhbhum (Jharkhand) through its Sr. Manager (HR & A) Sri Arjun Lohara, aged about 34 years, son of Sri Jitu Lohara, resident of Qrt. No.JTAQ-25, HCL Colony, Moubhandar, P.O. & P.S.- Moubhandar, District - East Singhbhum, (Jharkhand)

… … **Petitioner**

Versus

Ex-employees' Coordination Committee, Mosabani, through its General Secretary Sri Sujit Kumar Shaw, resident of Village Kela Bagan, P.O.-Bedia, PS- Mosabani, District - East Singhbhum, PIN 832104 (Jharkhand) … … **Respondent**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. Amit Kumar Das, Advocate
	: Mrs. Swati Shalini, Advocate
For the Respondent	: Mrs. M.M. Pal, Senior Advocate
	: Ms. Ruby Pandey, Advocate
	: Ms. Apoorva Singh, *Amicus*

C.A.V. On 16th December 2024 **Pronounced on 11th March 2025**

1. The office note of this writ records reveals that the notice issued to the respondent returned unserved by stating that the notice was refused but a *vakalatnama* has been filed by Sujit Kumar Shaw in his individual capacity without any mention of the respondent Ex-employees' Coordination Committee, Mosabani and without any seal. A counter affidavit has also been filed. Neither in the *Vakalatnama* nor in the counter affidavit it has been stated that Sujit Kumar Shaw is the general secretary of the respondent Ex-employees' Coordination Committee, Mosabani and is pursuing the case on behalf of himself and also on behalf of 413 ex-employees in representative capacity. Since the *Vakalatnama* has been filed in individual capacity, it cannot be said that Sujit Kumar Shaw is representing all other 413 ex-employees before this Court or even representing the respondent Ex-employees' Coordination Committee, Mosabani. However, the case has been extensively argued on the basis of materials available on record. An amicus was also appointed by this Court who has also assisted this Court in the matter.

2. This writ petition has been filed for the following reliefs:

> *"For issuance of appropriate writ(s)/ order(s)/, direction(s) setting aside the Award dated 28.09.2022 (Annexure 4) passed by Shri Dinesh Kumar Singh, learned Presiding Officer, Central Government Industrial Tribunal, No.1, Dhanbad in Reference No.13 of 2017, whereby and whereunder he has been pleased to answer the reference in favour of respondent-workman and hold that 414 workmen, who were separate under the Voluntary Retirement Scheme due to closure of the mines are entitled to arrears of wages arising out subsequent pay/wage revision."*

3. The terms of reference before the learned ***Central Government Industrial Tribunal No. 1, Dhanbad (hereinafter referred to as 'Industrial Tribunal')*** is as under:

> *"Whether the ex-employees of M/s. HCL who were separated under VR scheme due to closure of Mines are entitled for arrears of wages arising out of subsequent pay/wage revision?"*

4. On 25.11.2024 learned counsel appearing for the petitioner management had submitted that there are altogether 414 employees involved in the present case who accepted voluntary retirement pursuant to a scheme published by the petitioner and after acceptance of their voluntary retirement, there was some circular regarding pay revision which was given effect from a date prior to the date of voluntary retirement of the employees involved in the present case. Consequently, the said employees were seeking revision of the amount receivable out of pay revision in connection with their voluntary retirement. He had submitted that such relief has been granted by the learned Industrial Tribunal to the aforesaid 414 employees and consequently, the present writ petition has been filed by the management. The learned counsel had relied upon following judgments:

(i) ***(2006) 11 SCC 731 (B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and others)***

(ii) *(2003) 6 SCC 490 (Officers & Supervisors of I.D.P.L. Vs. Chairman & M.D., I.D.P.L. and others)*

(iii) *(2015) 4 SCC 482 (Manojbhai N. Shah and others Vs. Union of India and others)*

5. The learned counsel for the petitioner had submitted that once the voluntary retirement was accepted, it was full and final and revision of pay, even if it was effective from a date prior to the date of voluntary retirement, was not applicable for such employees who had accepted voluntary retirement as per the applicable scheme.

6. The case was adjourned to 10th of December 2024 and on that day the learned senior counsel for the respondent had prayed for adjournment to go through the records. However, on 10.12.2024 it was also recorded that in the terms of reference the number of workmen was not mentioned and a point was raised as to whether it could be supplemented by sending a list of workmen by the Ministry or by the Assistant Labour Commissioner. The arguments of the parties were concluded on 16.12.2024. The parties have also filed their notes of arguments.

7. Arguments of the petitioner-management.

I. The respondent appears to be an Association formed by the Ex-employees of Hindustan Copper Limited who got separated under the Voluntary Retirement Scheme in the year 1997. No details of this association have been brought on record. Even the details of its members and status of the respondent have not been disclosed.

II. An industrial dispute was raised after almost 20 years of separation claiming benefits of pay revision which was implemented subsequent to the separation of the workmen under the Voluntary Retirement Scheme but w.e.f. November, 1997. The respondent- Association claimed that they have been discriminated and illegally denied the benefits of pay revision on the ground that they have been separated under the Voluntary Retirement Scheme. After failure of conciliation, the Ministry of Labour, Government of India, vide order dated 28.06.2017 (Annexure 1) referred the matter to the industrial tribunal for adjudication. The following points have been raised with respect to the reference :-

(i) Reference is not maintainable, more so, as the respondent is not a Trade Union or a recognized Union.

(ii) No name of workmen is mentioned in the term of reference, therefore, the reference is bad for vagueness and is indefinite.

III. The concerned mines of the petitioner-Company were closed during the period 1997-2003 with the permission of the Ministry of Labour, Government of India under the Industrial Disputes Act, 1947. The workmen would have otherwise been entitled to closure compensation @ 15 days of average pay for every completed year of arrears or part thereof in excess of six months. However, a more beneficial scheme i.e. Voluntary Retirement Scheme was offered to them wherein they have been given benefit which is nearly three times more than the closure compensation and almost all the employees of Mosabani Group of Mines opted for the said scheme and got the benefit of the scheme.

IV. The employees who got separated under the Voluntary Retirement Scheme constitute a separate class who are not entitled to benefit of pay revision made pursuant to a settlement subsequent to their separation, even otherwise, for the following reasons:-

a. The 1997 wage Revision which was effective from 01.11.1997 could be implemented only in April 2006 for the serving employees i.e. after a gap of almost 10 years due to critical financial position of the Company. The said Wage Revision of 1997 was however implemented with the approval of the Govt. of India, Ministry of Mines conveyed vide their number 10/3/204-Met-III dated 17-04-2006 whereafter a Memorandum of Settlement dated 19.04.2006 was signed between the representatives of the Management and those of the Recognized Trade Union of the company before Chief Labour Commissioner (Central), New Delhi.

b. The para (V) of letter dated 17.04.2006 of the Ministry of Mines reads as under -

> "the revised scale of pay may be implemented w.e.f. 01.08.2004, the arrears of payment on account of wages/pay revision would be decided separately in consultation with the Ministry keeping in view the paying capacity of the company"

c. As will be apparent from bare perusal of the order-sheets, initially in the reference made to the learned Industrial Tribunal, there was no mention of the details of the workmen on whose behalf the dispute was sought to be raised, which fact stands recorded in the order-sheet dated 05.02.2019 wherein the submission on behalf of the respondent has been recorded that a list of workmen has been sent by A.L.C., Chaibasa. Subsequently, the order-sheet dated 10.04.2019 would show that three lists were filed before the Court by the Assistant Labour Commission (Central), Chaibasa with a copy to the Ministry containing name of 188 +226 + 511 = 925 workmen. Further, from the order-sheet dated 03.05.2019, it shall become apparent that a letter was issued to the Ministry for providing list of workmen and one list was received. Surprisingly, at the stage of conciliation or at the stage of reference, the persons on whose behalf the dispute was sought to be raised was not even verified. Further, as will be apparent from bare perusal of the order dated 04.03.2021, on behalf of the workmen, the following documents were marked as Exhibits: -

<table>
<tr><th>SN</th><th>Exhibits</th><th>Submissions</th></tr>
<tr><td>1.</td><td>HCL/PERS/9/37/260
Dated-20/02/1995
Ext. No.W-1</td><td rowspan="2">This letter apparently refers to the Company's Voluntary Retirement Scheme then in vogue and, therefore, the term "the Company's VRS" has been mentioned. This apart, on 20.02.1995 and on 09.03.1995 when these letters were issued, neither anyone could apprehend nor anyone could foresee the future benefits under VRS claimed to have been made in this case.</td></tr>
<tr><td>2.</td><td>Photo copy of the office order of the Chief Manager (P) ICC, dated - 09/03/1995
Ext. No.W-2</td></tr>
<tr><td>3.</td><td>Photo copy of the memorandum of settlement 2006 of Hindustan Copper Ltd
Ext.-W-3 and also Exhibit-11</td><td>Exhibit-3 is similar to Exhibit 11.
(i) Clause 1.0 makes this wage settlement applicable to all regular employees born on the rolls of the petitioner-Company as on 01.11.1997.
(ii) In internal page 3 of Exhibit 11, it has been mentioned that the 4th All India Wage Settlement was signed on 20.12.1995 which was operative from 01.11.1992 to 31.10.1997. This explains Exhibit 1 and Exhibit 2, the letters dated 20.02.1995 and 09.03.1995. As the 4th Wage Settlement was under negotiation and in pipeline, therefore, these letters were issued to the employees opting for voluntary retirement under the then existing scheme, wherein the Management decided to extend the benefits of Wage Revision which was in the process of implementation.
(iii) Clause 7.1 of the Wage</td></tr>
</table>

		Settlement specifically provided that though the pay fixation would be effective from 01.11.1997, however, same would be notional and actual payment would commence from 01.08.2004. (iv) Further clarification is there in Clause 8.2, wherein it has been mentioned that the arrears of wages and other allowances arising out of the settlement for the period 01.08.2004 to 31.03.2006 shall be paid from 1st August 2006.
4.	Photo copy of letter dated 17/10/2008 regarding payment of wage/salary arrears arising out of 1997 pay revision **Ext. No.W-4**	As per this letter, apparently, the benefit of wage revision is not to be extended to the VR employees i.e. the employees who have retired under the Voluntary Retirement Scheme. This letter issued by the Government of India was never challenged nor Govt. of India was made a party to this case.
5.	Photo copy of office memorandum dated 08/12/2000 regarding Voluntary Retirement Scheme/Voluntary Separation Scheme for the employees of Public Enterprises **Ext. No. W-5**	In reply to **Question No.15**, it has been clarified that this scheme is in supersession of old scheme and in reply to **Question No.19,** it has been clarified that the benefits of the pay revision shall not be extended to the VR employees. This letter issued by the Government of India was never challenged nor Govt. of India was made a party to the case.
10.	Photo copy of letter dated 08/06/2001 of Rana Som, Director (Personal) **Exht. No. W-10**	Apparently, Exht.10 relates to a letter issued to one Suresh Prasad Sharma, an Electrical Engineer which has nothing to do with the instant case. The letter was issued to an Executive whose post was Assistant Manager who was not a workman.

d. The respondent though had claimed the benefit of wage revision in computation of the benefits under the Voluntary Retirement Scheme under which its members have claimed to retire, but failed to exhibit or bring on record the scheme under which they had opted for voluntary retirement and got separated from the Company. ***The scheme was the most important document for adjudication of the dispute, but the same was deliberately suppressed.***

e. Not a single document or separation letter was brought on record to prove that who were the employees who opted for and were separated from the Company under which Voluntary Retirement Scheme. These omissions on their part are crucial and in absence of the same, no relief could have been extended to the respondent.

V. The reference is bad as the dispute was sought to be raised after 20 years of separation, that too, through an unrecognized Association. After separation, all the employees who adopted for voluntary retirement received all the benefits and no dispute survived. All of a sudden, after almost 20 years of such separation, new claims could not have been agitated and as such, the request of reference ought to have been refused on the ground of staleness.

(Reference, Prabhakar v. Joint Director, Sericulture Department and Another, (2015) 15 SCC 1, Paragraphs 8, 10, 12 and 42.1 to 42.6.

VI. In the reference, there is no mention of any name or number of workmen, nor any list of workmen has been mentioned in the rejoinder filed on behalf of the respondent. However, surprisingly, Award contains the reference of Sujit Kumar Shaw and 413 others. From where these names had crept up in the Award is unknown.

VII. A dispute under the Industrial Disputes Act could have been raised either by the aggrieved workmen or a recognized Trade Union on their behalf. Respondent is an Association which is neither recognized nor registered under the Trade Union Act and, therefore, was not competent to raise a dispute on behalf of 414 employees who got separated under the Industrial Disputes Act, 1947.

(Reference, The President, Labour Organization of HAL v. The Management of Hindustan Aeronautics Limited, ILR 2005 Kar, 4163, Para 13- An industrial dispute can be raised only by a recognized Union and not unrecognized/unregistered body.)

VIII. The respondent has made a heavy reliance on a Circular dated 20.02.1995 wherein it was informed that all employees who have retired/will be retiring under the Company's Voluntary Retirement Scheme will be entitled to wage revision/pay revision benefits as and when the same is finalized (Exhibit W/1). This Circular was apparently applicable to the Voluntary Retirement Scheme in vogue on the date of Circular dated 20.02.1995, but cannot be made applicable to a Voluntary Retirement Scheme which was subsequently introduced.

IX. The respondent had also made reliance on Exhibit W/3, the wage settlement. Apparently, the period of settlement has been mentioned in Clause 2.0 of the Settlement which is 01.11.1997 to 31.10.2007. Firstly, this Scheme is applicable only to the regular employees who were on the roll of the Company on 01.11.1997. The members of respondent-Association claimed to have opted and got voluntarily retired, but have not brought any document on record to show that they were in the rolls of the Company on 01.11.1997 or their letter of separation. ***The List on which the respondents are relying upon is of no consequence in as much as the list was never exhibited nor the dates mentioned therein has any evidentiary value***.

X. The aforesaid ground has been taken in addition to the ground that in view of the law settled by the Hon'ble Supreme Court, the employees, who opt to get separated under the Voluntary Retirement Scheme, form a separate class in itself who are entitled to the benefits confined under the Scheme and after their separation, they cannot claim the benefits of some pay revision introduced subsequently, though with retrospective effect. Surprisingly, the Voluntary Retirement Scheme under which the members of the respondent claim to have separated has not been brought on record, nor any separation letter showing separation of one or the other member under the Voluntary Retirement Scheme has been brought on record.

XI. Clause 8.1 of the Memorandum of Settlement (Exhibit W/3) itself mentions that the matter of payment of arrears for the period 01.11.1997 to 31.07.2004 shall be discussed and decided separately keeping in view the paying capacity of the Company. ***The respondent has not brought on record any document to show that any employee of the petitioner-Company actually got the financial benefits of pay revision for the period 01.11.1997 to 31.07.2004 and in absence thereof, no direction to that effect could have even otherwise been passed***.

XII. So far as the merit of the claim is concerned, it is now settled by the Hon'ble Supreme Court in a catena of decisions that employees opting to superannuate under the Voluntary Retirement Scheme is a separate class in itself and such employees who got separated under the Voluntary Retirement Scheme cannot claim the benefits of pay revision subsequently introduced, though with a retrospective effect. In this regard, the petitioner seeks to rely on the following judgments: -

a) ***HEC Voluntary Retired Employees Welfare Society and another Vs. Heavy Corporation Limited and others, (2006) 3 SCC 708, Paras 11, 12, 18, 19, 22 & 28.***
b) ***Manojbhai N. Shah v. Union of India, (2015) 4 SCC 482 paragraphs 28 to 31***
c) ***Maharashtra State Financial Corpn Ex-Employees Association and others Vs. State of Maharashtra and others, (2003) 11 SCC 186, paragraphs 40 and 41.***
d) ***Judgment passed in W.P.(C) No. 7240 of 2019 decided by this court.***

8. Arguments of the respondent-workmen

a) Management/ Petitioner has neither examined any witness nor has proved any documents in support of its case.
b) Award is based on evidences on record. Workmen exhibited following documents:-

Exhibit W/1- Photo copy of circular No. HCL/PERS/9/37/260 dated 20.02.1995.

Exhibit W-2- Photo copy of office order of chief Manager (P) ICC, Dated 09.03.1995 regarding circular NO HCL/PERS/9/37/260 dated 20.02.1995.

Exhibit W-3- Photo copy of Memorandum of settlement 2006 of Hindustan Copper Ltd.

Exhibit W-4- Photo copy of letter dated 17.10.2008 regarding payment of wage/salary arrears arising out of 1997 pay Revision.

Exhibit W-5- Photo copy of Office Memorandum dated 08.12.2000 regarding voluntary Retirement scheme/voluntary separation scheme for the employees of public Enterprises.

Exhibit W-6- Photo copy of Annual Report of Hindustan copper Ltd 2006-2007.

Exhibit W-7- Photo copy of Memorandum of Agreement of Hindustan Copper Ltd on 27.03.1980.

Exhibit W-8- Photo copy of letter No L-43024/3/99/IR (Misc) dated 23/12/1999 regarding application seeking permission of Government for closure of Pathagora and Kendadih Mine.

Exhibit-W-9- Photo copy of letter No 43024/5/97/IR(Misc) dated 01.10.1997 regarding application seeking permission of Govt for closure of Mosaboni Mines.

Exhibit-W 10- Photo copy of letter dated 08.06.2001 of Rana Som, Director (Personnel).

Exhibit W-11-Photo copy of Memorandum of settlement 2006 of Hindustan copper Ltd.

c) ***List of 414 Ex-employees of HCL (188+226 total 414) and list of workmen has been sent by Under Secretary, Government of India to the learned Industrial Tribunal in the year 2019 in two phase:-***
   i. ***In 1st list 1 to 188 workmen***
   ii. ***In 2nd list 1 to 226 workmen***

d) All concerned workmen were employees of the M/s Hindustan Copper Limited retired under the V.R scheme due to closure of mines and at the time of floating of the said schemes, the pay revision was pending, which was brought in force from 1997 after the employees had been voluntary retired and the revision of pay scale was done w.e.f 01.01.1997 for executive and w.e.f. 01.11.1997 for non-executive on the basis of settlement.

e) In the Circular dated 20.02.1995 (Exhibit W-1), it is mentioned that all the employees who have retired/will be retiring under V.R scheme will be entitled to wage revision/pay revision benefits as and when the same is finalised.

f) Most of employees have died/ old aged above 70 years and are suffering from financial difficulties.

g) Memorandum of Settlement (Exhibit W-3 and W-11) arrived between the Management and Employees are binding on both of them wherein it has been clearly mentioned that those who are on roll on 01.11.1997 are entitled to the benefits of said settlement.

h) In para 7.1 and 8.1 of the Memorandum of Settlement it has been clearly mentioned regarding payment of revised wages as such all the employees who are on rolls on 01.11.1997 cannot be discriminated and denied benefits of settlement because they had subsequently sought voluntary retirement under the various schemes floated after 01.11.1997.

i) Award is legal, proper and valid and has been passed on the basis of the evidence on record.

j) Relied Judgments:

   I. (2000) 4 SCC 245 ((Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another)

   II. (2008) AIR SCW 3996 (ONGC Vs. ONGC Contractual Workers Union)

   III. 2002 3 JCR 52 (HC) (Tata Iron & Steel Co. Ltd. Vs. State of Bihar)

IV. ***1988 Supp SCC 768: AIR 1988 SC 2168 (Calcutta Port Shramik Union Vs. Calcutta River Transport Association and others)***

Assistance by Amicus

9. An amicus was appointed by this Court and she has assisted this Court in going through the records.

Findings of this Court

10. The points which arise for consideration in this case are:-

I. Whether the reference itself was vague as it neither provided the number of ex-employees involved in the case nor any list of ex-employees was enclosed with the order of reference?

II. Whether the respondent- Ex-employees' Coordination Committee, Mosabani was representing all the 414 ex-employees whose list was later on sent to the Industrial Tribunal by the Ministry of Labour / concerned Assistant Labour Commissioner?

III. If the answer to the point no. II is in the affirmative, then whether the Ex-employees' Coordination Committee, Mosabani could have represented the concerned 414 ex-employees?

IV. If the answer to all the aforesaid points is in favour of the respondent Ex-employees' Coordination Committee, Mosabani, then whether the impugned award is perverse?

11. The records from the learned Industrial Tribunal reveals that the written statement was filed by Sujit Kumar Shaw under his signature and it was titled *"Written Statement on Behalf of Ex-Employees Hindustan Copper Ltd., Indian Copper Complex Mosabani Group of Mines Including Rakha Copper Project"*. The written statement did not reveal that it was being filed in representative capacity on behalf of the Ex-employees' Coordination Committee, Mosabani. However, the following points were raised in the written statement which is quoted as under:

*"**<u>Written Statement on Behalf of Ex-Employees Hindustan Copper Ltd., Indian Copper Complex Mosabani Group of Mines Including Rakha Copper Project.</u>***

Hindustan Copper Limited, Time to time gives Notice to closers of their various Units, and force to take VRS of their employees on deference of VRS schemes.

In all that cases the circulars are as under regarding arrears of Pay fixation:

1. Circular No.HCL/PERS/9/37/260 dated 20.2.95 Issued by Head office by Director Personnel, vide which it is cleared that pay fixation benefit should be given to all VRS employees also.

2. The Office order of chief Manager (P) ICC of 9.3.1995 same circular was issued.

3. During VRS the wage settlement was due from 1997 hence the Hindustan Copper Limited Given interim relief to the employees as proof that whenever the pay/wage revision would be done the employees will get the benefit.

4. The wage/pay revision was done on 19th APRIL 2006

5. The Govt Of India Ministry of Mines Vide Letter Ref 10/3/2004-MerIII dated 17th Oct. 2004 give approval to payment of residual arrears arising out of 1997 Pay revision for a period from 1.1.1997 for executive and 1.11.1997 for non executive to 31.7.2002.

6. That the Jharkhand High Court vides Case No. W.P. (S) 1405 of 2003 directed the Hindustan Copper Limited to take decision on the representation of the petitioner in accordance with law regard to applicability of the claim as raised in the present writ petition within a period of 3 months

7. The Kolkata High Court against W.S. No. 6501 (W) of 2011 Puch Parvathisem & Others Vs Hindustan Copper Ltd,. & others verdict as "I Directed the respondent company to take necessary step for release of arrears arising out of the said pay revision for the period from January 1st 1997 to November 30, 1999 which is due to the petitioner with interest at the rate of 8 percent within eight week from the date of communication order"

8 The Guidelines issued by the Joint Secretary Govt. Of India Ministry of Heavy Industries & Public Enterprises Dept of Public Enterprises Vide Office Memorandum No. 2(32)/97-DPE (WC) GL-XXXV Govt. of India dated 8th December 2000 (Voluntary Retirement Scheme/Voluntary Separation Scheme for the Employees of Public Enterprises) mentioned as under:-. (S.No. 3) "whether any arrears of ex-Garcia are to be paid in event of PAY REVISION being sectioned subsequent to VOLOUNTARY SEPARATION? Ex-gratia will be recalculated on the basis of revised pay scale and the defference be paid.

9. Kindly go through the Annual Report Publish by The Hindustan Copper Limited. Page 52 "Schedules forming part of the accounts" part 8 of page 52 which is self elementary

regarding payment of arrears arising out of pay fixation from 1.1.97 for executives and 1.11.1997 for non executives where fund provision is there.
10. The Hindustan Copper Limited declared as MININ RATNAM Category 1
11. Hindustan Copper Limited is a profitable Unit and had given Cheque of Rs. 83.27 crore the 20% of the net profit to Mr. Dinsha Patel on 20.9.2013 for the financial year 2012-2013.
I/we hope it is cleared to you and any queries are to be reply at the time of arguments.
I/we declared that the above statement true to my knowledge.

S/d
(Sujit Kumar Shaw)"

12. Case of the petitioner- management before the learned Industrial Tribunal was as under:

i. *The term of reference in absence of name of workmen concerned is vague and indefinite and not maintainable.*
ii. *The ex-employees who were separated under VR Scheme were neither dismissed nor terminated, so they would not be treated as workmen under the definition given in Sec. 2A & 2(s) of I.D. Act.*
iii. *The Mosaboni Group of Mines were closed because of exhaustion of mineable reserve. The VR separated employees were paid the terminal benefits as admissible to them including the statutory dues at the time of separation itself, so they were not entitled to any further payment of arrears arising out of wage revision of 1997 effective from 01/11/1997.*
iv. *The 1997 wage revision which was effective from 01/11/1997 could be implemented only in April 2006 for serving employees after gap of 10 years due to critical financial position of the employer and the same was implemented with approval of the Government of India, Ministry of Mines conveyed vide letter no. 10/3/204-Met-III dated 17/04/2006 in which there was no direction regarding payment of arrears to VR separated employees.*
v. *The Letter no. 10/3/2004 Met. III dated 17/10/2008 conveyed the approval of the Govt. Of India for the payment of residual arising out of 1997 pay revision for the period from 01.01.1997/01.11.1997 to 31.07.2002 to the existing employees and to those separated otherwise than on VR in two instalments. The regular employees have not been paid full arrears arising out of 1997 wage revision.*

vi.The management stated that Para no.-1 of the written statement of workman was not correct and the statement made in Para no.-2 to 11 of the written statement of workman were also not correct and not relevant.

13. A rejoinder (annexure-2 to the writ petition) was filed before the learned Industrial Tribunal under the signature of Sujit Kumar Shaw by describing "for and on behalf of Ex-employees HCL/Mosabani Group of Mines Including Rakha Copper Project" in which again no foundational details of one or the other ex-employees including that of Sujit Kumar Shaw were given.

14. Case of the respondent who claimed to have been representing 414 workmen before the learned Industrial Tribunal was as under:-

a. *The Director Personnel (Head Office) of the employer had issued a Circular No. HCL/PERS/9/37/260 dated 20/02/1995, in which it was clearly mentioned that benefit of pay fixation should be given to all VRS employees and subsequently the Office Order of Chief Manager (P) ICC, dated 09/03/1995 was issued.*
b. *The VRS wage settlement was due from 1997, so the Hindustan Copper Limited had given interim relief to the employees as proof that whenever the pay/wage revision would be done, the employees would get the benefit and the wage/pay revision was done on 19/04/2006.*
c. *The Government of India Ministry of Mines vide letter bearing reference no. Ref 10/3/2004-MerIII dated 17th October 2004 gave approval to payment of residual arrears arising out of 1997 Pay Revision for a period from 01/01/1997 for executive and 01/11/1997 for non-executive to 31/07/2002.*
d. *In the meantime, Hon'ble Jharkhand High Court vide order passed in W.P.(S) 1405 of 2003 directed the employer to take decision on the representation in accordance with law with regard to applicability of claim as raised in the writ petition within a period of 3 months.*
e. *Further the Kolkata High Court in W.S. No. 6501 (W) of 2011 had directed the employer to take necessary step for release of arrears arising out of the said pay revision for the period 01/01/1997 to*

30/11/1999 which was due to the petitioners with interest at the rate of 8% within eight weeks for the date of order.

f. *The Annual Report published by the employer was self-explanatory regarding payment of arrears arising out of pay fixation from 01/01/1997 for executive and 01/11/1997 for non-executive. The employer is a profitable unit and had given cheque of Rs. 83.27 crores, the 20% of net profit to Mr. Dinsha Patel on 20/09/2013 for the financial year 2012-2013.*

15. No witness was examined in support of the case of the ex-employee including Sujit Kumar Shaw and Sujit Kumar Shaw only filed certain documents which were marked exhibit. The following documents were marked: -

"Exhibit W-1- Photo Copy of Circular No. HCL/PERS/9/37/260 Dt. 20/02/1995.

Exhibit W-2- Photo Copy of Office Order of Chief Manager (P) ICC, dated 09/03/1995 regarding Circular No. HCL/PERS/9/37/260 dated 20/02/1995.

Exhibit W-3- Photo Copy of Memorandum of Settlement 2006 of Hindustan Copper Ltd.

Exhibit W-4- Photo Copy of Letter dated 17/10/2008 regarding payment of wage/salary arrears arising out of 1997 Pay Revision.

Exhibit W-5- Photo Copy of Office Memorandum dated 08/12/2000 regarding Voluntary Retirement Scheme/Voluntary Separation Scheme for the Employees of Public Enterprises.

Exhibit W-6- Photo Copy of Annual Report of Hindustan Copper Ltd. 2006-2007.

Exhibit W-7- Photo Copy of Memorandum of Agreement of Hindustan Copper Ltd on 27/03/1980.

Exhibit W-8- Photo Copy of Letter No. L-43024/3/99/IR (Misc.) dt 23/12/1999 regarding application seeking permission of Govt. for closure of Pathargora and Kendadih Mine.

Exhibit W-9- Photo Copy of Letter No. 43024/5/97/IR (Misc.) Dt. 01/10/1997 regarding application seeking permission of Govt. for closure of Mosaboni Mines.

Exhibit W-10- Photo Copy of Letter dated 08/06/2001 of Rana Som, Director (Personnel).

Exhibit W-11- Photo Copy of Memorandum of Settlement 2006 of Hindustan Copper Ltd."

16. ***The management neither examined any witness nor proved any documents in supports of their case. The management in their written statement had already taken a plea that the term of reference in absence of name of workmen concerned was vague and indefinite and was not maintainable.***

17. The learned Industrial Tribunal gave its findings in paragraphs 11 to 19 of the award. In paragraph 11 of the award, it was noted that at the time of receiving the schedule of reference, the list of workmen was not attached and a request was subsequently made to provide the list and then the ministry provided the list of 414 workmen and it was held by the learned Tribunal that under such circumstances, the list formed part of the schedule to reference. Since no oral evidence was led by both the parties and the documents produced by respondent/ Sujit Kumar Shaw were marked exhibit, the case was decided on the basis of documents only. The findings are as under:

> *"11. At the outset of discussion it is relevant to mention here that at the time of receiving the schedule of reference, list of workmen was not attached and subsequently the Ministry of Labour and Employment was requested to submit the list of workmen involved in this reference.*
>
> *After that the Ministry of Labour and Employment had submitted a list of 414 (four hundred fourteen) Ex-Employee of Hindustan Copper Ltd., so the list of Ex-Employees of HCL is part and parcel of schedule.*
>
> *12. It is required to mention here that all the concerned workman are ex- employees of Hindustan Copper Ltd., Mosabani Group of Mines and they have opted for voluntary retirement on different dates under the scheme of VR announcement by the Govt. of India, Ministry of Mines.*
>
> *13. In this case neither the sponsoring union nor management has adduced any oral evidence on their behalf.*
>
> *14. Now, coming to the documentary evidence of concerned workmen it appears that, the Exhibit W-1 is the Circular dated 20/02/1995 which shows that those who have retired under the company's Voluntary Retirement Scheme will be entitled for wage revision, the Exhibit W-2 is Circular dated*

09/03/1995 which shows that the employees retiring under Company's VR Scheme in addition to pay revision benefits, will also be entitled for VR benefits, the Exhibit W-3 is Memorandum of Settlement of 2006 in which under Para 7.1 it is mentioned that the fixation of pay in the revised scales of pay will be effective from 01/11/1997 and actual payment would commence from 01/08/2004 in the revised scales of pay and in Para 8.1 it is mentioned that matter of payment of arrears for the earlier period from 01/11/1997 to 31/07/2004 and modalities of payment thereof will be discussed and decided separately keeping in view the paying capacity of the company in consultation with Administrative Ministry, the Exhibit W-4 is letter dated 17/10/2008 in which it has mentioned that the payment of residual arrears arising out of 1997 pay revision for the period from 01/01/1997 (for Executives)/ 01/11/1997 (for Non-Executives) to 31/07/2002 to the existing employees and to those separated otherwise than on VR in two instalments during the current fiscal year subject to availability of surplus fund, the Exhibit W-5 is an Office Memorandum of Ministry of Heavy Industries & Public Enterprises regarding Voluntary Retirement Scheme/Voluntary Separation Scheme for the employees of Public Enterprises, the Exhibit W-6 is the Annual report of HCL, the Exhibit W-7 is the Memorandum of Agreement on 27/03/1980, the Exhibit W-8 is application seeking permission of the Government for closure of Pathargora and Kendadih Mines (ICC) of M/s. HCL, the Exhibit W-9 is an application dated 01/10/1997 for seeking permission of the Government for closure of Mosaboni Mines, Exhibit W-10 is a letter of Director (Personnel) dated 08/06/2001 and the Exhibit W-11 is the Memorandum of Settlement of 2006 in which it has been categorically mentioned in Para 1.0 under heading Scope and Coverage that the settlement shall cover all the regular workmen borne on the rolls of HCL as on 01/11/1997 subject to the conditions enumerated in Para 7.1 and 8.1 of this Memorandum of Settlement. The Para 7.1 of the settlement says that the fixation in any revised scales of pay will be effective from 01/11/1997 but the fixation will be notional from 01/11/1997 to 31/07/2004 and modalities of payment thereof will be discussed and decided separately keeping in view the paying capacity of the company in consultation with Administrative Ministry.

15. After going through the list of workmen submitted by the Ministry of Labour and Employment it appears that the date of VR of all the concerned workmen are after 01/11/1997, so all the workman mentioned in the list are covered under the settlement of 2006.

16. The management had brought notice to the Tribunal of letter no. /10/3/2004-Met.III, dated 17/10/2008 in which it is mentioned that the payment of residual arrears arising out of 1997 pay revision for the period from 01/01/1997 (for Executives)/1.11.1997 (for Non-Executives) to 31/07/2002 to the existing employees and to those separated otherwise than on VR in two instalments during the current fiscal year subject to availability of surplus fund.

17. Now, under Para 1.0 under heading Scope & Coverage of Memorandum of Settlement of 2006 (Exhibit W-11) it has been categorically mentioned that this settlement will cover all the regular workmen borne on the rolls of Hindustan Copper Limited as on 01/11/1997 and the concerned workmen whose names are mentioned in the list attached with the schedule were on the rolls of service of HCL on 01/11/1997, so they are entitled for revision of wages as per para 7.1 of the Memorandum of Settlement,

In view of such fact the letter dated 17/10/2008 is in contravention of the Memorandum of Settlement of 2006 arrived between the Employer (HCL) and its employees. Moreover any letter which contravenes the Memorandum of Settlement is not binding on the concerned workmen and management.

18. It is required to mention here that the management had raised objection on the point of maintainability of reference of this case and on that order has been passed that it will be taken into consideration at the time of final hearing of the case.

It is relevant to mention here that the concerned workmen were employee of the Hindustan Copper Ltd. and they had taken voluntary retirement under the scheme of Government of India and they had not been paid their revised pay scale since 01/01/1997 as per Memorandum of Settlement of 2006.

In view of such the reference is maintainable and they were the workmen of the Hindustan Copper Ltd.

19. After considering all the facts and circumstances of the case the Tribunal finds and holds that all the ex-employees of HCL as per list received by Ministry of Labour and Employment, Government of India (Sujit Kumar Shaw & 413 others) who were separated under VR Scheme due to closure of Mines are entitled for arrears of wages arising out of subsequent pay/wage revision."

18. The records of the case reveal that the terms of reference did not mention the number of employees/ex-employees involved in the case. Admittedly, there was no schedule to the terms of reference and consequently, neither the name nor the number nor the foundational detail in connection with one or the other ex-employee was available when the reference was made. The written statement was filed under the signature of Sujit Kumar Shaw and there was no indication as to whether Sujit Kumar Shaw was an office bearer of the respondent (Ex-employees' Coordination Committee, Mosabani) or that he was authorised to represent all the ex-employees who had taken voluntary retirement. Further, the written statement also did not provide any foundational details of the ex-employees including that of Sujit Kumar Shaw himself and it primarily referred to certain decisions of the petitioner management/Government of India and settlement regarding revision of pay.

19. Thus, at the stage of reference and filing of the written statement under the signature of Sujit Kumar Shaw, the proceedings before the learned Industrial Tribunal remained completely vague not only in respect of the number of ex-employees but also with respect to the names and details of the ex-employees and it was also not clear as to under what capacity Sujit Kumar Shaw had filed the written statement and whether he was representing the respondent (Ex-employees' Coordination Committee, Mosabani) and whether he was authorised to represent one or the other ex-employee before the learned Tribunal.

20. Admittedly, the voluntary retirement was availed by executive as well as non- executive employees and it was not clear as to whether the concerned ex-employees were executive or non -executive and whether the Industrial Tribunal would have the jurisdiction to deal with the executive ex-employees. The dates of voluntary retirement of one or the other ex-employee and the scheme of the voluntary retirement under which one or the other ex-employee opted for voluntary retirement, much less the terms and conditions of voluntary retirement scheme(s) were not mentioned in the written statement filed by Sujit Kumar Shaw or even in the rejoinder. Admittedly, there were number of voluntary retirement schemes and not even one was exhibited before the learned tribunal .

21. The petitioner management raised objection regarding vagueness of the reference in their written statement. By this time the respondent (Ex-employees' Coordination Committee, Mosabani) had not entered in the case before the learned Industrial Tribunal as no written statement was filed on their behalf representing one or the other ex-employee. Sujit Kumar Shaw was just one of the ex-employees and there was nothing on record to show that he was representing the respondent (Ex-employees' Coordination Committee, Mosabani) or was authorised to represent the other ex-employees.

22. A rejoinder to the written statement of the management was filed under the signature of Sujit Kumar Shaw showing himself to be representing the respondent (Ex-employees' Coordination Committee, Mosabani) but this time also the list or the names of the ex-employees involved in the case much less the foundational details about such ex-employees was not mentioned nor anything was mentioned as to who were the ex-employees being represented before the learned Industrial Tribunal and what was the legal status of Ex-employees' Coordination Committee, Mosabani.

23. This Court further finds that later on the list of the ex-employees involved in the case was forwarded by the Ministry but there was nothing on record even to remotely suggest that the respondent (Ex-employees' Coordination Committee, Mosabani) or Sujit Kumar Shaw were authorised to represent any or all the ex-employees involved in the case before the learned Industrial Tribunal except that Sujit Kumar Shaw also claimed to be an ex-employee but no foundational details in this regards were given.

24. Even in this writ proceedings, the notice sent to the respondent (Ex-employees' Coordination Committee, Mosabani) returned on refusal and Sujit Kumar Shaw has filed *Vakalatnama* in his individual capacity and the counter affidavit filed by him also does not reflect that he is representing the respondent (Ex-employees' Coordination Committee, Mosabani) or representing the ex-employees.

25. At no point of time the ex-employees appeared before the learned Industrial Tribunal to put on record the foundational facts regarding their voluntary retirement or even to suggest that they were being represented by Sujit Kumar Shaw or the respondent (Ex-employees' Coordination Committee, Mosabani) and there is nothing on record to suggest that the ex-employees were members of the respondent (Ex-employees' Coordination Committee, Mosabani) and as to whether the respondent (Ex-employees' Coordination Committee, Mosabani) was a trade union or what was the legal status of the respondent (Ex-employees' Coordination Committee, Mosabani) so as to enable the respondent (Ex-employees' Coordination Committee, Mosabani) to represent the ex-employees before the learned Industrial Tribunal.

26. It has been argued by the learned Senior counsel for Sujit Kumar Shaw [who has appeared by filing *Vakalatnama* in his individual capacity and not as office bearer of the respondent (Ex-employees' Coordination Committee, Mosabani)] on the basis of the judgements of the Hon'ble Supreme Court that the award cannot be set-aside on trivial or technical ground. There is no dispute with regards to such proposition of law. However, at the same time it has to be ascertained as to whether the concerned ex-employees were duly represented before the learned Industrial Tribunal so as to bind themselves with any judgement and whether Sujit Kumar Shaw in his individual capacity or in the capacity of any office bearer of the respondent (Ex-employees' Coordination Committee, Mosabani) was entitled to represent the concerned ex-employees and whether the concerned ex-employees were members of the respondent (Ex-employees' Coordination Committee, Mosabani) or had authorised the respondent (Ex-employees' Coordination Committee, Mosabani) to represent their case before the learned Industrial Tribunal. This becomes all the more serious in view of the fact that not even one letter of acceptance of voluntary retirement of one or the other ex-employee much less the scheme of voluntary retirement under which one or the other ex-employee had applied have been exhibited and there has been no oral evidence of Sujit Kumar Shaw who filed the documents so as to ascertain his status in the respondent (Ex-employees' Coordination Committee, Mosabani) or his capacity to represent all the ex-employees. It has also been stated in the arguments of the learned Senior counsel for Sujit Kumar Shaw that many of the ex-employees had died, but no such details have been brought before this court or before the learned Industrial Tribunal. Even the list of ex-employees forwarded by the Ministry was never exhibited much less their date of voluntary retirement mentioned in the list. Further, mentioning the date of voluntary retirement in the list forwarded by the ministry by itself is not a piece of evidence and the date of voluntary retirement was certainly required to be proved by cogent evidence at least by producing the scheme and the letter of acceptance of voluntary retirement. It was for the concerned ex-employees to prove their case before the learned tribunal by leading cogent evidence. The learned Industrial Tribunal has straightaway referred to the list received from the ministry in the final award and has treated it to be a part of the reference and passed the award without any material regarding the foundational facts with respect to one or the other ex-employee and taking their date of voluntary retirement as mentioned in the list as gospel truth which was not supported by any material/evidence on record, oral or documentary. Further neither the list nor the date of voluntary retirement of 414 ex-employees mentioned in the list was exhibited before the learned Industrial Tribunal.

27. The aforesaid approach of the learned Industrial Tribunal is ex-facie perverse and cannot be sustained in the eyes of law. In absence of any material, either oral or documentary, to show that Sujit Kumar Shaw was authorised to represent the ex-employees and any material to show that Sujit Kumar Shaw was the office bearer of the respondent (Ex-employees' Coordination Committee, Mosabani) and any material to show that the respondent (Ex-employees' Coordination Committee, Mosabani) was authorised by the ex-employees to represent their case before the learned Industrial Tribunal and even before this Court ***and*** also in absence of the foundational facts with regards to each and every ex-employee as to under which voluntary retirement scheme their voluntary retirement was accepted and when it was accepted and what were the terms and conditions of voluntary retirement as even the schemes of voluntary retirement and the letter of separation were not placed on record before the learned tribunal, the impugned award passed by the learned Industrial Tribunal is perverse and cannot be sustained in law.

28. The status of the respondent (Ex-employees' Coordination Committee, Mosabani) was neither clear before the learned Industrial Tribunal nor is clear before this Court. Before this Court, Sujit Kumar Shaw, who has filed *Vakalatnama,* is not representing the respondent (Ex-employees' Coordination Committee, Mosabani) and Sujit Kumar Shaw is the only person who had appeared before the learned Industrial Tribunal and filed the written statement, rejoinder and the documents.

29. As a cumulative effect of the aforesaid findings, the impugned award dated 28.09.2022 passed by the Central Government Industrial Tribunal, No.1, Dhanbad in Reference No.13 of 2017 is set-aside.

30. In view of the aforesaid findings, the matter is remitted back to the learned Industrial Tribunal to consider the matter afresh after serving notice to the 414 ex-employees involved in the case as mentioned in the list forwarded by the Ministry or their legal heirs and representatives as the case may be. It will certainly be open to the concerned 414 ex-employees/their legal heirs and successors as the case may be, to represent themselves through any union/body as may be permissible under law. The petitioner management and Sujit Kumar Shaw who is one of the ex-employees involved in this case are directed to appear before the learned Industrial Tribunal on 15.04.2025 at 11:00 am and upon their appearance, the learned Industrial Tribunal shall proceed in accordance with law to pass a fresh award as expeditiously as possible.

31. This writ petition is accordingly allowed in the aforesaid terms.

32. Pending interlocutory application, if any, is closed.

33. Before parting, this Court observes that vide order dated 12.06.2024, Ms. Apoorva Singh, Advocate was appointed as an *Amicus Curiae* in this case by this Court. I record my appreciation for the valuable assistance accorded by the learned *Amicus Curiae* in final disposal of this case who could prepare in a short period of time and effectively assisted this Court in the matter. The Secretary, Jharkhand High Court Legal Services Committee is directed to ensure that the legal remuneration of the learned *Amicus Curiae* is duly paid to her within a period of 4 weeks upon submission of bills by her @ Rs.5500/- per day subject to the cap of maximum permissible amount.

34. Let a copy of this order be communicated to the Secretary, Jharkhand High Court Legal Services Committee.

35. Let this order be communicated to the learned Industrial Tribunal through 'FAX/Email'.

(Anubha Rawat Choudhary, J.)

Pankaj/AFR