

**(2011) 08 JH CK 0074**

**Jharkhand High Court**

**Case No:** Writ Petition (L) No. 6645 of 2010

Coal Field Labour Union  
Sudamdih Area

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Aug. 24, 2011

**Hon'ble Judges:** Poonam Srivastava, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Poonam Srivastav, J.

The instant writ petition is preferred challenging the order dated 29.9.2008, whereby the request of the petitioner to make reference for nonpayment of sick leave wages to 25 retired employees by Management of E.J. Area of M/s B.C.C.L. Was refused on the ground that there is no provision for payment of sick leave wages as demanded by the Union to the non-Executives under the provisions of NCWA. The refusal to make reference for adjudication is challenged at the very out set on the basis of a decision of the Apex Court in the case of Sarva Shramik Sangh v. Indian Oil Corporation Ltd. and Ors. 2009 LAB.I.C.2297.

2. The emphatic argument advanced on behalf of the petitioner is that a writ of mandamus is liable to be issued to the appropriate Government to reconsider the refusal to make a reference. The impugned refusal is on irrelevant, irrational or extraneous grounds and also the refusal is a result by the appropriate government in examining the merits of the dispute, whereby determining the dispute itself or the refusal is malafide or dishonest. It is also submitted that in the event the refusal ignoring the materials available, then the failure to report to the Conciliation Officer is liable to be interfered. The High Court should issue a mandamus for referring the question.

3. The Secretary, Coalfield Labour Union, Neicha Miner's Colony, Dhanbad approached to refer the question regarding non-payment of sick leave wages by the

Management to the retired employees. The Assistant Labour Commissioner (C), Dhanbad issued a notice dated 10th April 2007 to the respondent no. 3 as well as the petitioner to appear before him for discussion and conciliation regarding the dispute raised by the petitioner. Respondent no. 3 submitted their comments vide letter dated 10th May, 2007, which is Annexure-4 to the writ petition. The stand taken on behalf of the respondents is that there is no provision for payment of sick leave wages as per provision of NCWA under which the wage structure and conditions of service including fringe benefits are provided to the concerned persons. Payment of due wages of earned leave to retired employees are made as per provision under para-6.4.0 of NCWA-VII and there is no such provision for payment of wages for due sick leave, since workmen are governed under provisions of NCWA.

4. The question raised at the behest of the Union is irrelevant and there is no scope for any compromise or the benefits given to the Executives and, therefore, the dispute cannot be raised.

5. I am of the considered view that the objection raised at the behest of the petitioner do not fall under any of the category as held by the Apex Court in the case of Sarva Shramik Sangh (Supra) and, therefore, the issue of mandamus in the instant case is without any basis and the relief claimed in the instant writ petition is frivolous one and cannot be granted. I do not agree with the submission that the appropriate Government has examined the question itself and decided on merits without making a reference.

6. There is no merit in the instant writ petition. It is, accordingly, dismissed.