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

**BEFORE
HON'BLE SHRI JUSTICE MANINDER S. BHATTI**

ON THE 29th OF AUGUST, 2023

WRIT PETITION No. 14830 of 2023

BETWEEN:-

1. **KUNDAN SEHGAL S/O SHRI G.D. SEHGAL, AGED ABOUT 37 YEARS, OCCUPATION: DY. MANAGER (LEGAL) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI (MADHYA PRADESH)**
2. **PAWAN KUMAR DOOKIA S/O SHRI RAM NIWAAS, AGED ABOUT 39 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
3. **RADHA KRISHNA SETH S/O SHRI MAHESH KUMAR SETH, AGED ABOUT 35 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
4. **ABHISHEK TRIPATHI S/O SHRI YOGENDRA TRIPATHI, AGED ABOUT 39 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
5. **JAINENDER CHAUDHARY S/O SHRI ATMA RAM, AGED ABOUT 37 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
6. **MOHIT SHARMA S/O SHRI DHIRENDRA SHARMA, AGED ABOUT 35 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**

PRADESH)

7. KAUSHAL KUMAR VERMA S/O SHRI R.B. VERMA, AGED ABOUT 36 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
8. AMAR NATH RAWAT S/O SHRI RAMRAJ, AGED ABOUT 37 YEARS, OCCUPATION: WORKING AS DY. MANAGER (FINANCE) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
9. VED PRAKASH SINGH S/O LATE SHRI SURESH SINGH, AGED ABOUT 34 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
10. B.R. YADAV S/O SHRI K.R. YADAV, AGED ABOUT 58 YEARS, OCCUPATION: WORKING AS SOE (CIVIL) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
11. SUSHIL KUMAR GAUTAM S/O LATE SHRI NABBU LAL, AGED ABOUT 40 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
12. MRITUNJAY JHA S/O SHRI AMAR NATH JHA, AGED ABOUT 37 YEARS, OCCUPATION: WORKING AS DY. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
13. DINESH KUMAR S/O SHRI SHER SINGH, AGED ABOUT 30 YEARS, OCCUPATION: WORKING AS ASST. MANAGER (HR/PERS) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
14. DIWAKAR VASHISTH S/O SHRI GIRDHAR SHARMA, AGED ABOUT 33 YEARS, OCCUPATION:

WORKING AS DY. MANAGER (FINANCE)
NORTHERN COALFIELDS LIMITED
HEADQUARTERS SINGRAULI DISTRICT
SINGRAULI (MADHYA PRADESH)

15. ASHISH TIWARI S/O SHRI KAMLESH KUMAR TIWARI, AGED ABOUT 35 YEARS, OCCUPATION: WORKING AS ASSTT. MANAGER (MINING) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
16. HARSH CHAUHAN S/O LATE JAI PAL SINGH CHAUHAN, AGED ABOUT 36 YEARS, OCCUPATION: WORKING AS DY. MANAGER (FINANCE) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
17. CHANDAN KUMAR S/O SHRI ASHOK KUMAR YADAV, AGED ABOUT 33 YEARS, OCCUPATION: WORKING AS DY. MANAGER (M AND S) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
18. SURAJ KESHRI S/O SHRI B.N. KESHARAVANI, AGED ABOUT 40 YEARS, OCCUPATION: WORKING AS MANAGER (M AND S) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
19. SANJAY HOSHI S/O SHRI L.D. JOSHI, AGED ABOUT 37 YEARS, OCCUPATION: WORKING AS DY. MANAGER (FINANCE) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
20. SHIVAM KAPOOR S/O SHRI VINAY KAPOOR, AGED ABOUT 30 YEARS, OCCUPATION: WORKING AS ASST. MANAGER (FINANCE) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)
21. ADITI ANAND S/O SHRI RAM MURTI SINGH, AGED ABOUT 30 YEARS, OCCUPATION: WORKING AS ASST. MANAGER (FINANCE) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)

PRADESH)

22. **R.K YADAV S/O LATE SHRI S.B. YADAV, AGED ABOUT 37 YEARS, OCCUPATION: WORKING AS DY. MANAGER (LEGAL) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
23. **R.K. YADAV S/O LATE SHRI S.B. YADAV, AGED ABOUT 37 YEARS, OCCUPATION: WORKING AS DY. MANAGER (LEGAL) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
24. **RAHUL ANTHWAL S/O SHRI S.N. ANTHWAL, AGED ABOUT 38 YEARS, OCCUPATION: WORKING AS DY. MANAGER (CD) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
25. **ABHINAV DIXIT S/O SHRI A.K. DIXIT, AGED ABOUT 34 YEARS, OCCUPATION: WORKING AS MANAGER (CIVIL) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
26. **ABHISHEK KUMAR S/O LATE SHRI D.N. THAKUR, AGED ABOUT 38 YEARS, OCCUPATION: WORKING AS DY. MANAGER (CD) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
27. **PRASHANT KUMAR S/O SHRI N.PAL, AGED ABOUT 34 YEARS, OCCUPATION: WORKING AS DY. MANAGER (CD) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
28. **UTKARSH AGRAWAL S/O SHRI C.K. AGARWAL, AGED ABOUT 30 YEARS, OCCUPATION: WORKING AS DY. MANAGER (EXCV) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**
29. **RAJA RAM YADAV S/O SHRI B.K. YADAV, AGED ABOUT 38 YEARS, OCCUPATION: WORKING AS DY. MANAGER (CD) NORTHERN COALFIELDS LIMITED HEADQUARTERS SINGRAULI DISTRICT SINGRAULI (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI K.C. GHILDIYAL - SENIOR COUNSEL ASSISTED BY SHRI KARNIK SINGH AND SHRI ADITYA VEER SINGH - ADVOCATES)

AND

1. UNION OF INDIA THROUGH THE SECRETARY
MINISTRY OF COAL GOVERNMENT OF INDIA
SHASTRI BHAWAN NEW DELHI (DELHI)
2. THE DIRECTOR DEPARTMENT OF PUBLIC
ENTERPRISES GOVERNMENT OF INDIA ROOM
NO. 308 BLOCK NO. 14 CGO COMPLEX LODHI
ROAD NEW DELHI (DELHI)
3. THE COAL INDIA LIMITED THROUGH ITS
CHAIRMAN PREMISES NO.4 PLOT NO. AF-3
ACTION ARERA 1A NEW TOWN RAJARHAT
KOLKATA (WEST BENGAL)
4. THE DIRECTOR (P AND IR) COAL INDIA LIMITED
PREMISES NO 4 PLOT NO. AF3 ACTION ARERA 1A
NEW TOWN RAJARHAT KOLKATA (WEST
BENGAL)
5. THE NORTHERN COAL FIELDS LIMITED
THROUGH ITS CHAIRMAN CUM MD SINGRAULI
DISTRICT SINGRAULI (MADHYA PRADESH)
6. HIND KHADAN MAZDOOR FEDEDERATION
THROUGH PRESIDENT, MEMBER OF JBCCI
NATHUAL PANDEY JABALPUR (MADHYA
PRADESH)

.....RESPONDENTS

**(SHRI PUSHPENDRA YADAV - ASSISTANT SOLICITOR GENERAL FOR
RESPONDENT NOS. 1 & 2.)**

**(SHRI R.N. SINGH - SENIOR COUNSEL ASSISTED BY SHRI ANOOP NAIR -
ADVOCATE FOR RESPONDENT NOS. 3 AND 4)**

(SHRI GREESHM JAIN - ADVOCATE FOR RESPONDENT NO.5)

(SHRI G.P. SINGH - ADVOCATE FOR RESPONDENT NO.6/INTERVENOR)

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

ORDER

The petitioners have filed this petition while praying for the following
reliefs:-

"i. To issue a writ in the nature of certiorari thereby quashing NCWA-XI so far it relates to the revision of pay of the non-executives working with respondent no.3.

ii. To issue a writ in the nature of certiorari thereby quashing approval dated 22/06/2023 granted by the respondent no.1 for implementation of NCWA-XI dated 20/05/2023.

iii. To issue a writ in the nature of certiorari thereby quashing order dated 22/06/2023 (Implementation Instruction vide letter No. CIL/C-5B/JBCCI-XI/NCWA-XI/Revised Wages/55 and its enclosures) issued by respondent no.4.

iv. To issue a writ in the nature of mandamus thereby directing respondents to pay the petitioners a basic pay which is higher than that of non-executive.

v. Any other relief that this Hon'ble Court may deem just and proper in the facts and circumstances of the case."

2. The facts, as narrated in the petition, reveal that the petitioners herein are working with respondent No. 5 Company and holding the Executive posts. Further assertions, which have been made in the petition, reveal that the Coal India Limited (hereinafter referred to as CIL) is a Maharatna Company under the control of the Ministry of Coal (MOC), Government of India. CIL is a Central Public Sector Enterprise (hereinafter referred to as CPSE) and is bound by the directives issued by the Department of Public Enterprises (hereinafter referred to as DPE) under the aegis of the Ministry of Finance, Government of India. The employees of respondent No. 5 are classified into two categories i.e. Executives and Non Executives. The Executives have been further bifurcated into as many as 9 grades i.e. from E-1 to E-9 and they are treated to be below board level Executives. As per the Service Rules, Grade E-1 is an Executive post, which carries pay scale of Rs.40,000-1,40,000/-.

3. The salaries and emoluments of Non Executives are governed by the National Coal Wage Agreement (hereinafter referred to as NCWA), which is framed in terms of the provisions of Section 18 of the Industrial Disputes Act. The last NCWA-X was made effective from 1.7.2016 to 30.6.2021. Thereafter, the Union Cabinet chaired by Hon'ble the Prime Minister approved the Wage Policy for the 8th round of wage negotiations for workmen in CPSE and as per the said decision of the Union Cabinet, the wage revision was approved with certain conditions, which were incorporated in the Cabinet decision. The Cabinet decision was conveyed by DPE vide Office Memorandum dated 24.11.2017, which is contained in Annexure P-3 and as per the said Office Memorandum, the management of the concerned CPSEs were directed to ensure that negotiated scales of pay do not exceed the existing scales of pay of Executives/Officers and non unionized supervisors of respective CPSEs.

4. After the decision of the Union Cabinet, respondent No.3/CIL vide communication dated 7.9.2022 approached the Ministry of Coal and informed that minimum Basic of lowest grade of executives (i.e. E-1) is Rs.40,000/- per month w.e.f. 1.1.2017 and the revised minimum Basic of highest grade of Non Executive cadre employees of CIL/Subsidiaries (i.e. T & S Grade A-1) as finalized by Joint Bipartite Committee for the Coal Industry-X (for short JBCCI-X) is Rs.54969.80/- per month for the Assam Coalfields and Rs.47802.52/- per month for other locations. As there was overlapping in pay scales of Executives and Non-Executives of CIL and other Subsidiaries, CIL sought relaxation from conditions mentioned in Office Memorandum dated 24.11.2017 of DPE through the Ministry of Coal. The said communication was further followed by other communications dated 26.12.2022 (page 89), 9.1.2023 (page 91) and later on, CIL issued another communication dated 26.5.2023, containing a chart in which it was demonstrated by CIL that gross pay of Executives (E-3) is higher than the highest grade of Non

Executives i.e. (T & S Grade A-1). In the said chart, the gross emoluments of Executive employee of Grade E-3 was shown as Rs.95,820/- and gross pay of Non Executive employees of T&S Grade A-1 was shown as Rs.84,019.58/-. On the basis of said communication, the Ministry of Coal issued an order dated 22.6.2023, which is contained in Annexure P-11. The said order dated 22.6.2023 is being assailed in the present petition with a further prayer to quash NCWA-XI to the extent of revision of pay of Non Executives working with respondent No. 3.

5. Learned Senior Counsel for the petitioners contends that in the present case the controversy is as regards the conferment of benefit of higher pay scale to the Non Executives. It is contended that conferment of benefit of pay scale to Non Executive, in violation of Union Cabinet decision, which has been conveyed vide Office Memorandum dated 24.11.2017, is impermissible. The Office Memorandum dated 24.11.2017 specifically reflects that the wage negotiations and finalization were permitted subject to compliance of the conditions, which were specified in conditions 2(i) to (x) of the Office Memorandum dated 24.11.2017. As per condition 2(iv) of the Office Memorandum, CPSEs were specifically directed to ensure that negotiated scales of pay should not exceed existing scale of pay of executives/officers and accordingly, the wage negotiations were permitted. It is further contended by the senior counsel that as NCWA provides for the benefit of pay scale or wage revision in respect of Non Executives, therefore, the interests of employees, who belong to Executive cadre, were safeguarded. It is further contended by the senior counsel that respondent No. 3 while issuing communication dated 7.9.2022 (Annexure P-7) specifically admitted that there was overlapping in the pay scales of Executives and Non Executives and accordingly, had sought relaxation from DPE.

6. The senior counsel for the petitioners also submitted that the communication dated 9.1.2023, which is at page No. 91 of the petition, also

reflects that respondent No. 3 had even requested the Ministry of Coal to grant exemption from conditions 2(iv), (v) and (vi) of the Office Memorandum dated 24.11.2017. It is contended by the senior counsel that CIL was well aware that the scale of pay of Non Executive was exceeding the scale of lowest post of Executive, therefore, initially relaxation and later on, exemption from various clauses of Office Memorandum dated 24.11.2017 was sought. It is contended by the senior counsel that the conditions which are mentioned in the Office Memorandum dated 24.11.2017 were binding and no relaxation was permissible. It is also contended that neither the Ministry of Coal nor DPE were empowered to grant any relaxation or exemption, so far as the conditions mentioned in the Office Memorandum dated 24.11.2017 were concerned. It is contended that the Office Memorandum dated 24.11.2017 only contains the decision of the Union Cabinet and, therefore, there could not have been any deviation from the conditions, which were mentioned in the Office Memorandum dated 24.11.2017. It is further contended that the letter dated 26.5.2023, which has been brought on record as (Annexure P-10) was merely an afterthought as CIL was well aware that the pay scale of highest post of Non Executive was higher than the Executive post and accordingly, while treating Grade E-3 to be the lowest post in the Executive cadre, a futile attempt was made to demonstrate that while taking into consideration the gross emoluments, the pay of Executive of Grade E-3 was higher than the pay of Non Executive T&S Grade A-1. It is contended by the senior counsel that the impugned order dated 22.6.2023 has been passed without any jurisdiction, inasmuch as, the decision by the Union Cabinet, cannot be overreached by the Ministry of Coal.

7. It is further contended by the senior counsel for the petitioners that in the present case, DPE has not filed any separate return. On the contrary, return has been filed on behalf of the Ministry of Coal as well as DPE jointly whereas in the

present case, DPE should have filed a return separately. It is also contended that NCWA-XI is being implemented by respondent Nos. 3 and 4 and, therefore, the order impugned deserves to be quashed as the respondents are likely to disburse the arrears to the Non Executives in the month of September, 2023, which according to respondents are admissible, on account of implementation of NCWA-XI.

8. *Per contra*, Shri Pushendra Yadav, learned Assistant Solicitor General for respondent Nos. 1 and 2 has submitted that the present petition filed by the petitioners deserves to be dismissed. It is contended that Para 6 of the return of respondent Nos. 1 and 2 contains specific analysis of the pay scales of Executive as well as Non Executive employees. The employees of Executive cadre are selected against the post of management trainee in Grade E-2 with the pay scale of Rs.50,000-1,60,000/- and after the successful training, said trainees are placed in Grade E-3 with pay scale of Rs.60,000-1,80,000/-. Thus, while calculating the gross pay, it is evident that pay of an Executive employee is much more than his counterpart, who is Non Executive, therefore, there is no substance in the present petition. It is the further submission of the counsel that in the present case there are as many as 5 Trade Unions, whose members are to be benefitted by NCWA and out of those Unions, four Unions have not been impleaded as parties in the present petition and in absence of the said four unions, there cannot be any adjudication in the present petition, inasmuch as, the members of those Unions will be directly affected, if any adverse order is passed in the present petition. Shri Yadav while taking this Court to NCWA-XI, which is contained in Annexure R-4, submitted that the details of JBCCI-XI reflect that there was representation of various Unions but none of the Unions have been impleaded in the present petition as respondents. It is, therefore, contended that this petition is not maintainable in absence of necessary parties.

9. Shri R.N. Singh, learned Senior Counsel assisted by Shri Anoop Nair, Advocate on behalf of respondent Nos. 3 and 4 submits that in the entire writ petition, the petitioners have not disclosed the fact that what pay scale they are receiving from the respondents. It is contended that in absence of any pleadings, the present petition filed by the petitioners is not maintainable. It is contended that the petitioners have approached this Court in individual capacity. There are large number of Executives, who have not chosen to assail NCWA-XI and, therefore, the present petition have been filed by the petitioners with an oblique motive to seek interference of this Court in NCWA-XI, which has statutory force in terms of the provisions of Section 18 of the Industrial Disputes Act. It is also contended by the senior counsel that none of the Trade Unions have been impleaded in the present petition. All Non Executive employees are represented through Trade Unions, which are mentioned in JBCCI-XI. The petitioners knowing fully well that cause of the Non Executive employees was espoused by the respective Trade Unions, have not impleaded the Trade Unions as parties in the present petition, therefore, the present petition deserves to be dismissed. Learned Senior Counsel has drawn attention of this Court to Annexure P-31 filed along with the rejoinder and submitted that same does not contain detail of any of the petitioners and, therefore, the document is misleading. Therefore, submits that the present petition, in absence of the Trade Unions, who represent the Non Executives, is not maintainable. In support of the aforesaid contentions, reliance has been placed on the decisions of the Apex Court in **Ramesh Sanka Vs. Union of India and others - (2019) 3 SCC 589** and **State of Assam Vs. Union of India and others - (2010) 10 SCC 408**.

10. It is further submitted by learned senior counsel for respondent Nos. 3 and 4 that subsequently a development has taken place whereby upgradation of pay scales of Executives is under active consideration and the Ministry of Coal has

issued a communication dated 17.8.2023 to CIL and fresh proposal for upgradation of pay scales of Executives of CIL and its Subsidiaries has been requisitioned. It is contended that once there is upgradation of pay scale of Executives, the present petition would automatically render infructuous.

11. Shri G.P. Singh, learned counsel appearing for respondent No. 6 has adopted the arguments already advanced by Shri R.N. Singh, learned senior counsel for respondent Nos. 3 and 4 and has submitted that the present petition is not maintainable. It is further submitted that in the matters involving financial implications, the Court should refrain itself from interfering with such a decision and accordingly, has placed reliance on the decision of the Apex Court in **Union of India vs. Indian Navy Civilian Design Officers Association and another - 2023 SCC OnLine SC 173**. Thus, submits that the present petition deserves to be dismissed.

12. No other point is argued or pressed by the counsel for the parties.

13. Heard the submissions advanced on behalf of the counsel for the parties and perused the record.

14. On perusal of the record, it reflects that the case of the petitioners is entirely based on the Office Memorandum dated 24.11.2017, which has been issued in view of the decision of the Union Cabinet and in terms of the said Office Memorandum, which only conveys the decision of the Government, though CPSEs were permitted to proceed with the wage negotiations and finalizations but they have been specifically directed to ensure that the negotiated pay scales of Non Executives should not exceed the pay scale of Executives. The relevant conditions of the Office Memorandum dated 24.11.2017 are reproduced herein:-

"2. The wage negotiations and finalization "will be subject"

to the following conditions:-

i).....

ii).....

iii).....

iv) The management of the concerned CPSEs have to ensure that negotiated scales of pay do not exceed the existing scales of pay of executives/officers and non-unionized supervisors of respective CPSEs.

v) The Management of CPSEs where the five year periodicity is followed have to ensure that negotiated scales of pay for two successive wages negotiations do not exceed the existing scales of pay of executives/officers and non-unionized supervisors of respective CPSEs for whom ten years periodicity is being followed.

vi) To avoid conflict of pay scales of executives/non-unionised supervisors with that of their workmen, CPSEs may consider adoption of graded DA neutralization and/or graded fitment during the wage negotiations.

vii).....

(viii).....

ix).....

x) The CPSEs would implement negotiated wages after confirming with their Administrative Ministry/Department that the wage settlement is in conformity with approved parameters.

15. A perusal of aforesaid conditions reflects that CPSEs were accorded permission to proceed further with the wage negotiations and finalization with certain conditions, which are detailed in the Office Memorandum dated 24.11.2017. In view of the said conditions, as CIL found that the scales of Non Executives and Executives were overlapping, they sought relaxation from DPE through Ministry of Coal vide communication dated 7.9.2022 and later on vide communication dated 9.1.2023 sought exemption from Clause 2(iv), (v), (vi) of

Office Memorandum dated 24.11.2017. Subsequently, CIL vide communication dated 26.5.2023 (Annexure P-10) addressed to the Ministry of Coal, explained with an illustration that the pay scale of an Executive of Grade E-3 was higher than the pay scale of highest post of a Non Executive i.e. T&S Grade A-1. In terms of the communication dated 26.5.2023, the Ministry of Coal issued impugned order dated 22.6.2023 and it was informed to CIL that the Memorandum of Agreement for NCWA-XI has been confirmed by the Ministry of Coal and by the said communication, it was informed to CIL that guidelines of DPE may be followed. Therefore, in the present case, the Ministry of Coal was empowered to confirm the Memorandum of Agreement for NCWA-XI or not? is a question which requires to be mulled over.

16. The Office Memorandum dated 24.11.2017 conveys the decision of the Union Cabinet, therefore, the said decision having binding effect, CIL vide communication dated 7.9.2022 sought relaxation from DPE through the Ministry of Coal and later on even claimed exemption as well. The communications which have been brought on record vide Annexure P-7 refers to some communication of DPE dated 30.11.2022 bearing O.M. No. W-02/0028/2022-DPE (WC). CIL then sent a communication dated 26.5.2023, contained in Annexure P-10 and submitted an illustration that pay scale of the highest post of a Non executive was lesser than the pay scale of the lowest post of Executives and on the basis of said communication, the Ministry of Coal accorded its confirmation vide impugned communication dated 22.6.2023. The Ministry of Coal was not competent to accord sanction without obtaining the approval of DPE. The issue was required to be dealt with by DPE, as initially relaxation and exemption were sought and later on while taking recourse to a complete volte-face, fixation was projected to be justified while submitting that there was no overlapping of pay scales. If there was no overlapping of pay scales, there was no occasion to seek any relaxation or

exemption from conditions of Office Memorandum dated 24.11.2017.

17. In the present case, a return has been filed by respondent Nos. 1 and 2 jointly and same is supported by an affidavit of Deputy Secretary, Ministry of Coal, Government of India, New Delhi. There is no affidavit of any of the officers of DPE. DPE in the present case should have filed a separate specific return, inasmuch as, it is DPE, which had issued the Office Memorandum dated 24.11.2017 (Annexure P-3) and, therefore, the proposed wage finalization was in accordance with the Office Memorandum dated 24.11.2017 or was in conflict with the same? was a question, which could have been dealt with by DPE only. NCWA-XI undisputedly is an outcome of the decision taken by JBCCI-XI and said committee was consisted of the office bearers of the various Trade Unions and in the present case only one Trade Union has been impleaded as respondent No.6. Therefore, it would be expedient as well as conducive in the interest of justice that all the Trade Unions, which were part of JBCCI-XI also be heard by DPE before taking a final decision in the matter.

18. DPE is required to ensure that there is no violation of the decision of the Union Cabinet, which has ensued in issuance of Office Memorandum dated 24.11.2017. Unless compliance and adherence to the decision by the Union Cabinet is ascertained by DPE, the Ministry of Coal, on its own, cannot grant approval to NCWA-XI. The decision of Union Cabinet protects the interest of executive employees as well. The petitioners are Executives which is evident from perusal of details of pay slips etc. filed with the petition.

19. This Court is conscious of the fact that other Trade Unions, which were part of JBCCI-XI are not parties to the litigation in hand but decision by the Ministry of Coal is being interfered with on the ground that the same has been taken without approval of DPE. Therefore, it would be conducive and proper that all affected parties be given opportunity of hearing by DPE before finalization of

pay scales of the Non-Executives.

20. Accordingly, the present petition is allowed. Impugned approval dated 22.6.2023 stands quashed. The matter is referred to DPE to take decision while extending opportunity of hearing to all concerned including the petitioners and all Trade Unions, which were part of JBCCI-XI. If DPE ultimately comes to a conclusion that there is no violation of the Cabinet decision, the Ministry of Coal shall pass the consequential order regarding approval of the finalization of pay scales of the Non-Executives. Let decision in terms of this order be taken within 60 days from today.

PB



**(MANINDER S. BHATTI)
JUDGE**