

SINGLE BENCH

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C.F. 100/-

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**IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH**

W.P. NO. 5069 /2005

PETITIONER

Deepak Sarkar, S/o Shri Ishwar Sundarnath Sarkar, Aged about 50 years, R/o - Behind Baba Hotel, Shivaji Nagar, Khursipar Gate, Tehsil and District - Durg, Chhattisgarh.

P.R. No. 5151/05 -
Presented by Ajay Sharma
dated 1/10/05

VERSUS

RESPONDENTS

1) Dawda Brothers,
P.O. Jamul Cement Works,
Jamul Tehsil and District - Durg,
Chhattisgarh.

2) Suresh Laxmi Das,
Through: Its Manager,
P.O. Jamul Cement Works,
Jamul Tehsil and District - Durg,
Chhattisgarh.

3) Associate Cement Company,
Through: Its General Manager,
P.O. Jamul Cement Works,
Jamul Tehsil and District - Durg,
Chhattisgarh.



**WRIT PETITION UNDER ARTICLE 226/227 OF
CONSTITUTION OF INDIA FOR ISSUANCE OF
APPROPRIATE WRITS, ORDERS, DIRECTIONS OR LIKE
ETC.**



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HIGH COURT OF CHHATTISGARH, BILASPUR

SB: HON'BLE SHRI NAVIN SINHA, ACTING CHIEF JUSTICE

Writ Petition No. 5069 of 2005

PETITIONER

Deepak Sarkar

Versus

RESPONDENTS

Dawda Brothers and others

(WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION
OF INDIA)

Appearance:

Shri Prasun Bhaduri, Advocate for the Petitioner.
Shri N.K. Vyas, Advocate for Respondent No. 3.

ORDER

(24th December, 2014)

NAVIN SINHA, ACTING C.J.

1. Heard Learned Counsel for the Petitioner and Respondent No. 3.
सत्यमेव जयते
2. Learned Counsel for the Petitioner submits that both the Labour Court and the Industrial Court did not properly appreciate that Respondent No.2 in fact had more than 100 persons working on its Rolls evident from letter dated 14.6.1988 along with enclosures. The Madhya Pradesh Industrial Relations Act, 1960 was therefore clearly applicable and both the Labour Court as also the Industrial Court erred in non-suiting the Petitioner on the

ground that he had not been able to demonstrate that more than 100 persons were working in the Establishment.

3. Learned Counsel for Respondent No.3 submits that the communication dated 14.6.1988, pertains to the erstwhile employer whose truck along with the Driver is supposed to have been taken over by Respondent No.2.

4. Having considered the submissions on behalf of the parties, the facts that emerge are that the Petitioner was employed as a Truck Driver with Respondent No.1. The Truck having been taken over by Respondent No.2, the Petitioner continued in the employment of Respondent No.2. While on duty he is alleged to have indulged in clandestine activities leading to a criminal prosecution in which he was given acquittal on benefit of doubt and not on merits.

5. If the Petitioner moved the Labour Court and an objection was taken with regard to applicability of the Madhya Pradesh Industrial Relations Act due to non availability of at least 100 workers in the Establishment as required under the Act, the onus was clearly on the Petitioner to demonstrate the fact which he admittedly failed to do before two forums. The question whether 100 persons were employed or not was a pure question of fact. Whether it be his acquittal for involvement in a criminal prosecution based on benefit of doubt and the discretion of the employer to take back such a

person in service or not coupled with his failure to discharge the onus for applicability of the Act, the Court finds no reason to interfere with the impugned orders of the Labour Court and the Industrial Court.

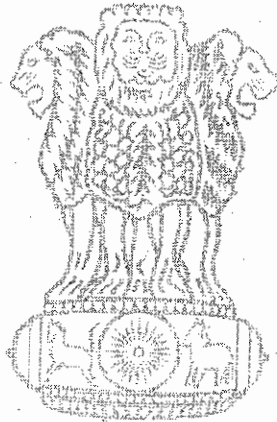
6. The Writ Petition is dismissed.

Sd/-
Acting Chief Justice

sunita

CHHATTISGARH

COURT



सत्यमेव जयते