

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (L) No. 6900 OF 2007

State of Chhattisgarh, Through : Divisional Forest Officer, Department of Forest, Forest Division, Kawardha, District – Kawardha (C.G.)

... Petitioner

Versus

1. Kanhaiya Yadav, S/o Late Daya Ram Yadav, aged about 45 years, R/o Village – Balpahri, Tahsil & District – Kawardha (C.G.)

2. The Labour Court, Rajnandgaon, Through : The Presiding Officer, District – Rajnandgaon (C.G.)

... Respondents

For Petitioner : Mr. UNS Deo, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/08/2015

1. The Petitioner - State of Chhattisgarh through the present Writ Petition has challenged the award dated 27.1.2007 passed by the Labour Court, Rajnandgaon, in Case No. 33/I.D.Act/2005 (Reference), whereby the award of reinstatement in services with 50% back-wages was passed in favour of Respondent No.1-workman.

2. Respondent No.1-workman had raised an industrial dispute stating that he was employed as Chowkidar in the year 1987 and he continued to work on the said post till April, 2000. According to Respondent No.1-workman from April, 2000, his services were illegally terminated by the State without compliance of any of the provisions of the Industrial Disputes Act. Based upon the said claim, the State Government made the following reference to the Labour Court:

“1. Whether the application filed after four years of termination/retrenchment is maintainable?

2. If yes, whether the retrenchment of Kanhaiya Yadav is legal and proper? If not, then what relief he is entitled for?

3. After completion of the pleadings, the Labour Court vide impugned award dated 27.1.2007 passed an award in favour of Respondent No.1-workman holding that termination of Respondent No.1 was bad in law and that it was without compliance of the provisions of Section 25(F) of the Industrial Disputes Act and that the State, i.e. the second party before the Labour Court, has not been able to substantiate their contentions before the Labour Court by producing cogent, convincing and clear evidence in support of their contentions and as a consequence the Labour Court granted the relief of reinstatement with 50% back-wages in favour of Respondent No.1-workman.

4. It is this award dated 27.1.2007 which is under challenge in the instant Writ Petition.

5. According to the Counsel for the State, the Labour Court has committed an error of law in not appreciating the fact that there was no actual order of appointment issued in favour of Respondent No.1 to establish the employer-employee relationship. The contention of the State also was that the Court below has committed an error of law in not appreciating the fact that in any case the status of Respondent No.1 was only that of a daily wage employee and therefore he does not have any indefeasible right for employment. The last contention of the State Counsel was that even if Respondent No.1 has been able to prove his employment but the fact that he was only engaged on the availability of the work has not been properly appreciated by the Court below and therefore the impugned award is liable to be quashed.

6. A perusal of the records would however show that there is a categorical finding of fact by the Labour Court in respect of the fact that

in spite of repeated opportunities being granted to the State Government, they have failed to produce any document to show the nature of employment of Respondent No.1 and that the State also failed to show any document in respect of payment of retrenchment compensation to Respondent No.1. Likewise, the finding of the Labour Court is that the State has also not produced the Muster Roll pertaining to Respondent No.1 so as to prove the fact that Respondent No.1 has not worked continuously for a period of more than 240 days in a calendar year.

7. Considering the categorical finding of fact by the Labour Court, this Court is not inclined to interfere with the finding of fact, particularly, when the State has failed to produce any evidence before the Court below to substantiate their contentions. Another reason for not interfering with the impugned award is the fact that pending the Writ Petition before this Court, the State Government on 29.8.2008, i.e. almost about 7 years back, has already regularized the services of Respondent No.1-workman and he is working with the State Government as a regular employee since then.

8. Taking into consideration the over all facts and circumstances of the case and also taking note of the categorical finding of the Labour Court that State Government had not complied with the mandatory provisions of Section 25 (F) of the Industrial Disputes Act and thereby making the termination of services illegal and bad in law, this Court do not find any good ground to hold that the impugned award is perverse. Even otherwise the scope of interference of the writ Court under Article 226/227 against an award based on finding of fact is very limited.

9. The Writ Petition being devoid of merits is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge