

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (227) No. 2753 OF 2010

Nagar Palik Nigam, through - Commissioner, Nagar Palik Nigam,
Bilaspur (C.G.)

... Petitioner

Versus

1. Panna Lal Rajput, S/o Late Swaroop Singh, aged about 44 years,
Ex-clerk, Nagar Palik Nigam, Social Security Pension Department, R/o
Kasturba Nagar, Bilaspur (C.G.)

2. The Presiding Officer, Under Industrial Dispute Act-cum-Labour,
Bilaspur (C.G.)

... Respondents

For Petitioner	:	Ms. Hamida Siddiqui, Advocate.
For Respondent No.1	:	Mr. D.C. Verma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/09/2015

1. Challenge in the present Writ Petition is to the award dated
14.1.2010 passed by Labour Court, Bilaspur, in Case No.
04/I.D.A./2007(Ref.)

2. Brief facts of the case are that Respondent No.1 was working
with the Petitioner-Corporation from 18.10.1996 till 2.8.1999
continuously. Thereafter, the services of Respondent No.1 discontinued
without any reason or order and without any notice or salary in lieu of
notice in accordance with the policy of the State Government.
Respondent No.1 immediately raised an issue and the issue was finally
referred to the Labour Court with the following terms of reference:-

“Whether the retrenchment of Shri Panna Lal Rajput from
service is legal and proper? If not, to what relief the applicant
is entitled? What directions should be given to the employer
in this regard?”

3. Based upon the reference being made to the Labour Court, the Labour Court registering the case as Reference case proceeded further and issued notice to the disputing parties. Respondent No.1-workman who was the first party and the Petitioner-Corporation who was the second party submitted their respective statement of claim.

4. According to Respondent No.1-workman, he was appointed as a Clerk against a clear sanctioned vacant post in the Social Security Pension Department of the Petitioner-Corporation on 18.10.1996 and on which post he continued to serve till 2.8.1999. Thereafter, abruptly without there being any reason whatsoever and also without any show cause notice or without applying the mandatory provisions of Chapter V of the Industrial Disputes Act, his service has been discontinued. As per the Respondent No.1-workman, the Petitioner-Corporation has neither paid any retrenchment compensation to him nor has he been paid any salary in lieu of notice period prior to his removal from service.

5. The stand of the Respondent-workman categorically before the Labour Court was also that since 18.2.1996 he has been continuously and without any break working with the Petitioner-Corporation and as such he has worked for more than 240 days continuously in a calendar year and has thereby got the right in his favour to at-least compliance of Chapter V of the Industrial Disputes Act before being removed/retrenched from employment.

6. Petitioner-Corporation countering the reply of Respondent-workman submitted that there was no sanctioned post of Clerk available at the relevant time in the Social Security Pension Department in which the Respondent-workman was engaged. Petitioner-Corporation further contended that the status of Respondent No.1 was that of a daily wage worker and therefore he does not have any right created in his favour

for getting a notice prior to being removed nor would he be entitled for any retrenchment compensation prior to his discontinuance for the reason that the basic appointment of Respondent No.1 itself was not in accordance with the constitutional scheme framed by the State Government or for that matter the Petitioner-Corporation.

7. The Labour Court after completion of the pleadings went in for recording the evidence wherein the Respondent-workman himself and also got the evidence of an Ex. Deputy Mayor of the Petitioner-Corporation examined in his favour wherein the Ex. Deputy Mayor has categorically disclosed before the Court that while he was discharging the duties that of a Deputy Mayor he had found the Respondent-workman discharging his duties that of a Clerk in the Social Security Pension Department of the Petitioner-Corporation and that he was working against a vacant post.

8. On the contrary, the Petitioner-Corporation, after the evidence of the workman was closed, was granted sufficient opportunity to lead evidence and in spite of repeated opportunities being granted, the Petitioner-Corporation did not lead any evidence whatsoever to rebut the contentions put forth by the Respondent-workman and therefore the right of the Petitioner-Corporation to lead evidence was closed. The Labour Court then proceeded to pass the final award, taking into consideration the evidences which have come on record, particularly the evidence on behalf of the workman and also the documentary proof like the reply of the Petitioner-Corporation before the Conciliation Officer, i.e. Annexure P-1, before the Labour Court wherein the Petitioner-Corporation itself had accepted the fact that Respondent-workman was working against the sanctioned vacant post of Clerk in the Petitioner-Corporation, the Labour Court finally vide impugned order

passed an award of reinstatement in services without back-wages. It is this award which is under challenge in the present Writ Petition.

9. Learned Counsel for the Petitioner-Corporation tried to harp upon their pleadings that they had taken in the Written Statement filed before the Labour Court. However, when a query was put to the Counsel for the Petitioner-Corporation to show the evidence by which it can be held that there was no sanctioned vacant post or for that matter whether there was any such evidence brought before the Labour Court also, the Counsel was not in a position to substantiate her contentions. On the contrary, a perusal of the award itself clearly shows that the stand taken by the Petitioner-Corporation at the first instance when the dispute was initially raised before the Conciliation Officer (the reply that the Petitioner-Corporation had filed before the Conciliation Officer), showed that the Respondent-workman was working against the sanctioned vacant post of Clerk in the Petitioner-Corporation. Thus, the finding of the Labour Court is a finding of fact to which there is no evidence to establish that the finding so arrived at is a perverse finding or is an incorrect appreciation of evidences which have come on record.

10. Learned Counsel for the Respondent-workman opposing the writ petition submits that there is no illegality, infirmity or perversity in the finding arrived at by the Labour Court and as such the impugned award does not warrant any interference and the petition deserves to be rejected. He further submits that the present writ petition has been filed as early as in the year 2010 and for the last 6 years, the Petitioner-Corporation has not complied with the mandatory requirement under Section 17-B of the Industrial Disputes Act and the Respondent-workman has been forced to live in state of penury and starvation in spite of there being an award in his favour. Counsel for Respondent-

workman further submitted that it is a case of no evidence on the part of the Petitioner-Corporation before the Labour Court and in spite of they being given sufficient opportunities they chose not to lead any evidence. Therefore, the Labour Court has given a finding of fact on the basis of the materials available before it and as such it cannot be said to be bad in law or contrary to the evidence on record.

11. It was submitted by the Counsel for the Respondent-workman that the Petitioner-Corporation till date have not complied with the mandatory requirement of Section 17-B of the Industrial Disputes Act inasmuch as neither the Petitioner-Corporation has taken back the Respondent-workman in employment nor has he been paid the wages last drawn from the time the writ petition was filed by the Petitioner-Corporation.

12. Counsel for the Respondent-workman has relied upon the judgement passed by the Supreme Court in the cases of *Raj Kumar Dixit v. M/s Vijay Kumar Gauri Shanker, Kanpur Nagar* (2015 AIR SCW 3681) and *Director of Horticulture and another v. H.A. Kumar* [2014 (13) SCC 746].

13. The Supreme Court in the case of *Dena Bank v. Kriti Kumar T. Patel* (AIR 1998 SC 511), has held that Section 17-B has been enacted by the Parliament with a view to give relief to workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of the proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlining the provisions is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award of reinstatement.

14. Following the judgment of *Dena Bank* (supra), the Supreme Court in the case of *Dena Bank v. Ghanshyam* [2001 (5) SCC 169] has held that Section 17-B provides that where the employer prefers any proceedings against an award directing reinstatement of any workman, the employer shall be liable to pay said workman during the pendency of the proceedings in the High Court, full wages last drawn by him.

15. By the said provision, the Parliament intended that the workman should get last wages drawn from the date of award till the challenge to the award is finally decided. The inescapable conclusion from the aforesaid pronouncement of the Supreme Court is that denial of benefits as granted to the workman under Section 17-B of the Industrial Disputes Act would defeat the spirit of enactment. The Section in effect has codified the rights of the workmen to get their wages which they could not get in time because of long drawn out process caused by the methods employed by the employer/employer management. Similar view has also been taken by this High Court in the case of *State of Chhattisgarh and others v. Labour Court and others* [2007 LAB. I.C. 1682]. For the aforementioned reasons and also relying upon the judicial pronouncement referred to in the preceding paragraphs, this Court is of the opinion that the present is a fit case for being rejected only on the ground of non-compliance of the statutory requirement of the provisions under Section 17-B of the Industrial Disputes Act.

16. Under Section 25-F of the Industrial Disputes Act, a workman who has been illegally retrenched is entitled for reinstatement if the workman has worked for a period of 240 days or more within 12 months immediately preceding the date of retrenchment.

17. Section 2(oo) defines “retrenchment” which is as follows:

“2. (oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action...”

18. Chapter V-A of the Industrial Disputes Act deals with “lay-off and retrenchment”. Section 25-B defines continuous service, including deemed continuous service on continuation of certain days in a year. Section 25-C of the Act explains the right of the workman for compensation. Section 25-F deals with conditions precedent to retrenchment of a workman.

19. Thus, it is mandatory that in order to retrench a workman who has been in continuous service for not less than one year in industry, the employer needs to give a month's notice or to pay the workman the amount in lieu of notice and the wages for the period of notice. That is to say any order or retrenchment in violation of Section 25-F will render such order illegal.

20. In (2015) 6 SCC 321 (Ajaypal Singh v. Haryana Warehousing Corporation), the Supreme Court while upholding the award of reinstatement of the Labour Court in similar factual background and while setting aside the judgement of the High Court quashing the award has held in paragraph 22 as under:

“22. It is always open to the employer to issue an order of “retrenchment” on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be restored to and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Section 25-F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.”

21. Subsequently, again the Supreme Court in one of a very recent decision reported in (2015) 4 SCC 458 (Jasmer Singh v. State of Haryana & Another) in paragraph 13 as held as under:-

“13. In view of the aforesaid statement of law the setting aside of the Award by the learned Single Judge which is affirmed by the Division Bench is vitiated in law as the same is contrary to the judgments of this Court referred to supra, upon which the learned counsel for the appellant has rightly placed reliance in support of the correctness of the finding recorded by the labour court on the various issues, particularly the finding of fact that the workman has worked for more than 240 days in a calendar year and termination order is void *ab initio* in law for non-compliance of Section 25-F (clauses (a) and (b)), 25-G and 25-H of the Act, therefore, the Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination of services of the workman and awarded the order of reinstatement with continuity of service and full back wages...”

22. Considering the legal pronunciation by the Supreme Court in similar context in a series of decisions, this Court is of the opinion that the finding arrived at by the Labour Court cannot be said to be bad in law, arbitrary or perverse nor can it be said contrary to the evidence which have come on record.

23. This Court in exercise of its writ jurisdiction under Article 226 of the Constitution would not be sit as an appellate Court by giving a judgment contrary to the one passed by the Labour Court particularly when there is no evidence on the part of the Petitioner-Corporation to rebut the evidences which have come on record before the Labour Court led on behalf of the Respondent-workman.

24. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned

in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

25. Taking into consideration the facts and circumstances of the case and also considering the limited scope of interference by this Court while exercising its writ jurisdiction, the instant Writ Petition being devoid of merits is liable to be and is hereby dismissed. No cost.

Sd/-
(P. Sam Koshy)
Judge