

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (L) No. 4857 OF 2010**

Purshottam S/o Shri Samaru Suryawansi, age about 39 years, Village - Darripara, Post - Ratanpur, Bilaspur (C.G.)

... Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Public Works Department, D.K.S. Bhawan, Raipur (C.G.)
2. Engineer in Chief, Public Works Department, Raipur (C.G.)
3. Executive Engineer, Public Works Department, Division, Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Lav Sharma and Mr. K.P.S. Gandhi, Advocates, for the Petitioner.
For Respondent-State.	:	Mr. Bhupendra Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/08/2015**

1. By way of the present Writ Petition, the Petitioner has challenged the award dated 3.10.2008 passed by the Labour Court, Bilaspur, in Case No. 10/IDA/2006(Ref).
2. The challenge to the award is to the extent of non-granting of back-wages by the Labour Court which has though answered the reference in favour of the Petitioner for reinstatement in services but the back-wages have not been granted.
3. The facts in nutshell are that the Petitioner was engaged as a daily wage worker with the Respondents on 6.5.1990 and since then he continued to work as daily wage worker till 29.3.2000 whereafter his services were discontinued.

4. The Petitioner workman thereafter raised an industrial dispute under the provisions of Industrial Disputes Act and the matter was referred to the State Labour Court wherein the case was registered as Case No. 10/IDA/2006(Ref) and the Labour Court proceeded to decide on the following terms of reference:

“Whether the retrenchment of applicant Shri Purushottam, son of Shri Samaru Suryawansi, on 29.3.2000, after making payments of retrenchment compensation and other dues by the non-applicants in accordance with the provisions of 25(F) of the Industrial Disputes Act, 1947, is illegal? If yes, then what directions should be given to the non-applicants?”

5. The Labour Court, vide the impugned award dated 3.10.2008, answered the term of reference in favour of the Petitioner holding that the discontinuance of services of the Petitioner by the Respondents was illegal and allowing the prayer of the Petitioner granted him the relief of reinstatement in services but without back-wages.

6. According to the Petitioner, he has been denied back-wages by the Labour Court for no fault of his. As per the Petitioner, since there is a categorical finding of the Labour Court that discontinuance of the services was contrary to the provisions of law and the termination has been declared to be illegal, and as a natural consequence the Petitioner workman would be entitled for back-wages, the denial of the same therefore was illegal and the impugned award warrants interference to that extent of awarding back-wages also to the Petitioner workman.

7. Counsel for the Petitioner has relied upon the decision rendered by the Supreme Court in the case of Reetu Marbles v. Prabhakant Shukla, reported in 2010 (2) SCC 70, along with two recent decisions reported in 2015 AIR SCW 869 (Jasmer Singh v. State of Haryana and another) and 2015 AIR SCW 3681 (Raj Kumar Dixit v. M/s Vijay Kumar Gauri Shanker, Kanpur Nagar) for grant of 100% back-wages.

8. Counsel for the State however opposing the petition submitted that the impugned award does not warrant any interference for the reason that ultimately the status of the Petitioner was that of a daily wage employee and that at the time of his discontinuance the record shows that the Petitioner worker was paid one month's notice pay and in addition he was paid retrenchment compensation and was also granted gratuity for the services that he had rendered. As such it is a case where in fact the discontinuance was purely in accordance with law and therefore the writ petition deserves to be rejected setting aside the impugned award.

9. Considering the rival contentions and on perusal of the record would reveal that the admitted position as it stands is that the Petitioner worked with the Respondents from 6.9.1990 to 29.3.2000 and after which the services of the Petitioner stood discontinued. The record shows that after the year 2000 the Petitioner himself had raised the conciliation proceeding under the Industrial Disputes Act in the year 2005, that is after the lapse of more than 5 years of time from the date of discontinuance of his services. That on 19.12.2005 the appropriate government formulated the terms of reference and referred the matter to the State Labour Court at Bilaspur for adjudicating the terms of reference which was finally answered vide impugned award dated 3.10.2008 in favour of the Petitioner with the relief of reinstatement in services without back-wages.

10. A perusal of the record would further show that the award dated 3.10.2008 was again challenged by the Petitioner further after the lapse of almost 2 years, i.e., on 20.8.2010 seeking for relief of back-wages.

11. Thus, from the record it is evidently clear that at the first instance from the date of discontinuance, i.e., in the year 2000, the Petitioner slept over his right for almost 5 years for raising a dispute which ultimately was referred on 19.12.2005 to the Labour Court and the Labour Court decided the case on 3.10.2008. Subsequently, the Petitioner again slept over his right, after the impugned award was passed on 3.10.2008, for a period of almost 2 years for challenging the impugned award seeking for back-wages.

12. It is pertinent to mention that in between the Respondents have not challenged the impugned award and at the same time have reinstated the Petitioner in employment and since then he is continuously serving the Respondents without any grievance whatsoever.

13. The law insofar as back-wages is concerned, is by now well settled that back-wages cannot be claimed as a matter of right in a case where removal from service has been held to be illegal and bad in law. For claiming the back-wages, bonafide of the employee has also to be borne and kept to be in mind by the Court/Tribunal concerned. In the instant case, a perusal of the record would show that there is a laxity on the part of the Petitioner worker himself at the first instance in raising the dispute before the appropriate authority and secondly in challenging the impugned award before this Court in a writ petition and for the fault on the part of the Petitioner he definitely cannot claim back-wages for the intervening period when he had not raised any dispute. Back-wages after the termination order being declared illegal cannot be granted mechanically neither would it automatically follow with the order of reinstatement. The Court below also is to kept in mind the relevant facts so far as the bonafide of the Petitioner while deciding the claim for

back-wages is concerned. In the present case the record does not show any explanation or justification has been provided by the workman for not raising the dispute immediately upon his discontinuance from the services in the year 2000 for about 5 years' time after he was discontinued from services and therefore in the opinion of this Court the claim of the Petitioner is not sustainable.

14. In addition, in the present case the Petitioner admittedly has received one months notice pay, retrenchment compensation and also the payment of gratuity and which he has retained even after his reinstatement.

15. So far as the judgments cited by the Counsel for the Petitioner is concerned, the case of Reetu Marbles (supra) as well as the case of Raj Kumar Dixit (supra) both the cases were not pertaining to daily wage worker and the facts of the said cases were entirely under different factual matrix as compared to the facts of the present case. Similarly, so far as the case of Jasmer Singh (supra) is concerned there again immediately upon his being discontinued from services the worker had raised the conciliation proceeding and the matter was also immediately referred to the State Labour Court for adjudication and therefore the said judgment is distinguishable from the facts of the present case. Thus, the above referred judgements would not come to the aid and rescue of the Petitioner so far as his claim for back-wages is concerned.

16. The view of this Court gets fortified by the recent decision of the Supreme Court in 2011 (15) SCC 180 (Uttar Pradesh State Textile Corporation Limited v. Suresh Kumar) wherein in paragraph 7 the Supreme Court has categorically held that grant of back wages is a matter of discretion vested in the Court and the conduct of an employee

is an extremely relevant factor on this aspect. The conduct of the respondent and the financial status of the appellant does not justify the payment of back wages.

17. For the foregoing reasons, this Court is of the opinion that no good ground has been made out by the Petitioner calling for interference with the impugned award passed by the Labour Court.

18. The Writ Petition is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge