

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 5562 of 2010

James Robert S/o Late Shri M.Jonathan, R/o House No. 13, Akash
Nagar, Near New Gayatri Nagar, Raipur (CG)

---- Petitioner

Versus

Gopal Prasad Sahu S/o Sri Daulat Ram Sahu, R/o Qtr.No.2 F, Street No.
23, Sector 11, Khursipar Zone 1, Bhilai, Distt. Durg (CG)

---- Respondent

For Petitioner	:	Shri Sanjay Patel, Advocate
For Respondent	:	Shri Sanjay Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20.11.2015

Challenge in the present Writ Petition is to the orders dated 27.04.2001 passed in case no. 82/ID Act/2000 civil and 28.08.2010 passed in case no. 38/09 by the Labour Court.

2. The facts leading to the filing of the present writ petition are that respondent no.1 was an employee under the petitioner and that vide order dated 01.10.1996, the services of respondent no.1 were terminated by the present petitioner. The order of termination dated 01.10.96 was challenged under Section 58 of M.P. Shops and Establishment Act, 1958 before the Appellate Authority i.e. the Assistant Labour Commissioner, Durg. The Assistant Labour Commissioner proceeded ex party against the petitioner and allowed the appeal of respondent no.1 by its order dated 26.02.99 holding that respondent no.1 is entitled for reinstatement with full back wages.

3. Subsequently, respondent no.1 moved an application under section 33 C (2) of the Industrial Dispute Act on 11.05.2000 before the Labour Court, Durg registered as case no. 82/ID Act/2000 claiming for wages for the period he was

out of employment after the order dated 26.02.99 passed by the Appellate Authority under the Shops and Establishment Act. The Labour Court vide order dated 27.04.2001 allowed the said application and ordered the present petitioner for payment of Rs.53,240 as back wages to respondent no.1.

4. It is pertinent to mention that the said ex party order dated 26.02.99 passed by the Appellate Authority was put under review before the same authority by the present petitioner moving an application in this regard on 21.03.2002 which was allowed and the ex parte order dated 26.02.99 was recalled and the matter was proceeded afresh and decided on its merit. After fresh proceeding being drawn by the Appellate Authority, a fresh order was passed on 24.03.2004 whereby the application under Section 58 of M.P. Shops and Establishment Act, 1958 preferred by respondent no.1 was rejected by the Appellate Authority i.e. Assistant Labour Commissioner, Durg.

5. When the Appellate Authority vide its order dated 24.03.2004 finally recalled its earlier order dated 26.02.99 and rejected the appeal preferred by respondent no.1 under Section 58 of the Shops and Establishment Act, the respondent no.1 would not be entitled for any relief whatsoever and as such the order passed by the Labour Court under Section 33 C (2) automatically becomes nullified.

6. It is further pertinent to mention that the order dated 24.03.2004 was challenged by respondent no.1 in a writ petition before this Court registered as W.P. No.3696 of 2005 and the record shows that the said writ petition was dismissed by this Court on 31.03.2010. As a consequence of the dismissal of the said writ petition, the order passed by the Appellate Authority under Shops and Establishment Act on 24.03.2004 gets affirmed. As a result of which, respondent no.1 would not have been entitled for any relief whatsoever.

7. This being the position, respondent no.1 again approached the Labour Court for execution of its earlier order dated 27.04.2001 which was not justified

at all and that the Labour Court ought to have rejected the same at the threshold itself in the light of the subsequent order passed by the Appellate Authority on 24.03.2004 which has also been affirmed by this Court vide order dated 31.03.2010. Yet, the Labour Court proceeded further for execution of an order which had already become null and void in view of the subsequent developments and proceedings and passed an order on 28.08.2010 for recovery of Rs.53,240 which is per se illegal and shows the total lack of judicious mind by the Presiding Officer of the Labour Court who has acted contrary to the common principles of law. An order which has been null and void by the subsequent developments could have never been executed. The Labour Court ignoring this fact even after having been brought to its notice shows callousness and lack of judicious mind while passing the said order.

8. Once the original order of reinstatement with back wages itself has been recalled and set aside and it has been specifically held by the Competent Court of law that respondent no.1 is not entitled for reinstatement or back wages, the question of execution of an order for grant of back wages does not arise at all specifically when the writ petition preferred by respondent no.1 challenging the subsequent order of the Appellate Authority dated 24.03.2004 was also dismissed by this Court on 31.03.2010.

9. For the aforesaid reasons, the orders passed by the Labour Court on 27.04.2001 Annexure P-3 and 28.08.2010 Annexure P-6 are per se illegal and bad in law which deserve to be and are accordingly set aside. As a consequence, the present writ petition stands allowed. No order as to cost.

Sd/-
P. Sam Koshy
Judge