

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(L) No. 6039 of 2010**

State of Chhattisgarh through Executive Engineer, Minimata Bango
Canal Division No.6 nandelibhatha, Sakti, District Janjgir-Champa (CG)

---- Petitioner**Versus**

Jeetram Yadav aged about 45 years, S/o Muritram Yadav, Ex Store
Chaukidar, R/o Village & Post Lakhali, Tehsil Champa, District Janjgir-
Champa (CG)

---- Respondent

For Petitioner : Shri U. N. S. Deo, Govt. Advocate
For Respondent : Shri Lav Sharma and Shri K. P. S. Gandhi, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04.12.2015**

Challenge to the present writ petition is the award dated 31.03.2010
passed by the Labour Court, Bilaspur in Case No. 48/I.D.A/09 (Ref.).

2. The State Govt. had made the following terms of reference to the Labour
Court for adjudication:

“Whether the application preferred after 12 years of termination is
considerable? If yes, whether the termination of services of the
respondent is proper and legal? If not, what relief he is entitled for.”

3. The case in nutshell is that the respondent workman was engaged as a
daily wage worker with the petitioner department for discharging the duty of
Chowkidar since 01.02.1989. According to the respondent, suddenly his
services were discontinued w.e.f. 30.06.1996 for which he raised an industrial
dispute which was referred to the Labour Court. After recording of evidences
on either side, the Labour Court passed the impugned award holding that the
termination of the respondent workman is bad in law as the same is contrary to
the provisions of chapter V of the Industrial Dispute Act and accordingly ordered

for reinstatement of the services of the respondent worker without back wages which is under challenge in the present writ petition.

4. It is pertinent to note that the writ petition was filed in the year 2010 and notices were issued to the respondent who also entered appearance but till date has not filed the reply and therefore, this Court proceeded to decide the matter on the basis of the available record before the Court.

5. State counsel drew the attention of the Court to the application of interim relief wherein they have mentioned that the petitioner intends to take the respondent back in employment as compliance of the provisions of Section 17 B of the I.D. Act but the respondent employee has not approached them till date which itself shows the conduct of the respondent employee. It was contended that in any case, the services of the respondent was that of a daily wager who was not engaged by the State Government in accordance to the scheme of recruitment as envisaged under the Service Rules and therefore the respondent cannot claim appointment as a right on the said post. It was also submitted that if for some reason, the Court finds that the petitioner has not complied the provisions required under Chapter V of the ID Act, at best, the Court can compensate the respondent but ordering of reinstatement of a daily wage employee would amount to grant of employment contrary to the constitutional scheme and the same would not be permissible under the law.

6. However, counsel for the respondent, opposing the submissions made by the State Counsel, submits that in the instant case, admittedly, the respondent worked with the petitioner from 1989 to 1996 and without paying any compensation or passing any order of termination, the discontinuation of services of the respondent amounts to be illegal and therefore the respondent is entitled for reinstatement. He further submits that the impugned order passed by the Court below is fully in accordance with law and based on the evidences which have come on record, therefore, the same does not warrant any interference.

7. Counsel for the respondent relied upon a judgment passed by the Co-ordinate Bench of this Court in Writ Petition (227) No. 5280 of 2010 and the other analogous petitions decided on 15.10.2015 based upon which he prayed for passing of a similar order.

8. From the given facts and circumstances of the case what is admitted and evident from the records is that the respondent worker was working only as a daily wager and was never working against any sanctioned vacant post nor has there been any evidence in this regard led by the workman. Admittedly, the respondent since he was a daily wage worker did not have any vested right on the said post. Relief by way of reinstatement may not be automatic and would be inappropriate in a given factual background even though the termination of an employee is contrary to law.

9. In the recent past, the Hon'ble Supreme Court in a series of decisions has held that even if the termination is found to be illegal on account of the violation of the provisions of 25F of ID Act, the order of reinstatement would not be proper and justified. In stead, the Supreme Court is of the view that in lieu of reinstatement, compensation should be awarded to meet the ends of justice.

10. According to the Supreme Court, even if the worker as per the award of the Labour Court is reinstated in service, he can be discontinued immediately thereafter, after compliance of the provisions of law as is required under Section 25 F of the ID Act by paying requisite compensation for the period spent on duty and also for the notice period. Thus, no useful purpose would be served in ordering reinstatement of such a worker when he can be compensated monetarily.

11. Another aspect which has to be borne in mind is that after the award having been passed in favour of the respondent, he has not been taken in employment till date. If the period of discontinuance is taken into account, the respondent workman is out of employment by now for a period of about 20 years and at this stage, granting him a relief of reinstatement would not be

proper.

12. The Hon'ble Supreme Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and another reported in (2009) 15 SCC 327 relying upon its certain earlier decisions in regard to paying compensation in lieu of reinstatement held that "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given factual situation even though the termination of an employee is contrary to law, instead of reinstatement, compensation should be paid to meet the ends of justice. The Supreme Court further held that an order of retrenchment passed in violation of Section 25 F of ID Act though may be set aside yet an award of reinstatement should not be automatically passed, in stead, compensation has to be awarded."

13. This view of the Supreme Court was further reiterated in (2010) 6 SCC 773 (Senior Superintendent Telegraph (traffic), Bhopal Vs. Santosh Kumar Seal and others) wherein this Court in paragraph-11 held as under:-

"In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. In our considered view, the compensation of R\s. 40,000 to each of the workmen (Respondents 1 to 14) shall meet the ends of justice. We order accordingly. Such payment shall be made within 6 weeks from today, failing which the same shall carry interest at the rate of 9% per annum."

14. The above said position further got fortified from the recent decision of the Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Bhurumal reported in (2014) 7 SCC 177 wherein the Supreme Court though categorically held that the award of the Tribunal to the extent of termination of the worker

who had completed 240 days in the preceding months prior to the date of termination without payment of requisite compensation under chapter V of the ID Act to be illegal, however, the Supreme Court held that taking note of the fact that the respondent was essentially a daily wager and that the termination took place more than 11 years ago, to meet the ends of justice, compensation in lieu of reinstatement would be proper and justified and accordingly awarded compensation in lieu of reinstatement.

15. Likewise, again in the case of Hari Nandan Prasad and another Vs. Employer I/R to Management of Food corporation of India and another reported in (2014) 7 SCC 190, the Supreme Court relying upon two of its earlier decisions i.e. (2012) 1 SCC 558 (Bharat Sanchar Nigam Limited Vs. Man Singh) and (2010) 9 SCC 126 (Incharge Officer and another Vs. Shankar Shetty) reiterated the principles that in a given case where the termination took place long back and there is a huge gap between the date of termination and the order of reinstatement, it would not serve any fruitful purpose reinstating such worker at this juncture and therefore, such order of reinstatement would not be proper, legal and justified.

16. A perusal of the entire records and the finding of the Labour Court would show that the respondent appears to have worked with the petitioner from 01.02.1989 to 30.06.1996 which the petitioner has also mentioned in its statement of claim. Beyond that period, the respondent has not worked with the petitioner in any manner and therefore, at this stage, the order of reinstatement particularly when the employee is out of employment for the last about 20 years is not proper and justified.

17. Yet another fact which is pertinent at this juncture to be considered is the fact that according to the respondent worker himself, his services were discontinued from June, 1996 but it appears from the records that he had raised the present industrial dispute after elapse of over a decade as the reference is of the year 2009 which means the dispute by the respondent itself was raised

after more than 10 years of his being discontinued from service.

18. Taking into consideration the total facts and circumstances of the case and applying the principles of the Supreme Court in the present case, this Court is of the opinion that the impugned award is sustainable only to the extent that the termination of the respondent employee was bad in law. However, in stead of ordering for reinstatement, relying upon the judgments of the Supreme Court referred to above, this Court is of the opinion that for the said period, the respondent has only to be compensated for which this Court quantifies compensation of Rs.25,000 for each completed years of service. It is ordered accordingly.

19. With the aforesaid observations, the instant writ petition stands disposed of.

Sd/-
P. Sam Koshy
Judge