

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Writ Petition (L) No. 6067 of 2010**

State Of Chhattisgarh through Executive Engineer, Minimata Bango  
Canal Division No.6 Nandelibhatha, Sakti, Distt. Janjgir-Champa (CG)

**---- Petitioner**

**Versus**

Kunjram Karsh S/o Narayan Prasad Karsh R/o Village & Post Semara,  
Tahsil Nawagarh, Distt. Janjgir Champa (Cg), present Address C/o Raju  
Tamrakar Parshad, Ward No.2, Bhatapara Naila, Distt. Janjgir-Champa  
(CG)

**---- Respondents**

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For Petitioner/State:

Shri UNS. Deo Government Advocate.

For Respondent:

Shri Lav Sharma, Advocate.

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**Single Bench: Hon'ble Shri P. Sam Koshy, J**  
**Order On Board**

**7.12.2015**

1. Through the present Writ Petition, the challenge is to the award dated 30.9.2009 in Case No.16/I.D. Act/2007 (Ref.).

2. The Respondent/worker has raised an industrial dispute with the State Government, which in turn, was referred to the State Labour Court, Bilaspur on 11.7.2007 on the following terms of reference:-

“Whether the termination of service of Shri Kunjram Karsh, S/o Shri Narayan Karsh was illegal and justified? If not, what relief he would be entitled for from the employer and what direction in this regard can be granted?”

3. Subsequent to the pleadings being filed by either side, the Labour Court, on completion of the evidence, vide the impugned award dated 30.9.2009, held that discontinuance of the employment of the Petitioner w.e.f. 31.7.1992 is bad in law. That prior to discontinuing the services of the Respondent, the compliance as is required under Section 25F of the Industrial Disputes Act (hereinafter referred to as 'the Act') or for that matter, the requirement under Chapter-5 of the Industrial Disputes Act has not been complied with and therefore, the discontinuance clearly amounts to an illegal termination and

therefore allowing the reference, granted relief of reinstatement in services without back wages.

4. Learned Counsel for the Petitioner challenging the award submits that in fact the Petitioner was appointed as a daily wager and since he was working as a daily wager, he did not have any vested right over the said post and that the engagement was made purely as and when there was availability of work. He further submits that even the fact that the concerned employee had worked for 240 days immediately prior to his discontinuance is disputed and not sufficiently established before the Court below and therefore, the finding of the Court below is bad in law.

5. Learned Counsel for the Respondent opposing the petition submits that the scope of interference in the award of the lower Court is very restricted. That the interference would be called for only in case the findings of the Labour Court are perversely or blatantly contrary to the record. He further submits that in the instant case, the equity is also in favour of the Respondent/Worker as subsequent to the impugned award dated 30.9.2009, the Respondent has been reinstated in service on 23.11.2009 and since then, he is continuously working on the said post. He further submits that though the Respondent/worker was taken back on employment on 23.11.2009, the present Writ Petition has been filed after almost about one year from the date of his reinstatement and which itself establishes the fact that the order of reinstatement was unconditional and was not as a compliance of Section 17B of the Act.

6. Learned Counsel for the Respondent further submits that the impugned award under challenge in the present Writ Petition is based on findings of fact after due appreciation of the evidence on record. Learned Counsel for the Respondent stated that it was categorically pleaded before the Labour Court by

the Respondent/workman that he was working with the Petitioner from 1.9.1986 continuously till 31.7.1992. He further submits that it is undisputedly established that for the aforesaid period, the Petitioner had continuously worked and prior to discontinuing his services, he was not paid any retrenchment compensation or for that matter, any notice or salary in lieu of notice. It was further contended that the Petitioner/State has not been able to disprove the contentions put forth by the Respondent/workman in his evidence led before the Labour Court rather most of the averments made by the workman in his evidence have been admitted by the management witness before the Labour Court. Thus, the finding of fact arrived at by the Court below does not warrant any interference. Therefore, the present Writ Petition deserves to be rejected and does not call for any interference.

7. A perusal of the award and the records placed before this Court itself clearly shows that admittedly, the Sub Divisional Officer who had been examined on behalf of the Petitioner/State before the Labour Court has accepted the fact that the Petitioner was in employment of the State at one point of time though as a daily wager worker. He had also admitted the issuance of the experience certificate, Exhibit-P2 C enclosed with the records of the Labour Court and also the master roll in which the attendance of the Respondent/employee was marked and proved.

8. Thus, from the perusal of the award itself, it is clear that the Petitioner prior to his discontinuance, had worked continuously for a period of 240 days as is evident from the statement of the witness of the State Government and that it is also an admitted fact that prior to the discontinuation, the Respondent/worker was not paid any retrenchment compensation or for that matter, the wages in lieu of the period prior to his discontinuance. Such discontinuance can be safely said to be a case of illegal termination. The law in this regard has been well

settled that in the event of discontinuation of a worker without compliance of the provisions of Chapter-5 of the Act, more particularly under Section 25 F of the Act, the only consequence would be that such termination is to be declared as illegal termination and for which, the worker is entitled for reinstatement in service.

9. In para 17 of (2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another vs. Employer I/R to Management of Food Corporation of India & Another), it has been held as under:-

“17.....At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of retrenchment I paying the aforesaid dues in accordance with Section 25-F of the ID Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well.....”

Applying the same analogy and again reiterating the same in the case of (2014) 7 Supreme Court Cases 177 (Bharat Sanchar Nigam Limited vs. Bhurumal), it has been held in paragraph- 27 as under:-

“27.....In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months' period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.”

In addition to the fact that there is an illegal termination, the equity also stands in favour of the Respondent/worker as he has been un-conditionally reinstated in service in the year 2009 itself and is still working with the Petitioner. The fact that there is an order of reinstatement is evident from the documents enclosed along with the application for grant of interim relief which shows that it

was not an order of reinstatement in compliance of the provisions of 17 B of the Act but was an unconditional order of reinstatement.

10. The petitioners even during the course of hearing of this petition also are not in a position to disprove the finding of the Labour Court by leading any documentary evidence to contradict the finding arrived at by the Labour Court. It is also settled position of law that under the writ jurisdiction, this court would not interfere with the order passed by the Labour Court as if sitting as an Appellate Authority particularly in a case under ID Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can interfere with factual aspect only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.

11. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court does not find any infirmity in the decision making process warranting interference.

12. The Supreme Court in the case of Harjinder Singh v. Punjab State Warehousing Corpn. reported in (2010) 3 SCC 192, in paragraph 21 held as under:-

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and /or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and others similar legislative instruments are social

welfare legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

10. .... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.'

(A.I.R 1958 SC 923 [State of Mysore v. Workers of Gold Mines, AIR p.928, para 10.]”

This view has further been reiterated in the case of Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited reported in (2014) 11 SCC 85.

13. The State Govt. through the present writ petition has failed to show either there being any perversity in the finding or the Court below having exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified.

14. Another fact which is pertinent to mention that subsequent to the award passed on 22.01.2011, the State Govt. has also reinstated the services of the respondent in May, 2011 itself and since then he is working. This all the more brings the equity in favour of the respondent workman and thus the order under challenge does not require any interference at this juncture.

15. Thus, for the aforesaid reasons, this Court does not find any good ground for interfering with the findings arrived at by the lower Court and the present Writ

Petition, being devoid of any merits, the same is accordingly dismissed.

Sd/-  
(P. Sam Koshy)  
**J U D G E**

Priya