

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(L) No. 5481 of 2011**

1. State of Chhattisgarh, through the Secretary, Department of Water Resources, D.K.S. Bhawan, Mantralaya, Raipur (CG)
2. Executive Engineer, Minimata Bango Nahar, Sambhag Kramank 3, Sakti Tah. Sakti, Distt. Janjgir-Champa (CG)
3. Sub Divisional Officer, Hasdeo Banyi Tat Nahar Sambhag Kramank 2 (153), Jaijaipur, Distt. Janjgir-Champa (CG)

---- Petitioners**Versus**

Hariprem Verma S/o Shri Bhojram Verma, R/o Purana Labour Haat,
Sinchai Colony, Rampur, Korba (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**

The State through the present writ petition has challenged the award dated 22.01.2011 declared on 29.03.2011 passed by the Labour Court, Korba in Case No. 16/ID Act/2009/Reference whereby the services of the respondent have been directed to be reinstated without back wages.

2. Brief facts, relevant for disposal of the petition are that a reference was made to the Labour Court, Korba by the office of Assistant Labour Commissioner for adjudication of the validity and legality of the termination of services of the respondent. On receiving the terms of reference, the Labour Court, Korba registered a case and called upon the parties to submit their respective claims.

3. The respondent who was first party before the Court below submitted his statement of claim stating that he was engaged as a Helper on Daily Wages

on 01.06.1989 with the petitioners department and continued his services without any interruption on the said post till 28.02.1995. However, all of a sudden, without following the mandatory provisions of Section 25F of Industrial Dispute Act, his services were terminated w.e.f. 01.03.1995 and therefore he raised an industrial dispute challenging the illegal termination.

4. The petitioners 2 & 3 herein who were second party before the Court below submitted their written submission categorically denying the submissions made by the workman/respondent in his statement of claim. The employment and continuous service of about six years of the first party has also been denied by the second party in their written statement.

5. The first party i.e. the Respondent while giving evidence before the Court below categorically submitted that he was initially engaged as Helper on daily wage in the year 1989 and continuously worked on the said post till 28.02.1995. The workman in his evidence had stated that at the time of termination of his services, the mandatory provisions of Section 25F of ID Act and the other provisions under chapter V were not complied with. He had further deposed before the Court below that subsequent to his termination, he was not gainfully employed in any other institution and therefore he is entitled for full consequential benefits.

6. One Shri Shashank Tiwari appearing on behalf of the State Govt. in his deposition could not produce any documentary proof so far as the denial part of the employment of the respondent for a continuous period of about six years is concerned. The petitioners have also not been able to substantiate their contention regarding the respondent having continuously not worked between 1989 to 1995. On the contrary, the witness of the State Govt. admitted the fact that the respondent was engaged as a contingency worker on daily wages. He further admitted that he has not brought the muster roll and therefore is not able to state the actual number of days worked. In the absence of any evidence on behalf of the State Govt. before the Court below, the only inference which could

be drawn on the basis of the statement of the respondent and the witness of the Govt. is that the respondent has continuously worked from 1989 to 1995 and the finding in this regard is correct. The employment part stood admitted by the State Govt. before the Court below in its evidence. Thus, the State Govt. failing to produce any evidence before the Court below to disprove the contention put forth by the respondent worker, it can be held that the finding of the Labour Court is a finding of fact based on the evidences which have come on record and it is a settled position law that finding of fact of the Labour Court should not be interfered as a matter of routine.

7. Thus, from 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 is 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.

8. 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 (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.”

9. 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 2011 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:-

“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 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.'

(State of Mysore v. Workers of Gold Mines¹, 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

¹ AIR 1958 SC 923

brings the equity in favour of the respondent workman and thus the order under challenge does not require any interference at this juncture.

15. Consequently, the instant writ petition being devoid of merit, deserves to be and is accordingly dismissed.

Sd/-
P. Sam Koshy
Judge

Bhola