

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 7101 of 2011

State Of Chhattisgarh through the Executive Engineer, Public Works Department, Khairagarh, Distt. Rajnandgaon (CG)

Represented through Shri HR. Dhruw, aged about 48 years, S/o Shri Dhruw, presently posted as Executive Engineer, Public Works Department, Khairagarh, District Rajnandgaon (CG) and OIC of the case of the Petitioner/State

---- **Petitioner**

Versus

Suklal S/o Chaitu R/o Village Chindari Post Chuikhadan Distt. Rajnandgaon Cg R/o C/o Through Shri Navjeet Kumar Raman Advocate, 25/12 Nehru Nagar West Bhilai Distt. Durg Cg

---- **Respondent**

For Petitioner/State:
For Respondent:

Shri UNS. Deo Government Advocate.
Shri Anup Majumdar, Advocate.

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

7.12.2015

1. Challenge in the present Writ Petition is to the order dated 10.3.2008 passed by the Labour Court granting relief of reinstatement with 50% back wages and Annexure-P-1, the order passed by the Industrial Court in Appeal dated 25.1.2011 whereby the appeal preferred by the State also was rejected upholding the order of the Labour Court.

2. The case of the Petitioner is that the employee concerned in the present dispute i.e. the Respondent was engaged by the Petitioner at the Chuikhadan Section in Khairagarh Sub-division as a labourer in the year 1992 and he continued to work as a daily wage worker continuously till 1998 and subsequently, in the year 1998, he was discontinued from employment. The worker concerned had challenged the said discontinuance before the Labour Court vide Case No.29/M.P.I.R./98 under Section 31 (3) of the then M.P.I.R Act. The contention of the workman was that since he had completed more than 240

days continuous service prior to his discontinuance, therefore, discontinuance amounts to termination of service and that since the termination was without compliance of the statutory requirement as is required under Chapter-5 of the Industrial Disputes Act (hereinafter referred to as 'the Act'), more particularly, Section 25-F of the Act, the termination becomes illegal and therefore, he is entitled for all the consequential benefits including reinstatement with back wages. The said claim of the Respondent/worker was declined before the Labour Court by the State on the ground that the Respondent/worker was in fact only a daily wage employee and that there was no vested right conferred upon him for any permanent employment. That he was engaged only as and when the availability of the work was there. The Petitioner further had denied the aspect of the Respondent/Worker having put in 240 days of continuous employment prior to his discontinuance and therefore, the State had claimed for rejection of his claim application.

3. Learned Counsel for the Petitioner submits that since the status of the Petitioner was that of a daily wage worker, he did not have vested right created in his favour for challenging his discontinuance. In any case, as engagement was on daily wages and the moment the work was complete in the evening, his services stood dis-engaged and there was no question of any termination of his services. It is rather dis-engagement of a person engaged for a specific period and after this period, his employment stood automatically discontinued. He further submits that the Respondent/worker's claim of having worked for 240 days continuously also has not been properly proved before the Court below and thus prayed for setting aside/quashing of the orders passed by the two Courts below.

4. Learned counsel for the Petitioner also questions the order of the Labour

Court to the extent of granting back wages particularly taking into consideration the status of a worker being that of the daily wager and therefore he did not have any vested right on the said post nor was he working against any sanctioned vacant post or on regular salary by which he could have either claimed for back wages. The Labour Court could not have granted back wages and therefore, the order of awarding 50% back wages is also bad in law.

5. However, the Labour Court, after due appreciation of the evidence which was led on behalf of either party, came to the conclusion that admittedly, on the basis of the evidence on behalf of the State which was adduced before the Labour Court, it stood established that the Respondent/worker had worked with the Petitioner from 1992 to 1998 and since 1998, he had been discontinued. It was also a categorical finding by the Labour Court that prior to the discontinuance of the services of the Respondent/worker, he was neither paid compensation towards retrenchment nor was given any notice or salary in lieu of notice period and therefore, the order of discontinuance becomes an illegal termination.

6. The finding of the Labour Court is that from the evidence of the management before the Labour Court, it stood established that the Respondent/worker had been employed under the Petitioner at Khairagarh Sub-division and that except for the muster roll, there was no other piece of document to show that the Respondent/worker was not in employment of the Petitioner. The management witness has also deposed before the Court below that the Respondent/worker was never engaged subsequent to 1998 which by itself establishes that from 1992 to 1998, there was continuous employment and therefore, it was stood proved that the Respondent/worker had put it 240 days of continuous employment prior to his discontinuance. Thus, the Petitioner, prior to his discontinuance, ought to have paid the Respondent/worker the

compensation towards retrenchment as also the other benefits attached to retrenchment as is envisaged under Chapter – 5 of the Act.

7. Learned Counsel for the Respondent opposing the petition submits that in the present case, the Respondent, in compliance of the order passed by the Court below, has already been reinstated by the Petitioner in the year 2005 and since then, the Respondent is continuously discharging his duties. That having put in 10 years of service after the reinstatement, at this juncture, the impugned two orders do not call for any interference and prayed for the rejection of the same. Learned Counsel for the Respondent also questioned the maintainability of the Petition invoking the scope of writ jurisdiction in a case where there are two orders passed by the Court below giving concurrent finding of fact based upon the evidence which has come on record. He further contended that from the pleadings of the Petitioner/State, it stands established that the Respondent/worker had worked with the Petitioner/State from 1992 to 1998 as is evident from the evidence of the management itself before the Labour Court. It is also proved that prior to his discontinuance, he was not paid any compensation towards retrenchment nor was any salary in lieu of notice paid to him and therefore, the two orders passed by the Court below are in accordance with law and do not call for any interference and the petition deserves to be rejected.

8. Taking into consideration the overall facts and circumstances, this Court is of the opinion that granting of the back wages by the Labour Court is definitely not desirable as the Petitioner was not a regular employee but was only a daily wager and the principle of no work no pay would be applicable and the same is therefore bad in law and the impugned order of the Labour Court which is also upheld by the Industrial Court, is modified to the extent that his reinstatement in service is maintained however, he would not be entitled for back wages on the

principle of “No Work No Pay”.

The fact that the Respondent/workman shall not be entitled for back wages is fortified by the judgment of the Supreme Court in (2002) 6 Supreme Court Cases 41 (Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya & Another), (2005) 5 Supreme Court Cases 100 (Manager, Reserve Bank of India, Bangalore vs. S. Mani and Others), (2003) 10 Supreme Court Cases 92 (Chief Conservator of Forests And Another vs. Rahmat Ullah) and (2003) 6 Supreme Court Cases 141 (M.P. State Electricity Board vs. Jarina Bee [Smt]) wherein in all the aforesaid judgment, the Supreme Court has clearly held that payment of back wages is not a straight jacket formula in cases where the award of reinstatement is granted. There should be a specific finding to be recorded by the Labour Court while awarding back wages. If no finding has been recorded, no back wages can be awarded.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 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.

14. 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.

15. 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.

16. Thus, for the aforesaid reasons, this Court does not find any good ground for interfering with the findings arrived at by the lower Court so far as the order of reinstatement is granted which is maintained. However, the order so far as grant of back wages is concerned, the same is set aside.

17. The Petition accordingly stands partly allowed.

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