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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.283 of 2014

Municipal Corporation, Rajnandgaon, Through the
Commissioner, Municipal Corporation, Rajnandgaon,
Tahsil & District Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

Narayan Lal Sinha, S/o Bhaiyya Lal Sinha, aged about
39 years, Caste Kalar, R/o Village Khuteri, Post Somni,
Tahsil & District Rajnandgaon, Chhattisgarh

---- Respondent

For Petitioner:	Mr. Sourabh Sharma, Advocate.
For Respondent:	None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/12/2015

1. The respondent / workman was employed in the Department of Health under the Establishment of Municipal Corporation, Rajnandgaon since 1995 and his services were terminated with effect from 14-1-2000. He filed an application on 12-7-2013 before the Conciliation Officer for referring the industrial dispute of termination to the appropriate Government, though the period of 45 days expired, yet the Conciliation Officer did not refer the matter to the appropriate Government

for adjudication of the industrial dispute to the Labour Court. He filed an application under Section 2A (2) of the Industrial Disputes Act, 1947 (for short 'the ID Act') inserted with effect from 15-9-2010 directly to the Labour Court for adjudication of his industrial dispute on 17-10-2013, as 45 days has expired, which was opposed by the present petitioner.

2. The Labour Court by its award dated 16-6-2014 has answered the reference in favour of the respondent workman holding that he is entitled for reinstatement without backwages.
3. Feeling aggrieved against the order passed by the Labour Court reinstating the respondent herein on the post of daily wager, this writ petition has been filed stating inter alia that the application filed by the respondent under sub-section (2) of Section 2A of the ID Act which came into force with effect from 15-9-2010, was hit by sub-section (3) of Section 2A of the ID Act, as the respondent was admittedly terminated from service on 14-1-2000 and he made application for reference to the Conciliation Officer on 12-7-2013 and as such, the application was barred by limitation and,

therefore, the impugned award deserves to be set aside.

4. Mr. Sourabh Sharma, learned counsel appearing for the petitioner, would submit that the application preferred by the respondent under sub-section (2) of Section 2A of the ID Act was clearly hit by sub-section (3) of Section 2A of the said Act as admittedly, the respondent having been terminated from service on 14-1-2000 and application for reference to the Conciliation Officer was filed on 12-7-2013, sub-section (2) of Section 2A of the ID Act was not at all attracted in view of sub-section (3) of Section 2A of the said Act and, therefore, the impugned award deserves to be set aside.

5. I have heard learned counsel for the petitioner, as none appeared on behalf of the respondent to oppose the petition though the respondent was served.

6. At this stage, it would be proper to notice the provisions of Section 2A of the Industrial Disputes Act, 1947 which came into force with effect from 15-9-2010.

Section 2A of the ID Act reads as follows: -

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—Where any employer

discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

7. The object and purpose of enacting Section 2A of the ID Act is to confer a right to an individual workman to seek relief against discharge, dismissal or otherwise termination of his service independently where such

dispute was not sponsored by other workman or espoused by Union of workman. The Parliament has enacted Section 2A in the Act by way of amendment vide the Industrial Disputes Amendment Act, 1965 (Act No.35/1965). The said Amendment Act came into effect on and from 1-12-1965. The said Act was further amended by the Industrial Disputes Amendment Act, 2010 (Act No.24/2010) provisions whereby came into effect on and from 15-9-2010. In the absence of any specific provision to the contrary, the said Act No.24/2010 is operative prospectively.

8. The effect of the amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A of the ID Act may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of forty-five days from the date the workman has made the application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-section (3) of Section 2A of the ID Act lays down the time limit for making such application to such tribunal. It provides that such application to the Labour Court or Tribunal for

adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal as the case may be. Thus, this provision governs cases where the dismissal has been effected prior to the date of this enactment.

9. Section 2A of the ID Act came into force with effect from 15-9-2010. The respondent was terminated from service on 14-1-2000 and the three years' period under sub-section (3) of Section 2A of the ID Act expired on 14-1-2003. Therefore, the respondent was not eligible to seek relief under sub-section (2) of Section 2A of the ID Act, as he was not eligible to seek relief under sub-section (2) of Section 2A of the said Act by virtue of sub-section (3) of Section 2A. Therefore, the application filed by the respondent under sub-section (2) of Section 2A of the ID Act was not maintainable and the Labour Court has committed jurisdictional error in entertaining the application and granting the award, as sub-section (3) of Section 2A of the ID Act is imperative in nature.

10. As a fall out and consequence of the aforesaid discussion, the application filed by the respondent under sub-section (2) of Section 2A of the ID Act and

the award passed thereafter deserve to be and are hereby quashed.

11.The writ petition is allowed to the extent indicated herein-above but without imposition of costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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