

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 4764 of 2006**

1. Kanoi Paper & Industries Ltd. Through Factory Manager, Vill. Dhenka, District Bilaspur (CG)

---- Petitioner

Versus

1. State Industrial Court of Chhattisgarh Raipur Mahanadi Khand, Near D.K.S. Bhawan, Raipur
2. Labour Court, Bilaspur
3. S.C. Pandey S/o Shri G.N. Pandey Bengali Para Sarkanda, Bilaspur (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Narendra Kumar Vyas, Advocate
For Respondent No.3	:	Shri Vinod Deshmukh, Advocate

HON'BLE SHRI NAVIN SINHA, ACTING C.J.**Order On Board****20/03/2015**

1. Heard Learned Counsel for the Petitioner and Respondent No.3.
2. The present application assails order dated 6.5.1999 passed by the Labour Court directing reinstatement of the Respondent with back wages as affirmed by the Industrial Court in appeal dated 19.12.2005. Also, challenge is to the order dated 4.8.2006 of the Industrial Court rejecting the application for review of order dated 19.12.2005.
3. Respondent No.3 entered appearance as far back as

23.6.2009, but no reply has been filed by him.

4. The Respondent had moved the Labour Court asserting that he was forced to sign a resignation letter on basis of which he had been illegally removed from service. Both the Courts below arrived at the conclusion that the resignation was not voluntary but had been obtained by coercive methods.

5. Learned Counsel for the Petitioner submits that a charge sheet was issued to the Respondent and he was placed under suspension. Before the departmental proceedings could commence, the Respondent resigned. Consequently, he was paid his gratuity which was encashed. More than 11 months later he moved the Labour Court contending that his resignation was obtained under duress. Learned Counsel further refers to the discussion in the appellate order from the evidence of the Respondent that he had signed on the paper without noticing if it was blank or something was written on it. The absurdity of the defence by the Respondent is evident from his own conduct. After resigning the Respondent was gainfully employed and had wrongly contended before the Labour Court that he was unemployed, leading to grant of back wages. The Petitioner at that time did not have necessary information regarding the employment of the Respondent and therefore could not place necessary materials before the Labour Court. No sooner that the Petitioner was able to collect information, it moved the Review application before the Industrial Court with complete details of the Respondent possessing a Car worth Rs.8 lacs including the make

and registration number obtained from the Transport Authorities, that the Respondent was running an Engineering firm in the name and style of 'Pooja Engineering' with a handsome income. The Respondent had thus obtained the order for back wages by misleading the Courts below. The Industrial Court failed to appreciate that if the Respondent had made wrong representations before the Labour Court and obtained an order for back wages by misleading it, the Industrial Court was not denuded of its inherent jurisdiction to recall the order for back wages.

6. Learned Counsel for the Respondent submits that the Review application was dismissed without issuance of notice and therefore he had no opportunity to deny the allegations. He had not made any wrong representation before the Labour Court much less were the allegations against him true.

7. The Court has considered the submissions on behalf of the parties and also perused Annexure P/23, copy of the Review application filed on behalf of the Petitioner before the Industrial Court.

8. The Respondent has entered appearance in 2009 but has not filed any affidavit till today denying the contentions of the Petitioner that he was gainfully employed and that he had made misrepresentation before the Labour Court. If a person obtains an order to his advantage from a Court of law by submitting wrong or incorrect facts, the Court passing the order has inherent jurisdiction to recall its order. Any order obtained

from a Court of law by misrepresentation of facts amounts to fraud. It unravels anything and every relief granted. In so far as the merits of the controversy is concerned, it may only be noticed that the Respondent stated in his evidence that his resignation was obtained by force, but surprisingly made a very ambivalent statement that at the time of signing did not notice that the paper was blank or anything was written on it. It defies common sense prudence and reasoning that a person signing on a document is unable to say whether it was blank or contained written information. That alone is sufficient to hold that his entire plea with regard to forced resignation obtained under duress was false. Furthermore, he encashed his gratuity payment and only thereafter 11 months later sought to raise issues with regard to a forced resignation.

9. The inherent power of a Court to recall a judgment or order obtained by misrepresentation or fraud was considered in (1996) 5 SCC 550 (Indian Bank Vs. Satyam Fibres (India) (P) Ltd.) observing as follows:

“20.This plea could not have been legally ignored by the Commission which needs to be reminded that the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or order if they are obtained by fraud as fraud and justice never dwell together (Fraus et jus numquam cohabitant). It has been repeatedly said that fraud and deceit defend or excuse no man (Fraus et dolus nemini patrocinari debent).”

10. In the entirety of the matter the orders of the Labour Court and the Industrial Court are held to be unsustainable. They are set aside.

11. The writ petition is allowed.

ACTING CHIEF JUSTICE