

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (L) No. 2765 OF 2007

1. State of Chhattisgarh, through Superintending Engineer, Shivnath Division, Department of Water Resources, Chui Khadan, District Durg (C.G.)
2. Executive Engineer, Water Resources Division, Chuikhadan, District Rajnandgaon (C.G.)
3. Sub Divisional Officer, Piparia Head, Work Sub Division, Water Resources Department, Chuikhadan, District Rajnandgaon (C.G.)

... Petitioners

Versus

Jailal, S/o Khorbahra, aged about 35 years, R/o village Nayagaon, Post & Police Station, Chuikhadan, District Rajnandgaon (C.G.)

... Respondent

For Petitioners	:	Mr. B. Gopa Kumar, Dy. A.G.
For Respondent	:	Mr. Anup Majumdar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/09/2015

1. In the present Writ Petition, the State Government has challenged the award dated 20.12.2006 passed by the Labour Court, Rajnandgaon in Case No. 01/I.D.Act/2006(Ref.).
2. Vide impugned award, the Labour Court has granted the relief of reinstatement without back-wages.
3. Learned Counsel for the Petitioners submits that in compliance of the provisions of Section 17-B, the Respondent-workman has already been reinstated in employment in the year 2006 and continues in services till now. Challenging the award he submits that the Labour court has not considered the fact that the initial appointment of the Respondent itself was not in accordance with any of the constitutional schemes framed by the State Government and therefore the same is

bad in law particularly in the light of the judgement of the Supreme Court in 2006 (4) SCC 1 (Secretary, State of Karnataka & Others Vs. Uma Devi (3) & Others)

4. Learned Counsel for the Petitioners further submits that since the appointment was itself bad in law, the requirement of compliance of Section 25-F or for that matter compliance of Chapter V of the Industrial Disputes Act does not arise and therefore the finding of the Labour Court to that extent deserves to be interfered with and the same is liable to be set aside/quashed.

5. Per contra, learned Counsel for the Respondent-workman submits that it is a case where the admitted position as is evident from the evidence of the Petitioners' witnesses before the Labour Court is that the Respondent-workman was in employment with the Petitioners since 6.3.1984 and that earlier also in the year 1996 the service of the workman was illegally terminated by the Petitioners and the said termination was challenged by the Respondent-workman in the Labour Court wherein the Labour Court granted the benefit of reinstatement by virtue of which he has come back in employment and as such he is in continuous employment since 1984.

6. Learned Counsel for the Respondent-workman further submits that in spite of the fact that on an earlier occasion the Labour Court had passed an award of reinstatement of the Respondent-workman declaring the termination to be illegal for non-compliance of the Section 25-F, the State Government again while removing him from employment in the year 2000 still have not complied with the provisions of the Industrial Disputes Act. Therefore, it is a case where the Petitioners knowing fully well of the earlier order of the Labour Court and the requirement of compliance of Section 25-F have violated the provisions

of Chapter V of the Industrial Disputes Act and thus the order of termination was rightly held to be bad in law and was rightly set aside by the Labour Court.

7. It was further submitted by the learned Counsel for the Respondent-workman that by now the Respondent-workman has already put in about more than 30 years of continuous service with the Petitioners and this itself may be considered as a ground for maintaining the continuity of services of the Respondent-workman.

8. Considering the rival contentions put forth by the learned Counsel for the parties and on perusal of the impugned award, it clearly reveals that in spite of the fact that there was an earlier order of reinstatement in favour of the Respondent-workman, the Petitioner-State Government has again removed the Respondent-workman in the same fashion which on an earlier occasion was held to be bad in law.

9. Except for the fact that the witnesses of the State Government having made a statement before the Labour Court that he was not given a proper order of appointment and that his recruitment was not in accordance with rules applicable to the State Government, the appointment being bad, the witnesses of the State Government have not adduced any evidence to show compliance of the provisions of the Industrial Disputes Act, particularly, the compliance of the provisions of Section 25-F of the Industrial Disputes Act. The witness of the Petitioner-State rather has not disputed the engagement of the workman since 1984 and that he has been working with the State for long. Thus, the award passed by the Labour Court becomes a finding of fact based on the evidences which have come on record and which cannot be interfered with as a matter of routine and as a matter of course, unless some cogent evidence to rebut the same is established

by the Petitioner-State Government which they have not done before the Labour Court as also before this Court.

10. Under Section 25-F of the Industrial Disputes Act, a workman who has been illegally retrenched is entitled for reinstatement if the workman has worked for a period of 240 days or more within 12 months immediately preceding the date of retrenchment.

11. Section 2(oo) defines “retrenchment” which is as follows:

“2. (oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action...”

12. Chapter V-A of the Industrial Disputes Act deals with “lay-off and retrenchment”. Section 25-B defines continuous service, including deemed continuous service on continuation of certain days in a year. Section 25-C of the Act explains the right of the workman for compensation. Section 25-F deals with conditions precedent to retrenchment of a workman.

13. Thus, it is mandatory that in order to retrench a workman who has been in continuous service for not less than one year in industry, the employer needs to give a month's notice or to pay the workman the amount in lieu of notice and the wages for the period of notice. That is to say any order or retrenchment in violation of Section 25-F will render such order illegal.

14. In (2015) 6 SCC 321 (Ajaypal Singh v. Haryana Warehousing Corporation), the Supreme Court while upholding the award of reinstatement of the Labour Court in similar factual background and while setting aside the judgement of the High Court quashing the award has held in paragraph 22 as under:

“22. It is always open to the employer to issue an order of “retrenchment” on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the

Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be restored to and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Section 25-F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.”

15. Subsequently, again the Supreme Court in one of a very recent decision reported in (2015) 4 SCC 458 (Jasmer Singh v. State of Haryana & Another) in paragraph 13 as held as under:-

“**13.** In view of the aforesaid statement of law the setting aside of the Award by the learned Single Judge which is affirmed by the Division Bench is vitiated in law as the same is contrary to the judgments of this Court referred to supra, upon which the learned counsel for the appellant has rightly placed reliance in support of the correctness of the finding recorded by the labour court on the various issues, particularly the finding of fact that the workman has worked for more than 240 days in a calendar year and termination order is void *ab initio* in law for non-compliance of Section 25-F (clauses (a) and (b)), 25-G and 25-H of the Act, therefore, the Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination of services of the workman and awarded the order of reinstatement with continuity of service and full back wages...”

16. Taking into consideration the facts and circumstances of the case and also considering the limited scope of interference by this Court while exercising its writ jurisdiction, the instant Writ Petition being devoid of merits is liable to be and is hereby dismissed. No cost.

Sd/-
(P. Sam Koshy)
Judge