

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 645 of 2015**

Narayan Prasad Dansena son of Samaru Ram Dansena, aged about 26 years, Ex. Waterman, Resident of village Dharamjaygarh, Post Dharamjaygarh, Tehsil Dharamjaygarh, P.S. Dharamjaygarh, Civil and Revenue District Raigarh, Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh, Through its Assistant Commissioner, Office of the Collector, (Tribal Development), Raigarh, Tehsil Revenue and Civil District Raigarh, Chhattisgarh.

---- Respondent

Writ Appeal No. 646 of 2015

Rishikeshwar Singh Rathia, son of Shri Chandan Singh Rathia, aged about 38 years, Ex Peon, Resident of village Chhal, Post Chhal, Tehsil Dharamjaygarh, P.S. Dharamjaygarh, Civil and Revenue District Raigarh, Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh, Through its Assistant Commissioner, Office of the Collector, (Tribal Development), Raigarh, Tehsil Revenue and Civil District Raigarh, Chhattisgarh.

---- Respondent

For Appellants	:	Shri K.K.Patel, Advocate.
For Respondent/State	:	Shri UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****14/12/2015**

1. These two writ appeals arise from common order dated 5.10.2015 passed in Writ Petition (L) No. 114 of 2015 and analogous cases. The Learned Single Judge set aside the award passed by the Labour Court dated 11.5.2015 directing

reinstatement without backwages and substituted it by a total compensation of Rs. 1,00,000/- to each of the Appellants.

2. IA No. 1 of 2015 has been filed to condone delay of 16 days in preferring the appeals. Considering the duration and after hearing Learned Counsel for the parties, delay is condoned.

3. Since the facts are identical and the questions of law arising for consideration being common, for convenience the facts will primarily be taken from Writ Appeal No. 645 of 2015.

4. Learned Counsel for the Appellant submitted that retrenchment was admittedly in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter called 'the ID Act'). The Learned Single Judge therefore ought not to have interfered with reinstatement. If reinstatement was in violation of law, backwages also ought to have been granted. Reliance was placed on an order in Civil Appeal No. 3701 of 2015 (Gauri Shankar v. State of Rajasthan) disposed on 16.4.2015.

5. Learned Counsel for the State opposing the appeal submitted that the Appellants were daily wage employees. No formal orders for their appointment had ever been issued. They were not appointed against any sanctioned vacant post. They had worked approximately for 1½ years and 9 months, respectively. A daily wage has no indefeasible right and his engagement is dependent on the needs of the employer. An employer cannot be saddled with an employee whose services are not required. Compensation was therefore justly granted in the facts of the case and backwages denied as they had admittedly not worked in the interregnum.

6. We have considered the submissions on behalf of the parties.

7. The Appellant was appointed on 8.10.2008 and worked till 21.3.2010. He came to this Court two years later in Writ Petition (S) No. 3650 of 2012 which was

dismissed on 25.2.2013 as revealed from the order of the Labour Court dated 11.5.2015. Unfortunately, the Appellant has not chosen to place that order on record. Apparently, the writ petition itself was preferred belatedly. After the writ petition was dismissed, it appears that the Appellant sought a reference under Section 10(1) of the ID Act and which was made on 16.4.2014. It is also an admitted fact that in the meantime on 2.6.2012, before the dismissal of his writ petition, the Respondents had issued an advertisement for fresh recruitment in accordance with law. Except for a bald statement that the principle of 'last come first go' had not been followed, no materials appear to have been placed by the Appellant on this question of fact before the Labour Court or the Learned Single Judge. The Labour Court did not consider the nature of appointment, intervening developments and proceeded to grant reinstatement straightaway.

8. The Learned Single Judge relying on more than one precedent noticed the changing judicial trend with regard to grant of compensation in lieu of reinstatement for retrenchment in violation of Section 25F of the ID Act more particularly with regard to daily wagers and who may have worked for extremely short duration like the Appellants. Jobs cannot be created by judicial orders nor the needs of the employer determined in judicial review as was observed in (2007) 1 SCC 408 (Indian Drugs & Pharmaceuticals Ltd. vs. Workmen).

9. It emerges as an admitted fact from the order of the Labour Court that the Appellant was never appointed against a sanctioned vacant post. He was a daily wage. He was removed as his services were no longer required. He first came to this Court unsuccessfully and allowed the order to attain finality and then resorted to proceedings under the ID Act. It was not open for the Appellant to go forum hunting if he did not get relief in the writ petition and allowed the order to attain finality. The Labour Court noticed this fact but did not dwell upon it presumably for the reason that a Reference had been made. It is not known whether the workman had made full disclosure with regard to dismissal of his writ petition when he moved

the State Government for a Reference. We requested the Learned Counsel to provide us a copy of the application for perusal. Learned Counsel regretted his inability saying that he was not in possession of the same.

10. The facts in Gauri Shanker (supra) were completely different. The workman claimed that he was appointed against a permanent sanctioned post. The Respondents disputed his claim but did not produce the muster roll leading to adverse inference. Naturally, if he was appointed against a permanent sanctioned post, it was on basis of proper orders unlike the present case where the Appellant acknowledges that he was not appointed by any formal order. The Appellant therein had worked for longer duration. The High Court interfered with the conclusion of the Labour Court of a regular appointment in judicial review to arrive at conclusion that he was a daily wage worker. The case is distinguishable on its own facts.

11. We find no reason to interfere with the order under appeal.

12. The writ appeals are dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE