

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 1628 of 1997

- Bhagta Di Dukan, Through its Proprietor, Mangatrai Jindal S/o Shri P.C. Gupta, aged about 33 years, M.G. Road, RAIPUR

---- Petitioner

Versus

1. Competent Authority, M.P. Shop & Establishment Act, 1958, Assistant Labour Commissioner, Raipur Division, Raipur
2. Shri Ratanlal S/o Shri Tribhan, R/o C/o Shri G.R. Dongre, Bajrang Nagar, RAIPUR

---- Respondent

For Petitioner
For Respondent No.2

Mr. N.K. Vyas, Advocate
Mr. N. Naha Roy, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

8/2/2016

Heard.

(2) The petitioner runs a hotel at M.G. Road, Raipur. Respondent No.2 worked as Waiter in his hotel. He was discontinued from service on 03.11.1990 on the ground that his behaviour with the customers is not satisfactory. Respondent no.2 moved an appeal under Section 58 of the Chhattisgarh Shops and Establishments Act, 1958 (in short "the Act"), which has been allowed by the impugned order on the ground that the petitioner has not served one month notice on respondent No.2 before discontinuing him from service.

(3) I have heard Mr. Vyas, learned counsel appearing for the petitioner and Mr. Roy, learned counsel appearing for respondent No.2 through the High Court Legal Aid Committee, and have also perused the record of the case.

(4) Mr. Roy has been appointed by this Court, because, respondent No.2 did not respond to the notice issued by this Court and his present status is also not known to any of the counsel.

(5) On the basis of evidence recorded before the appellate authority-cum-Assistant Labour Commissioner, Raipur, who is empowered to hear appeal under Section 58 (2) of the Act, the appellate authority concluded that the petitioner failed to serve one month notice on respondent No.2, therefore, the disengagement/retranchment is illegal.

(6) Section of 58 of the Act reads thus :

"58. Notice of dismissal - (1) No employer shall dispense with the services of an employee who has been employed for a period of three months or more except for a reasonable cause, and without giving such employee at least one month's notice or wages in lieu of such notice :

Provided that such notice shall not be necessary if the services of such employees are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held by the employer for the purpose.

(2) (a) The employee discharged, dismissed or retrenched may appeal to such authority and within such time as may be prescribed either on the ground that there was no

reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that such punishment of discharge or dismissal was severe.

(b) The Appellate Authority may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period during which he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the Appellate Authority shall be final and binding on both the parties and be given effect to, without such time as may be specified in the order of the Appellate Authority.”

(7) A reading of the above provision would make it clear that the appellate authority has power to reinstate an employee with or without back-wages. Since there is no dispute that the petitioner did not serve notice on respondent No.2 before discharging him from service, there is violation of provisions contained in Section 58(1) of the Act. Therefore, the impugned order in so far as it concerns reinstatement of respondent no.2 does not call for any interference, however the finding in respect of 50% back-wages appears to be without any material.

(8) There is absolutely no evidence led by respondent No.2 that he was not gainfully employed during the period. On the contrary, there is finding by the appellate authority itself that during the period of disengagement/retrenchment, respondent No.2 was earning livelihood by operating a *thela* opposite Mahendra Travels at Bus Stand, Raipur. If

respondent No.2 was earning by operating a *thela*, it was incumbent upon respondent No.2 to have proved the income which he was earning from the said vocation. If his income was less than the wages earned during his employment with the petitioner, he would have been entitled for back-wages, but there being no evidence or finding to this effect, the appellate authority erred in awarding 50% back wages, therefore, this part of the impugned order is set-aside.

(9) Accordingly, the writ petition is allowed in part in the above stated terms.

Sd/-

Judge

(Prashant Kumar Mishra)

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