NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (L) NO. 7218 OF 2006

State of Chhattisgarh, through Divisional Forest Officer, Forest Division, Kawardha, District Kawardha (C.G.)

… Petitioner

Versus

Manohar Lal Soni, S/o Shri Chedilal Soni, resident of Ward No.6, Kawardha, District Kabirdham (C.G.)

… Respondent

For Petitioner-State : Mr. Y.S. Thakur, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/08/2016

1. The present petition has been preferred by the Petitioner-State challenging the award dated 19.5.2006 passed by the Labour Court, Rajnandgaon in Case No. 41/I.D. Act Ref./2004.

2. The State of Chhattisgarh vide order dated 24.9.2003 had sent a reference to the Labour Court for adjudication on the following terms:

> "Whether the retrenchment of worker Shri Manohar Soni, S/o Shri Chhedilal Soni on 18.2.2000 by the employer after payment of retrenchment compensation and other payable dues in accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 was illegal? If yes, what directions should be given to the employer?"

3. According to the claim of the Respondent-worker, he was appointed at the Forest Range, Kawardha against clear vacancy with effect from 2.11.1991 and was assigned to maintain dispatch register, cash book, voucher maintenance etc. Since November, 1991 the Respondent-worker denied the discharge of his duties in the same capacity till 18.2.2000 on which date the Respondent was illegally removed from services. The

reasons for discontinuance for the Respondent-worker was because of the instructions of the department not to keep the daily wage employees engaged subsequent to 1988. Therefore the services of the Respondent-worker were no longer required and thus he was removed. It was the contention of the Respondent-worker that prior to his removal, the State had not complied with the provisions of Chapter V of the I.D. Act and that it was only after the Respondent-worker was removed from the services that the State had paid retrenchment compensation which is contrary to law and is malafide. It was also contended that the post was lying at the office of the Forest Department and there was a requirement, yet the Forest Department has decided not to take services from the Respondent-worker.

4. The Forest Department in their reply had categorically denied all the contentions raised by the Respondent-worker including the employment, the services that he had rendered, nature of duty discharged and also the necessity of the Respondent-worker. It was contended by the Forest Department that since he was engaged as a daily wage employee, there was no necessity for issuance of a notice prior to his discontinuance. The Forest Department had also denied the contentions that notice was not issued and the salary in lieu of notice was also not paid to the Respondent-worker. At the same time, it was contended that subsequent to his removal he was paid the retrenchment compensation that was payable to him for the services that he had rendered and as such there was no illegality or violation of any of the provisions of the I.D. Act and prayed for answering of the reference in the negative.

5. During the course of the proceedings before the Labour Court, the Respondent-worker examined himself and on behalf of the Petitioner-State one Shri A.K. Jha deposed before the Court below. After due consideration of the pleadings and the evidence which has come on record, the Labour

Court reached to the conclusion that from the statement of the witness of the Forest Department it stands admitted that the Respondent-worker was working as a contingency employee in the Forest Department at Kabirdham while he was working as a Sub Divisional Officer, Forest. The witness of the Forest Department submitted that the services of the Respondent was discontinued on account of instructions of the State Government to discontinue all daily wage employees engaged subsequent to 31.12.1988. He also made a statement that at the time of discontinuance of the Respondent-worker, one month's notice pay and the retrenchment compensation was paid to him. From the deposition of the witness of the Forest Department, it also stood reflected that the notice issued to the Respondent-worker was of 7.4.2000 and which was served upon him also on the same day. It was also admitted by the witness of the Forest Department that the retrenchment compensation to the Respondent-worker was paid much after his retrenchment from the post. So far as the other records are concerned, like the attendance register and other documents, it were made available by the witness on behalf of the Forest Department and based on the his evidence, the Court below reached to the conclusion that the fact that at the time of retrenchment since the mandatory provisions of Section 25-F of the I.D. Act were not followed and therefore the removal of the worker was illegal. Hence, the order of removal was set-aside/quashed by the Labour Court on 19.5.2006 and directed the Petitioner-State to reinstate the Respondent-worker in service with 50% backwages.

6. It is this award dated 19.5.2006 which has been assailed by the State through the present writ petition.

7. It is pertinent to mention at this juncture that the Respondent-worker has apprised the Court of the fact that pending the petition before this

Court, the Petitioner-State has already granted regular employment to the Respondent-worker by virtue of his length of service vide order dated 29.8.2008. It is also pertinent to take note of the fact that since then i.e., from 29.8.2008 the Respondent-worker is continuously discharging his duties on the said post and has been receiving the benefits arising out of the said order including all consequential benefits. The Petitioner-State already having taken the Respondent-worker back in services and also regularised his services and who in turn by now has put about 8 years of services, this Court is of the opinion that it would not be proper at this juncture to go into the merits of the case and decide as to whether the order passed by the Labour Court in the year 2006 was proper, legal and justified or not. Even otherwise, a prima facie consideration of the evidence that has come on record before the Labour Court was that the Respondent-worker had in fact worked continuously with the Petitioner-State since 1991 till February, 2000 i.e., for more than about 9 years time. It is also an admitted position that the Respondent-worker had continuously discharged the duties that of a Clerk in the Forest Department. He had also been working against the clear vacancy available in the department. The further admitted position gathered from the evidence in the case is that the notice of removal and the compensation paid on retrenchment also was paid much subsequent to the discontinuance of the Respondent-worker whereas the mandate of the law as per Chapter V of the I.D. Act is very clear that at the time of retrenchment itself the employer has to provide him the retrenchment compensation etc., which in the instant case apparently seems to have not been complied with and the order of discontinuance is bad in law for this reason itself.

8. Under Section 25-F of the I.D. 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.

9. 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...”

10. Chapter V-A of the I.D. 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.

11. 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.

12. 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.**”**

13. Subsequently, again the Supreme Court in a 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...**"**

14. Considering the legal pronunciation by the Supreme Court in similar context in recent past, this Court is of the opinion that the finding arrived at by the Labour Court cannot be said to be bad in law, arbitrary or perverse nor can it be said contrary to the evidence which have come on record. The Supreme Court has categorically held that once if the removal is held to be contrary to the provisions of Section 25-F of the I.D. Act, the natural consequences would be that of a reinstatement and consequential benefit. In the instant case since the backwages also awarded by the Labour Court is only 50%, this Court does not think it proper to interfere with the said finding arrived at by the Labour Court.

15. The writ petition being devoid of merits the same is dismissed.

Sd/-

(P. Sam Koshy)
Judge

/sharad/