

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 6 of 2013

- State Of Chhattisgarh (Respondent) Through The Divisional Forest Officer, Forest Division Khairagarh, Distt Rajnandgaon, CG

---- Petitioner

Versus

- Prakash Chand Sahu S/o Pret Ram Sahu R/o Madiyan, Post Madiyan PS Chichola, Tah Dongargarh, Distt Rajnandgaon (CG)

---- Respondent

And

WPL No. 7 Of 2013

- State Of Chhattisgarh (Respondent) Through The Divisional Forest Officer, Forest Division Khairagarh, Distt Rajnandgaon, CG

---- Petitioner

Vs

- Dasru Ram Patel S/o Prem Lal Patel R/o Paniyajoab, PS Boartalab, Tah Dongargarh, Distt Rajnandgaon, CG

---- Respondent

For Petitioners	Mr. Shashank Thakur, Government Advocate
For Respondent	Mr. Pankaj Agarwal, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

4/2/2016

Heard finally with the consent of learned counsel for the parties.

(2) The State of Chhattisgarh has preferred these two writ petitions assailing the awards passed by the Labour Court, Rajnandgaon reinstating the respondent-workmen as daily wage labourers along with 50% back wages.

(3) It is not in dispute that the respondent-workman Prakash Chand Sahu in WPL No.06/2013 had worked as daily wager from the year 1986 to 2008, whereas, respondent-workman Dasru Ram Patel in WPL No.7/2013 had worked as daily wager from the year 1983 to 2007 in the Forest Depot, Rajnandgaon. There is some dispute as to the nature of work assigned to the workmen, inasmuch as, on the one hand, the workmen were claiming that they were engaged as watchmen, on the other hand, the Department would assert that they were engaged seasonally for cutting of bamboos and immediately after the cutting season in the year was over, they were disengaged for the rest of the year.

(4) The respondent workmen raised the industrial dispute on submission that they were continuously working from the date of initial engagement till 2008 and 2007 respectively, however, they were disengaged without any lawful reason; without issuing any show cause notice or giving opportunity of hearing, even though they had rendered more than 240 days of service in the preceding calendar year. Before the Labour Court, the Department contended that the workmen were engaged seasonally for cutting of bamboos and were not permanently engaged. Their engagement depended upon the availability of work, therefore, as soon as the work was not available, they have been disengaged without causing any stigma.

(5) In both the reference, the Labour Court has recorded categorical finding that there is violation of Section 25F of the Industrial Disputes Act (in short "the Act"), inasmuch as, the workmen have categorically proved more than 240 days of working in the just preceding calendar year and the Department has not discharged its burden to disprove the said assertion of the workmen.

(6) It is settled in a catena of decisions that the finding recorded by the Labour Court regarding engagement of workmen for 240 days or more in the preceding calendar year is finding of fact, therefore, the writ Court would not disturb the finding unless it is shown to be perverse. Nothing has been brought to the notice of this Court to demonstrate that the said finding does not arise out of the pleadings or materials placed before the Labour Court.

(7) Accordingly, it is found that the Labour Court has not committed any illegality in holding that the disengagement or removal of the respondent-workmen was in contravention of Section 25F of the Act, therefore, the workmen is entitled for reinstatement.

(8) In so far as the question regarding back-wages is concerned, ordinarily, a daily wager is not held entitled for back wages when the removal is on the ground of non-availability of work. A daily wager has no right to hold the post and reinstatement is directed for violation of Section 25F of the Act, the principle of grant of back wages does not *ispo facto* applies to a daily wager.

(9) For the foregoing, while upholding the impugned awards of reinstatement passed by the Labour Court, this Court would set-aside the Labour Court awards pertaining to grant of 50% back wages.

(10) Accordingly, the writ petitions stand allowed in part, to the extent indicated above. Parties to bear their own cost.

Sd/-

Judge

(Prashant Kumar Mishra)