

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 2912 of 2007**

Chhattisgarh State Electricity Board, through Secretary, Head Quarter,
Danganiya, Raipur.

---- Petitioner**Versus**

1. State Industrial Court of Chhattisgarh Mahanadi Khand-B, Mantralaya building Raipur.
2. Presiding Officer Labour Court, Anand Nagar, Raipur (CG).
3. Smt. Hem Lata Tiwari Additional O.A. Grade I, O/o CSEB, Danganiya, Raipur (CG).

---- Respondents

For Petitioner	:	Shri NK Vyas, Advocate.
For respondent/State	:	Ms. M. Asha, Panel Lawyer.
For Respondent No.3	:	Shri Anurag Dayal Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****20/10/2016**

1. The present petition under Article 226/227 has been filed assailing the order dated 13.12.2006 passed by the State Industrial Court, Chhattisgarh, Raipur, in Civil Appeal No.75/CGIR Act/A-II/06. By the said impugned order, the Industrial Court setting aside the order of Labour Court dated 21.07.2006 in case No.135/CGIR Act/2004 and has ordered that the respondent No.3/employee shall be entitled for her annual increment w.e.f. June, 1988 instead of November, 1988.
2. Brief facts relevant for proper adjudication of the case is that, the respondent No.3 was initially appointed as a 'Work Charged Employee'

in the petitioner's establishment on 29.05.1984 as Assistant Grade-III. She continued on the said post uninterruptedly till order dated 29.10.1987 (Ex. D/1) was issued. By the said order dated 29.10.1987, the services of the respondent No.3 was regularized on the post of Assistant Grade-III as a regular employee in the regular establishment of the petitioner. Indisputably, the respondent No.3 assumed her charge on the said post w.e.f. 07.11.1987 onwards. It is a case, where the petitioner considered the service of the respondent No.3 to be a fresh appointment w.e.f. 07.11.1987 and has granted regular annual increment to respondent No.3 with effect from completion of 12 months from 07.11.1987 i.e. in the month of November, 1988. This grant of annual increment from the month of November, 1988 was protested and objected by the respondent No.3 and claimed that she was entitled for increment w.e.f. June, 1988 instead of November, 1988.

3. The petitioner's establishment, vide fresh order dated 29.04.2004 have intimated the respondent No.3 that she is not entitled for the said preponement of fixing of annual increment and that she was entitled for increment only on the completion of 12 months period on the regular service as a regular employee which commenced from 07.11.1987 onwards.
4. This order dated 29.04.2004 was questioned by the respondent No.3 by filing a case before the Labour Court under the provisions of Section 31(3) of the Industrial Relations Act which was registered as case No. 135/CGIR Act/2004. After pleadings were complete and evidence were led, the Labour Court vide order dated 21.07.2006 rejected the claim of

respondent-employee holding that since the respondent No.3 became a regular employee of the petitioner's establishment w.e.f. 07.11.1987, she has rightly been given annual increment w.e.f. November, 1988 onwards i.e. after completion of 12 months of service on the post she was regularized.

5. The said order dated 21.07.2006 passed by the Labour Court was put to challenge by the respondent-employee before the Industrial Court under Section 65 of the Chhattisgarh Industrial Relations Act. The said appeal was registered as Civil Appeal No.75/CGIR Act/A-II/2006.
6. The Industrial Court while deciding the appeal considering the evidence led by the petitioner's establishment i.e. statement of Nand Kishore Kakde, Section Officer of the petitioner's establishment, reached to the conclusion that the respondent was initially appointed as a Assistant Grade-III, work charged employee in the pay scale of Rs. 750-15-840 w.e.f. 29.05.1984; she was granting annual increment even as a work charged employees and subsequently when the services of the respondent-employee was regularized she was also granted pay protection of the post and pay that she was holding as work charged employee. Therefore, for all practicable purpose she is entitled for annual increment continuously from the date that she was getting the annual increment as work charged employee i.e. from the month of June. As such she was entitled for the increment for the year 1988 also w.e.f. June, 1988 instead of November, 1988 and ordered accordingly. It is this order which is under challenge in this petition by the petitioner's establishment.

7. Learned counsel appearing for the petitioner assailing the order of Industrial Court submits that the finding of the Industrial Court to the extent of mentioning the respondent-employee entitled for annual increment w.e.f. June, 1988 is per se illegal, perverse and is contrary to the records and rules governing the field. According to him, the respondent No.3 became a regular employee of the petitioner's establishment w.e.f. November, 1987 only, and therefore, the next annual increment would have been granted only upon her completion of 12 months of service on the said regular pay scale. Since the services of the respondent No.3 was regularized only in the month of November, 1988, she could not have been granted increment in June, 1988 for the reason that at that point of time she was only a work charged employee and became regular employee of the petitioner's establishment only in the month of November, 1987 and would be entitled for annual increment only w.e.f. November, 1988. He further submits that for the period the respondent No.3 worked as work charged employee, she was already been granted annual increment and she cannot avail the benefit of increment of a post on which she has not worked i.e. from June, 1988 to November, 1988.
8. It was also submitted that the Industrial Court has wrongly taken into consideration the circular of the petitioner's establishment dated 03.04.1991 while granting relief to the respondent No.3. According to him, the said circular was not applicable in the present case on account of fact that the said notification had a cut off date of its applicability which was w.e.f. 01.04.1989 and in the instant case, the services of the

respondent No.3 was regularized w.e.f. 1988 i.e. prior to the cut off date prescribed in the said circular dated 03.04.1991. Thus, the findings of the Industrial Court is bad in law on this ground alone and prayed for setting aside the impugned order and for upholding the order passed by the Labour Court dated 21.07.2006.

9. Learned counsel appearing for the respondent No.3 submits that the findings of the Industrial Court does not warrant any interference and the petition deserves to be rejected on the ground that firstly there is no illegality or infirmity in the order passed by the Industrial Court. Secondly, when the admitted fact is that respondent-employee was earlier getting the benefit of increment for the period worked as work charged employee and her services in due course of time have been duly regularized. In addition, the fact that the respondent-employee had already put in more than two years of continuous service in the capacity of work charged employee, for all practicable purposes, she would have been entitled for the benefit that she was otherwise getting as work charged employee, particularly the fixation of annual increment. According to him, the pay scale in which the services of the respondent No.3 was regularized was infact the same pay scale in which the respondent No.3 was drawing in the capacity of work charged employee, and that the pay scale of the employee has not been changed. Infact if on the same post and same pay scale the respondent No.3 has been regularized, she would be entitled for the annual increment w.e.f. June, 1988 instead of November, 1988 which she was getting while working as work charged employee. It was further contended that if circular dated 10.05.1975 is taken into

consideration even then it clearly reflects that all those persons who have put in more than two years of continuous service as work charged employee, would be entitled for pay protection by the petitioner's establishment. Under the said circumstances, the respondent No.3 would have been entitled for the protection of pay that she was already receiving particularly in respect of annual increment. Thus, prayed for rejection of this petition.

10. Having considered the rival contentions put forth on either side and on perusal of the records what is undisputed facts of the case are that, the respondent No.3 was initially appointed on 29.05.1984 as Assistant Grade-III as work charged employee by the petitioner's establishment. At the time of this appointment itself, the respondent No.3 was granted pay scale of Rs. 750-15-840 which was the pay scale for a regular Assistant Grade-III. It is also undisputed that respondent No.3 continued to work on the said post in the capacity of work charged till the year, 1987 when her services were regularized. Another admitted fact is that even after regularization of services of the respondent No.3 in the petitioner's establishment she was granted the same pay scale that she was getting prior to regularization. The petitioner's establishment meanwhile had already issued an instruction for granting pay protection to the employees who have continuously worked for more than two years in the capacity of work charged employee and have subsequently been regularized on the same post. Further, a perusal of circular dated 03.04.1991, which was in force when the order of the Industrial Court was passed i.e. 13.12.2006, clearly reflects that the persons working as

work charged employees and have subsequently been regularized, would also be entitled for pay protection as well as grant of annual increment from the date while they were discharging their duties as work charged employees.

11. If we take into consideration these undisputed facts, it would clearly reflect that the services of the respondent No.3 squarely falls within the two circulars of the petitioner's establishment i.e. circular dated 10.05.1975 at the first instance wherein admittedly the respondent No.3 had put in more than two years of continuous service as work charged, and secondly the circular which was in force on the date of judgment of the Industrial Court i.e. circular dated 03.04.1991 wherein payment of annual increment was also ordered to be granted w.e.f. the date on which the employees were working in the capacity of work charged employees.
12. Thus, in the opinion of this court, the Industrial Court has not committed any illegality or infirmity in reaching to the conclusion that respondent No.3 was entitled for grant of increment w.e.f. June, 1988 instead of November, 1988.
13. Accordingly, the petition fails and is dismissed. No order as to costs.

Sd/-

(P. Sam Koshy)
Judge