

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No.1293 of 2006

1. State of Chhattisgarh, Through Secretary, Public Works Department, Mantralay Bhawan, Raipur, Chhattisgarh
2. Executive Engineer, Public Works Department, Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. Nanuk Ram, S/o Lalla Ram, Village Mohad, Post Mohara, District Rajnandgaon, Chhattisgarh
2. Presiding Officer, Industrial Court, Raipur (CG)
3. Presiding Officer, Labour Court, Rajnandgaon (C.G.)

---- Respondents

And

WP (S) No.2200 of 2014

Nanuk Ram Sahu S/o Shri Lalla Ram Sahu, aged about 47 years, R/o old rest house, Public Works Department (B/R), Rajnandgaon, P.O. & P.S. Rajnandgaon, District Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through : The Chief Secretary, Public Works Department, Mahanadi Mantralaya, New Raipur, District Raipur (C.G.)
2. Superintending Engineer, Public Works Department, Durg, Division Durg (C.G.)

---- Respondents

For State
For Workman

Mr. Y.S. Thakur, Dy. A.G.
Mr. H.B. Agarwal, Senior Advocate with Mrs.
Preeti Yadav, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

02.03.2016

1. Heard.
2. In WP No.1293 of 2006, the State has challenged the legality and validity of the appellate order passed by the Industrial Court, Chhattisgarh on 19.10.2005 and the original order passed by the Labour Court , Raipur on 15.01.2001, allowing the respondent-workman's claim for reinstatement in services with full back wages. WPS No.2200 of 2014 has been preferred by the same workman claiming regularization on the strength of rendering services for more than 10 years.
3. Indisputably, the workman was engaged as daily wage labourer in the Department of Public Works (B&R), Rajnandgaon from 08.08.1992 to 01.12.1994. On his removal from service, he preferred a claim before the Labour Court under Section 31(3) of the Chhattisgarh Industrial Relations Act, 1960 (in short C.G.I.R. Act). The Labour Court passed an award on 15.01.2001 directing his reinstatement on the ground that he has worked for more than 240 days in the preceding calendar year and was not paid retrenchment compensation before his removal, therefore, he is entitled to be reinstated with full back wages. This order has been confirmed by the Industrial Court.

4. In the matter of **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited**, (2014) 11 SCC 85, the Supreme Court has reiterated the principle as to when the order passed by the Labour Court can be interfered by the High Court in exercise of powers under Article 227 of the Constitution of India. The following has been held in para 22 of the aforesaid judgment:

“22. A careful reading of the judgments reveals that the High Court can interfere with an order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred up on it. Therefore, we accordingly answer Point (i) in favour of the appellant.”

5. In the case at hand, the Labour Court considered the material available on record to hold that the workman has worked for more than 240 days in the preceding calendar year. The State has not submitted any such evidence to disprove the said finding recorded by the Labour Court on the ground of perversity. Thus, the order of reinstatement does not suffer from any illegality.
6. In so far as award of back wages is concerned, ordinarily, a daily wager is not entitled to back wages because he is not appointed in a regular vacant post but is engaged on availability of work. However, in the case at hand, the order granting back wages was passed in the year 2001 and since thereafter, the workman has been regularized and paid the entire back-wages.

7. WP No.1293 of 2006 came up for hearing for the first time on 25.03.2006, however, no orders were passed on the State/petitioner's application for grant of interim relief. The matter was thereafter listed on 12.11.2013 and notices were issued to the opposite parties. In the meanwhile, the back wages has also been paid to the workman.
8. In the facts and circumstances of the case, setting aside the order of grant of back wages in favour of workman would cause undue hardship, because, he is still a daily wager and has consumed whatever was paid to him by the employer. Thus, only on the ground of long lapse of time after the impugned award, the grant of back wages is not interfered with. Consequently, WP No.1293 of 2006 deserves to be and is hereby dismissed.
9. In WPS No.2200 of 2014, the workman has prayed for regularization of his services on the ground that he has rendered more than 10 years of service after reinstatement and was otherwise employed during the period from 01.01.1989 to 31.12.1997, therefore, he is entitled for regularization.
10. The State Government has issued a Circular on 05.03.2008 directing to consider the issue of regularization of such employees, who have been in continuous service from 01.01.1989 to 31.12.1987 without any break.
11. The petitioner having worked only for 02 years during 1992 to 1994, is not entitled to be considered for regularization in terms of the Circular dated 05.03.2008.
12. For the foregoing, no direction can be issued in favour of the

petitioner for regularization in service. Accordingly, WPS No.2200 of 2014 is also dismissed. However, if the State Government takes a policy decision for regularization at any point of time in future, the petitioner's case shall be considered in accordance with law.

Sd/-

Judge

(Prashant Kumar Mishra)

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