

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 82 of 2013

1. State Of Chhattisgarh Through Secretary, Department Of Forest, Mahanadi Bhawan, Naya Mantralaya, Raipur, Cg

(Petitioner No.1 was not a party before the learned Labour Court, but has been impleaded as petitioner No.1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department)

2. The Divisional Forest Officer, Forest Division, Kabirdham, Distt Kabirdham, Cg

---- **Petitioner**

Versus

1. Ajay Kumar Tamboli, S/o Chhedi Lal Tamboli, R/o Pandatarai, Tahsil and P.S. Pandatarai of Pandariya, Distt Kabirdham, Cg

2. The Presiding Officer, Labour Court, Rajnandgaon, CG

---- **Respondent**

For Petitioners/State
For Respondents

Shri Shashank Thakur, GA
None

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

11/02/2016

1. Challenge in this petition is to the legality and validity of the award dated 12.02.2012 passed by the labour Court, Rajnandgaon, whereby the learned labour Court directed for reinstatement of the respondent No.1 workman in the service without back wages.
2. Learned Government Advocate appearing for the petitioner/State would submit that in the year 1995, the service of the respondent No.1 was taken as labour on daily wage basis, however, on account of non availability of the

work, the respondent No.1 was removed from service in the year 2000. Being aggrieved, the respondent No.1 raised an industrial dispute under the provisions of the Industrial Disputes Act, 1947 (for short 'the Act, 1947'). In the said matter, the employer submitted its reply, however, the learned labour Court without appreciating the facts and circumstances of the case in its letter and spirit passed the impugned award. The respondent No.1 was not in service against any sanctioned post and as such, the provisions of the Act, 1947 would not be applicable to the present case. Learned State counsel would submit that at the most, instead of reinstatement, the respondent No.1 is entitled for monetary compensation.

3. The identical issue has already been considered and decided by the learned Single Judge of this Court in **State of Chhattisgarh & Another v. Dhaniram**¹ and other connected writ petitions and instead of reinstatement, monetary compensation has been awarded. The said decision has been confirmed by the Division Bench of this Court in **Brij Nandan Chandra v. State of Chhattisgarh & Another**² and other connected writ appeals and even the same has also been confirmed by the Supreme Court in **Brij Nandan Chandra v. State of Chhattisgarh & Anr.**³.
4. The Supreme Court in **Bharat Sanchar Nigam Limited v. Man Singh**⁴ observed as under:-

4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.
5. In view of the aforementioned legal position and the fact that the respondent workmen were

1 WP (L) No.3034 of 2009 (decided on 02.02.2011)

2 WA No.50 of 2011 (decided on 17.02.2011)

3 Special Leave to Appeal Civil No.15761 of 2011 (decided on 05.07.2011)

4 (2012) 1 SCC 558

engaged as 'daily wagers' and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

6. Accordingly, the impugned judgment passed by the High Court as also the award dated 27.05.2005 passed by the Labour Court are set aside. We direct the appellant, Bharat Sanchat Nigam Ltd. to pay Rs.2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum.”
5. Similar view has been taken by the Supreme Court in **Assistant Engineer, Rajasthan Development Corporation and Another v. Gitam Singh**⁵.
6. In view of the above facts and circumstances of the case and applying the well settled principles of law to the facts of the present case, instead of reinstatement, monetary compensation would sub-serve the ends of justice. Thus, respondent No.1/employee is entitled to a sum of Rs.1.00 lac as compensation. Such payment shall be made within a period of four months from the date of the order.
7. As an upshot, the writ petition is allowed to the extent indicated above.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala