

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPL No. 1061 of 2008****Judgment Delivered on : 15/09/2016**

- Shankar Lal Gabel S/o Shri Mohan Lal Gabel, R/o Village & Post Aamgaon, Via-Jaijaipur, Block-Sakti, Distt. Janjgir-Champa (C.G.)

---- Petitioner**Versus**

1. Presiding Officer, Labour Court, Bilaspur (C.G.)
2. Block Development Officer, Block – Jaijaipur, District – Janjgir-Champa (C.G.)
3. State of C.G. Through-Secretary Panchayat And Village Block Development, Raipur (C.G.)

---- Respondents

For Petitioner : Mr. Vinod Deshmukh, Advocate

For Respondent-State : Mr. Gary Mukhopadhyay, Dy. Govt. Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**CAV JUDGMENT**

1. This petition under Article 226/227 of the Constitution of India has been filed by the petitioner praying for direction for payment of backwages from 18.11.1994 to 18.10.2001 along with penalty and interest.
2. The petitioner has claimed reliefs on the pleading *inter-alia* that while working as timekeeper with respondent No.2, he was terminated from service on 07.01.1992. On dispute raised by the petitioner, the Labour Court passed an award on 17.10.1994 in favour of the petitioner directing reinstatement of the petitioner with full backwages and benefits. Though the petitioner sought reinstatement with backwages by submitting application, he was not

reinstated and the respondent No.2 made application for setting aside ex-parte award. The said application was rejected vide order dated 27.02.1998. In the meantime, the petitioner approached the Labour Court by filing a complaint under Section 34 sub-section (1) of the Industrial Disputes Act, 1947 (for short, 'the I.D. Act, 1947') seeking prosecution of concerned officer for non-compliance of the award. During pendency of the aforesaid case, when application for setting aside ex-parte award was rejected, respondent No.2 challenged, though unsuccessfully, the order before the High Court of Madhya Pradesh. The petitioner filed petition before the High Court of Madhya Pradesh was eventually dismissed vide order dated 09.10.1998 passed in WP No. 4534 of 1998. Vide order dated 05.04.2003, though the Labour Court dismissed prosecution on the peculiar facts that officer concerned had taken steps for reinstatement by seeking instructions from higher authority, before information could be received, he was transferred, nevertheless, Labour Court categorically recorded the finding that award was not complied with and the petitioner was at liberty to file fresh complaint against the officer who had failed to execute the award. In the meantime, vide order dated 17.10.2001, the petitioner was reinstated in service, but his claim for payment of wages remain unredressed. The petitioner, then, moved an application under Section 33.C(2) of the I.D. Act, 1947 before the Labour Court, praying for payment of wages. Initially, the petitioner had prayed for wages of Rs.37,001/- being the amount of backwages from 07.01.1992 to 17.11.1994, which was later on amended to

incorporate claim of wages from 07.01.1992 to 18.10.2001 i.e. till the date of actual reinstatement. The Labour Court, however, rejected the application vide impugned order dated 23.10.1997 to the extent of petitioner's claim of wages from 17.11.1994 to 18.10.2001, though imposed penalty of Rs.5,000/-. Aggrieved by part of the award by which claim of wages from 17.11.1994 to 18.10.2001 was rejected, the petitioner filed this petition.

3. Learned counsel for the petitioner argued that the Labour Court failed to exercise jurisdiction vested under it under Section 33.C(2) of the I.D. Act, 1947 which confers wide power on the Labour Court to direct payment of any monetary or any benefit which the workman is entitled to receive from the employer. It was contended that in view of award dated 17.10.1994 which attained finality after decision of the High Court of Madhya Pradesh, the petitioner was entitled to wages till the date of reinstatement, but the Labour Court wrongly confined it to the period from 07.01.1992 to 17.11.1994, ignoring the admitted position on record that in execution of award dated 17.11.1994, though the petitioner was reinstated, he was not paid wages till the date of reinstatement to which he was entitled on the basis of award.
4. On the other hand, learned counsel for the respondents submitted that when the petitioner moved application under Section 33.C(2) of the I.D. Act, 1947 before the Labour Court, he confined his claim of wages only for the period from 07.01.1992 to 17.11.1994. The Labour Court rightly held that the power conferred under Section 33.C(2) of the I.D. Act, 1947 did not confer power on it to

award wages beyond the period as specified in the award itself. The award was passed on 17.11.1994 with the direction to reinstate the petitioner with full backwages, therefore, in respect to period after 17.11.1994, the petitioner was not entitled of any order in provisions under Section 33.C(2) of the I.D. Act, 1947.

5. It is not in dispute that the award dated 17.10.1994 declared on 17.11.1994 attained finality after the order passed by the High Court of Madhya Pradesh on 09.10.1998 in WP No. 4534 of 1998. Respondents could not bring notice of this Court any order of the Supreme Court setting aside or modifying the order dated 09.10.1998. The award passed in favour of the petitioner held the termination illegal and directed reinstatement with full backwages and other benefits that would flow in favour of the petitioner including wages for the period during which he was out of service due to illegal termination. The order of the Labour Court entitled the petitioner to reinstatement which was delayed by the respondent No.2, presumably, for the reason that respondent No.2 had taken the remedy before the Labour Court itself for setting aside the ex-parte award, though unsuccessful. The petition filed before the High Court of Madhya Pradesh was also dismissed in the year 1998, therefore, there was no discernible reasons why the petitioner was not reinstated. The right to be reinstated in service had directly flown from the order of the Labour Court which attained finality. It is, however, an admitted fact that later on, the petitioner was reinstated in employment vide order dated 17.10.2001 passed by the Superintending Engineer, Rural Engineering Service, Bilaspur

Division, Bilaspur which is placed on record as Annexure P-6. The petitioner relies on it and the respondents also do not dispute it. It is, thus, clear that despite there being an award in favour of the petitioner, which attained finality way back in the year 1998, the respondents reinstated the petitioner after almost 07 years.

6. It was not in dispute that the petitioner moved application under Section 33.C(2) of the I.D. Act, 1947 for payment of money due to him under the law.
7. The provision contained under Section Section 33.C(2) of the I.D. Act, 1947, which confers wide power on the Labour Court is relevant and reproduced for ready reference as under :

Section 33.C(2). “Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may; for reasons to be recorded in writing, extend such period by such further period as he may think fit.”

8. A bare reading of the aforesaid provision would leave no manner of doubt that the Labour Court is competent to direct that any money

or any benefit due to the workman could be directed to be paid by the Labour Court. This power of the Labour Court to direct payment of monetary benefit is not confined, in terms to the claim for a period upto the date of award. Rationally construed, the provision confers power on the Labour Court to direct payment of any money which is payable to the workman under the law. Where the right to receive monetary or any other benefit has already been adjudicated in the award of the Labour Court, the amount due for payment to workman flowing directly as consequence of the award can be directed to be paid by the Labour Court under Section 33.C(2) of the I.D. Act, 1947. The statutory scheme of the I.D. Act, 1947 not only provides for adjudication of the dispute by the Labour Court, but also cloths Labour Court with ample power to execute and pass all orders which are necessary to give full effect to the implementation of the award which necessarily includes power to issue directions for payment of any monetary benefit which directly flows from the award. The Act makes provisions not only for execution of award, but also for prosecution of employer, who withheld benefits payable under the award to the workman. It would be atrocious to hold that even after the award with full wages till reinstatement, the workman should again seek adjudication from Labour Court by raising new dispute and seek direction for payment of any amount which directly flows from the award. Where there is an order of the Labour Court to reinstate the workman with full payment and benefits till the workman is actually reinstated, he is entitled to receive all the wages because the termination has been held to be illegal.

Therefore, in the present case, once the termination was held to be illegal, he was not only entitled for reinstatement, but also for payment of backwages not only for the period upto the period of award, but also those wages which were not paid to him on account of delayed reinstatement.

9. In case of **M/s. Volta's Ltd. vs. J.M. Demello and Another, 1971(2) SCC 479**, Hon'ble the Supreme Court observed in para 13 as under :-

“13. Although it cannot go behind the award, it is nevertheless competent to construe the award where it is ambiguous and to ascertain its precise meaning, for, unless that is done, it cannot enforce the award when it is called upon to do so by an application under Section 33-C. As held in *The Central Bank of India v. Rajagopalan* (1964) 3 SCR 140, 152, a claim under Section 33-C(2) postulates that the determination of the question about computing in terms of money may in some cases have to be preceded by an inquiry into the existence of the right. Such an inquiry is incidental to the main determination assigned to the Labour Court by that sub-section.”....

10. In the present case, respondents could not bring notice of this Court that the implementation of the award was stayed during the pendency of application for setting aside the ex-parte award or during the pendency of the writ petition filed in the High Court. For argument sake, even it is assumed that the reinstatement was stayed, dismissal of the employer's petition by the High Court, entitled the petitioner to seek reinstatement including wages upto the date of actual reinstatement. In the present case, admittedly,

reinstatement was ordered only on 17.10.2001 and it is admitted position that the petitioner was reinstated also. That means upto the period of 17.10.2001, the petitioner remained deprived of his wages which he would have earned, had he been reinstated immediately after the award. It is quite logical that once the award is passed, holding termination to be illegal; the workman becomes entitled for wages till reinstatement. There was neither any ground nor any answer to what stated in the award that till the actual reinstatement, petitioner would be entitled to wages. This is so because upon passing of the award, the petitioner is entitled under the law to wages for the entire period which may include the period after award during which he could not be reinstated for one reason or the other, attributable only to the employer. Present is not a case, where the respondent has come with a case that despite order of reinstatement passed, the petitioner chose to remain away from employment and did not join duties.

11. The Labour Court in the impugned order, adopted illegal approach and unduly restricted power of wide amplitude conferred under Section 33.C(2) of the I.D. Act, 1947 by holding that the petitioner was only entitled to the order of backwages till the date of passing of the award and not in respect of the period thereafter, till the actual reinstatement. The scope and ambit of power available to the Labour Court under Section 33.C(2) of the I.D. Act, 1947 have been misconstrued by imposing limitations not contemplated in those provisions.

12. Curiously enough, the Labour Court though, has allowed amendment in the application and reliefs sought therein, to include period from 18.11.1994 to 18.10.2001, rejected the prayer by recording in the order that prayer was confined to the period from 07.01.1992 to 17.11.1994. The Labour Court failed to exercise jurisdiction vested under the law by holding that it could not grant wages from 18.11.1994 to 18.10.2001 on the ground that in the award there is no such direction. Such a finding is based on erroneous construction of directions in the award as if it was confined only to payment of backwages till the date of passing of the order and not wages due and payable to the workman till the date of actual reinstatement.

In view of aforesaid consideration, this Court has no hesitation to hold that Labour Court was obliged under the law to award wages upto the date of actual reinstatement i.e. upto 18.10.2001 which included the amount of backwages till the date of passing of the award. The amount payable for the aforesaid period, to a daily wage employee like the petitioner, as demonstrated by the petitioner by placing on record computation, based on information provided by the respondents, is also not in dispute. Therefore, in the considered opinion of this Court, the petitioner was entitled for a total payment of Rs. 1,81,724/- (including Rs. 37,000/-).

13. Accordingly, it is directed that the respondent Nos. 2 & 3 shall pay the amount of Rs.1,81,724/- to the petitioner. However, if the backwages of Rs.37,000/- have already been paid to the petitioner, the payment so made, may be adjusted from the amount of

Rs.1,81,724/-. The payment shall carry a flat interest at the rate of 6½ % from the date of award till the date of actual payment.

14. The petition is accordingly allowed. No order as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Chandra