

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 183 of 2016**

Gaukaran Yadav S/o Sewaram Yadav, Aged About 42 Years Old R/o Bandhwapara, Purana Shiv Mandir, Sarkanda, P.S. Sarkanda, Bilaspur, District Bilaspur, (Chhattisgarh)

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, P.S. Mandir Hasaud, Raipur, (Chhattisgarh)
2. The Chief Engineer, Water Resources Department, P.S. Civil Lines Bilaspur, District Bilaspur, (Chhattisgarh)
3. The Sub Divisional Officer, Minimata Bango Nahar, Sub Division No.17, Bilaspur, P.S. Civil Lines, Bilaspur, District Bilaspur, (Chhattisgarh)
4. The Presiding Officer, Labour Court, P.S. Civil Lines, Bilaspur, District Bilaspur, (Chhattisgarh)

-----Respondents

For Appellant:

Shri Vinod Deshmukh & Shri Lav Sharma, Advocates.

For Respondents/State:

Shri Raj Kumar Gupta, Deputy Advocate General.

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****7/04/2016**

1. The present appeal arises from order dated 2.3.2016 allowing Writ Petition (L) No.86/2013 setting aside the order of the Labour Court directing reinstatement for retrenchment in violation of Section 25F of the Industrial Disputes Act (hereinafter referred to as 'the Act') and in lieu thereof, granting compensation of Rs.2 lacs to be paid within a period of three months.
2. Learned counsel for the Appellant submits that the Respondents had

failed to produce the muster roll and therefore drawing an adverse inference, reinstatement was directed for violation of Section 25F of the Act. There is no finding of any procedural infirmity in the decision making process. The Learned Single Judge in a similar matter on 2.3.2015, dismissed two appeals of the State resulting in discrimination by judicial orders.

3. Learned Counsel for the State has opposed the appeal submitting that it calls for no interference in view of the recent judicial pronouncements noticed by the Learned Single Judge from (2014) AIR SCW 528 (Bharat Sanchar Nigam Limited vs. Bhurumal) and (2013) 5 SCC 136 (Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh) that even when termination was in violation of Section 25F of the Act, compensation was an appropriate remedy and reinstatement did not follow as a matter of course.

4. We have considered the submissions. The Appellant was appointed on daily wages in the year 1991. He worked till 28.2.1997 when his service was discontinued. It goes without saying that a daily wage employee is appointed in the exigency of service according to the needs of the employer. It can be dispensed with when not necessary. The Appellant sought to make out a case of discrimination that persons junior to him had been retained. But the Labour Court did not give any finding with regard to the same. Furthermore, the Appellant appears to have woken up and sought a reference under Section 10 of the Act belatedly in the year 2011 pursuant to certain orders passed by this Court with regard to what he claims are similarly situated persons. No details of those orders have been mentioned. Relief on basis of parity can also be denied to those who are not vigilant for protection of their own rights and form a separate class. The submission that discrimination has been occasioned due to judicial orders also is not sustainable as in those

cases, removal was in the year 1988, reference was sought in 1993, award passed in 1998 and State chose to challenge it belatedly six years later which is not the case presently.

5. In view of the changing judicial view that reinstatement was not to follow as a matter of course, merely because removal may have been in violation of Section 25F of the Act, it is not possible for us to hold that the reasoning and the view taken by the Learned Single Judge was not in consonance with law. Merely because sitting in Division Bench, we may have the power to upset that order cannot be sufficient justification to interfere.

6. At this stage, Learned Counsel for the Appellant sought enhancement of the compensation in the alternative. We put a question but got no answer to what was the last wage drawn on the date of removal or the minimum wages as on that date in 1997. In the circumstances, we are not inclined to entertain the submission.

7. We therefore find no merit. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE