

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 6380 OF 2011

Basant Kumar Bohidar S/o Shri Sharad Kumar Bohidar, aged about 48 years, occupation Service, Assistant Grade III, R/o Madhubanpara, Bhanupratap Nagar, Raigarh, Tahsil and District Raigarh (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Higher Education, Mantralay at D.K.S. Bhawan, Raipur, District Raipur (C.G.)
2. The Commissioner, Department of Higher Education Chhattisgarh, Raipur, Tahsil and District Raipur (C.G.)
3. The Principal, Government Paluram Dhananya Arts and Commerce College, Raigarh (C.G.)

... Respondents

For Petitioner	:	Mr. Vineet Kumar Pandey, Advocate.
For Respondent-State	:	Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/02/2016

1. The present writ petition has been preferred by the Petitioner seeking for quashment of the order dated 20.6.2011 (Annexure P-1) whereby the Respondents have rejected the representation of the Petitioner seeking seniority for the period that he was out of employment and he was reinstated by the order of the Administrative Tribunal setting aside the order of termination.
2. According to the Petitioner, he was working on the post of Clerk in the Government Paluram Dhananya Arts and Commerce College, Raigarh. The services of the Petitioner were terminated by the State Government on 30.9.1986 on the ground of some alleged misconduct. The said order of termination was put to challenge by the Petitioner and got transferred to the State Administrative Tribunal at Jabalpur in Transfer

Application No. 5777 of 1988. The said Administrative Tribunal vide its order dated 2.11.1988 allowed the said application granting reinstatement to the Petitioner holding that before terminating the services of the Petitioner an enquiry was must which has not been conducted by the Respondents and thus the order of termination being illegal the same was set aside. In paragraph 10 of the said order, the Administrative Tribunal as very categorically given a finding that-

“Thus, the plaintiff/petitioner was fully entitled to be continued and absorbed in the Government service. He was duly and legally appointed on the post of L.D.C. on a sanctioned post after due approval of the Higher Education Grant Commission. Therefore the present application deserves to be decreed/allowed and it is ordered that the order of termination of service of the Petitioner dt. 30.9.1986 is wholly illegal and invalid and hence it is quashed.”

3. Though there was an order of reinstatement in services of the Petitioner and the quashment of the order of termination, the Respondents did not challenge the same and as such the order of the Administrative Tribunal has attained finality. In spite of the order of the Administrative Tribunal being not put to challenge, the Respondents did not comply with the same and for which the Petitioner had to file a contempt petition. Pending the said contempt petition, the Respondent reinstated the Petitioner in service and the Petitioner resumed the office on 3.10.2000.

4. Grievance of the Petitioner in this Writ Petition is that in spite of the fact that the order of termination was held to be illegal and he was reinstated in service, the period he was out of employment, i.e., from the

date of termination 30.9.1986 to the date of reinstatement 3.10.2000 the intervening period has not been counted by the Respondents for seniority of the Petitioner thereby is being denied seniority for this period which is also coming on his way for further promotions. Therefore prays for a direction to the Respondents for treating the said intervening period as spent on duty only for counting seniority.

5. Learned Counsel for the State however opposes the petition and submits that perusal of the impugned order would clearly reflect that the Petitioner during the intervening period was gainfully employed and was posted at different places under different capacities and therefore for the period that he was working under different employer he cannot be given service benefits under the present employer. She further submits that the fact that he was gainfully employed elsewhere itself dis-entitles him for consequential relief.

6. Having considered the rival contentions of the Counsel for the parties and perusing the record itself would show that the period of the Petitioner being out of service not the present employer is about 14 years i.e. from 30.9.1986 to 3.10.2000 and for all this period the Petitioner had a fundamental right of his survival and also ensuring the survival of the others who were dependent on him. In the process he had to take an employment wherever he was getting the same and for which he has himself given an affidavit to the Respondents disclosing that he was engaged as a daily wager and at times he was engaged as clerk in private institutions so as to make both ends meet and also for sustaining the family members of the Petitioner who were dependent upon him.

7. The said explanation given by the Petitioner is sufficient for establishing the fact that he was not gainfully employed on regular basis under a permanent employer and that the nature of employment itself was of very casual and temporary nature and was purely for sustaining himself and his family and other members of the family who were dependant upon him. Only because the Petitioner was engaged in casual nature of work under different employer by itself would not dis-entitle him from getting seniority for the intervening period of 14 years particularly when there is a categorical finding by the Administrative Tribunal that the order of termination was per se illegal.

8. The Supreme Court in case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others {2013 (10) SCC 324} has held in paragraph 22 as under :

“The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that

during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

9. The Supreme Court again reiterated the same position of law in the case of Tapash Kumar Paul Vs. BSNL & Another (AIR 2014 SCW 5816).

10. From the aforesaid two decisions of the Supreme Court, what is culled out is the fact that relief of reinstatement with continuity of service has to be granted where the termination of service is found to be invalid as is the case in the present writ petition unless there is strong justified reasons for the same.

11. Withholding of consequential relief would mean that the employer has taken away illegally the right of the workmen/employee to work by an illegal order denying him his benefits attached to the post like his earnings and other incentives etc. If the employer is found to be wrong in his action in terminating resulting in the order of reinstatement, the employer should not shirk his responsibility of granting consequential relief to the employee which was deprived to the employee for the illegal or invalid action of the employer. In other words, where the termination of service is questioned as invalid or illegal and the workmen has to go through the gamut of litigation, during which time to sustain himself he is required to undergo great hardship for his survival and also for sustaining others who are dependent upon him. If after such a protracted time and energy consuming litigation a person just sustained himself somehow and ultimately he succeeds in the litigation and gets an order of reinstatement and yet if he is denied the consequential relief, it would amount to

subjecting to a sort of penalty for no fault of his and which would be wholly undeserving. Ordinarily, where a workman whose services has been terminated would be entitled for consequential benefit unless he was not gainfully employed on regular basis during the enforced period of litigation challenging the termination order.

12. Applying the ratio of law laid down by the Supreme Court in the aforesaid two cases to the facts of the present case it would reveal that in the instant case the petitioner had fairly not claimed for the back-wages for the intervening period, but has only claimed for the consequential relief of continuity in service by granting seniority for the intervening period so that the same can be calculated for the purpose of promotion to the next higher post. If the facts are seen, it would reveal that during the intervening period the petitioner was only working either as daily wage worker or as temporary employee. Admittedly, the respondents have not been able to prove that the petitioner had regular source of employment under a regular employer for all these period which was the first thing they should have done before rejecting the claim of the petitioner seeking seniority only for the reason that the petitioner was working as a daily wager during the relevant period. In the absence of any specific findings of the petitioner being in a regular employment during the intervening period except for his working as daily wage worker or as temporary employee only to sustain himself and his dependents, he cannot be denied grant of consequential relief of continuity in service for the intervening period i.e. from the date of termination to the date of reinstatement.

13. The demand of the petitioner seeking for continuity in service or seniority for the intervening period by no stretch of imagination can be said to be arbitrary or misconceived. Rather, the petitioner is entitled for the same as a matter of right on account of order of termination being held to be illegal and unconstitutional.

14. If the workmen was ready to work but was kept away by an invalid act of the employer and finally which has been held to be improper and unconstitutional, there is no justification for not awarding consequential benefit which is legitimately due to him. Only because during the period of being out of service the petitioner had undertaken work of a daily wager so as to sustain him and those dependent on him.

15. In view of the aforesaid facts and circumstances, the writ petition has to be allowed. It is ordered that the intervening period, i.e., from the date of termination till he has been taken back in the service by the Respondents has to be counted for the purpose of calculating his seniority and has to be treated as spent on duty. The employee shall be entitled for all consequential benefits except for back-wages.

16. With the aforesaid directions, the writ petition is allowed. No order as to costs.

SD/-
(P. Sam Koshy)
JUDGE