

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 2955 of 2007**

State of Chhattisgarh Through Executive Engineer, Department of Water Resources, Chhuikhadan, Distt Rajnandgaon (Chhattisgarh).

---- Petitioner

Versus

1. Hem Lal S/o Man Singh, R/o Village Bidouri, Post Shakha, Distt Rajnandgaon (Chhattisgarh).
2. Guni Ram S/o Phirtu Labour, Vill. Khudmudi, Post-Khudmudi, Tahsil - Chhuikhadan, District Rajnandgaon (C.G.)
3. Gangaram S/o Indrajeet Labour, Vill. Khudmudi, Post-Khudmudi, Tahsil - Chhuikhadan, District Rajnandgaon (C.G.)
4. Keshoram S/o Indrajeet Labour, Vill. Khudmudi, Post-Khudmudi, Tahsil - Chhuikhadan, District Rajnandgaon (C.G.)
5. Panchram S/o Jhanglu Labour, Vill. Khudmudi, Post-Khudmudi, Tahsil - Chhuikhadan, District Rajnandgaon (C.G.)
6. Kumlal S/o Budharu Labour, Vill. Khudmudi, Post-Khudmudi, Tahsil - Chhuikhadan, District Rajnandgaon (C.G.)
7. Alakh, S/o Shersingh Labour, Vill. Bhorampur, Post Shakha, Tahsil - Chhuikhadan, District Rajnandgaon (C.G.)
8. Prahlad S/o Aliyar Labour, Vill. Bundeli, Post - Bundeli, Tahsil - Chhuikhadan, District Rajnandgaon (C.G.)
9. Goutam S/o Dhamsau Labour, Vill. Bargada, Post - Dokrabhata, Tahsil - Khairagarh, District Rajnandgaon (C.G.)
10. Vijayraam S/o Guha Labour, Vill. Bargada, Post - Dokrabhata, Tahsil - Khairagarh, District Rajnandgaon (C.G.)
11. Kalaram S/o Sunder Labour, Vill. Mandla, Post - Mandala, Tahsil - Khairagarh, District Rajnandgaon (C.G.)
12. Rameshar, S/o Namdas Labour, Vill. Mandla, Post - Mandla Dokrabhata, Tahsil - Khairagarh, District Rajnandgaon (C.G.)
13. Samaru S/o Bhikhaam Labour, Vill. Bargada, Post - Dokrabhata, Tahsil - Khairagarh, District Rajnandgaon (C.G.)
14. Jeetram S/o Gaindu Labour, Vill. Bargada, Post - Dokrabhata, Tahsil - Khairagarh, District Rajnandgaon (C.G.)
15. Premlal S/o Agrahit Labour, Vill. Kusmi, Post - Kusmi Ataria, Tahsil - Khairagarh, District Rajnandgaon (C.G.)
16. Chamru S/o Mansingh Labour, Vill. Keshla, Post - Kusmi Ataria, Tahsil - Khairagarh, District Rajnandgaon (C.G.)

---- Respondents

For Petitioner/State : Shri S.P. Kale, Deputy Advocate General.
For Respondents : Shri NK Vyas, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

18/10/2016

1. The present petition under Article 226 of the Constitution of India has been filed assailing the award of Labour Court dated 07.01.2006 passed in Case No.15/ID Act/Reference/2001. By way of the impugned order, the Labour Court has set aside the order of termination/discontinuance of services of the respondents and have further directed for reinstatement of the respondents with 50 percent backwages.
2. Learned counsel appearing for the State/petitioner assailing the said award submits that the findings of the Labour Court is bad in law to the extent that the court below has not properly appreciated the evidence which have come on record and has wrongly reached to the conclusion that termination is violative of provisions of the Industrial Disputes Act. According to him, the admitted position is that the status of the respondents was that of a daily wage worker who do not have any indefeasible right attached to the regular post. According to the State counsel, the daily wage workers were being engaged on day to day work and payment basis, therefore, there was no necessity for the statutory compliance of provisions of the Industrial Disputes Act and the court below has committed an error of law in holding that the termination of services of the respondents are contrary to the provisions of Industrial Disputes Act and has awarded reinstatement of the respondents with 50 percent backwages.

3. In addition to the order of reinstatement, counsel for the State assailing the status of the respondents submits that admittedly they were daily wage worker/casual workers, and therefore, their engagement was only subject to availability of work and therefore the question of grant of backwages to such employee does not exist at all and the court below has again committed an error of law and thus, the award of Labour Court deserves to be set aside/quashed.
4. Learned counsel for the respondents submits that it is a case where the services of the respondents had already been classified by order of the Labour Court as early as on 17.04.1998 and that the said order of Labour Court has already been put to test in Writ Petition filed before this High Court which was registered as Writ Petition No.303 of 2001 and this High Court vide order dated 07.03.2013 has dismissed the appeal of the State Govt. affirming the order of the Labour Court. According to the respondents, since the services of the respondents has already been classified as per the order of the Labour Court dated 17.04.1998, their services could not have subsequently been terminated again by the petitioner/State treating them to be a daily wage employees as their status stood changed subsequent to award of the Labour Court dated 17.04.1998.
5. According to respondents, this fact has been given more weightage by the Labour Court while deciding the Reference of termination while passing the award dated 07.01.2006 and have ordered for reinstatement with 50 percent backwages as well as by the Industrial Court while deciding the appeal of the State and has passed the impugned order

which does not warrant for any interference and the petition deserves to be rejected.

6. Having heard the rival contentions put forth on either side and on perusal of the record what clearly reflects from a bare perusal of the impugned award passed by the Labour Court dated 07.01.2006 is the fact that the services of the petitioner were classified as permanent Gangman vide award of Labour Court on 17.04.1998 and indisputably, the order of the Labour Court was also affirmed by the Industrial Court in an appeal preferred by the State and thereafter the writ petition preferred by the State was also dismissed vide order dated 07.03.2013.
7. Further, from the reading of the impugned order it also reflects that the order of Labour Court was also duly complied with and once the order of Labour Court stood affirmed in an appeal as well as in writ petition and the order having acted upon, the question of subsequent discontinuation treating them still to be a daily wager could not have been passed by the State Govt. and in the opinion of this court, the court below were justified in holding that the order of termination/discontinuance to be bad in law.
8. Another aspect which cannot be brushed aside is the admitted fact on the basis of document available with the record is that the respondents are continuously working with the State since 1983 onwards and at this juncture discontinuance of the respondents would itself be violative of Articles 14 and 21 of the Constitution of India.
9. However, so far as the contention of the petitioner/State that awarding of backwages part to the respondents are concerned, this court is of the opinion that admittedly the respondents during the period of

discontinuance had not worked with the petitioner and their status even if in the light of the award of the Labour Court dated 17.04.1998 would only be a permanent Gangman and they were not engaged as regular scale worker, the Labour Court ought to have applied the principle of No Work No Pay. Therefore, in the opinion of this court, the award of granting 50 percent backwages to the respondents appears to be bad in law, the same deserves to be and is accordingly set aside.

10. However, so far as order of reinstatement is concerned, the same stands affirmed and the writ petition is accordingly allowed to the above extent.
11. At this juncture, counsel for the respondents submits that in the event, pending the writ petition the State have paid any amount to the respondents by way of compliance of Section 17-B of the Industrial Disputes Act or have made the payment of backwages, the same may not be recovered by the petitioner, to which counsel for the petitioner/State submits that he has instructions to say that no payment of backwages have been made till date.
12. Accordingly, it is made clear that if any payment is made to the respondents who are either in service or retired or expired, the same shall not be recovered by the petitioner/State.
13. With the aforesaid modification with the order impugned, the writ petition is partly allowed. No order as to costs.

Sd/-
(P.Sam Koshy)
Judge