

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION (L) NO. 208 OF 2016**

- Surendra Kumar Shrivastava S/o Late Ambika Prasad, aged about 46 years, R/o Near Tiranga Chowk, Naya Munda, Ambedkar Ward, Jagdalpur, District Bastar (C.G.)

**... Petitioner**

**Versus**

1. State of Chhattisgarh, through its Secretary, Department of Agriculture, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (C.G.)
2. Agriculture Engineer, Office of Agriculture Engineering, Bastar Division, Jagdalpur (C.G.)
3. Labour Court, through its Presiding Officer under the Industrial Disputes Act, 1947, Labour court, Jagdalpur (C.G.)

**... Respondents**

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| For Petitioner       | : | Mr. Vinod Deshmukh, Advocate.           |
| For Respondent-State | : | Mr. S.P. Kale, Deputy Advocate General. |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**28/11/2016**

1. By way of the present petition under Article 226/227 of the Constitution of India, the Petitioner has assailed the order dated 27.5.2016 passed by the Labour Court, Jagdalpur, in Case No. 03/2012/I.D.Act/Reference.

2. Facts of the case in nutshell are that the Petitioner, the worker, had raised an industrial dispute with the State of Chhattisgarh which the Labour Commissioner, Raipur had referred to the Labour Court, Jagdalpur, on the following term :

“Whether the termination of service of Shri Surendra Kumar Shrivastava S/o Late Ambika Prasad Shrivastava is legal and proper? If not, to what relief the applicant is entitled to and what direction should be given to the non-applicant in this regard?”

3. The petitioner-worker entered appearance before the Court below and submitted his Statement of Claim. The Respondent-State also had filed their Written Statement. In the Statement of Claim, the petitioner-

worker had categorically stated that he was engaged as a daily wage worker on 1.3.2008 and he continued to work as a daily wage worker up till 2.4.2012 when abruptly the service of the Petitioner was discontinued. It was also stated by the petitioner-worker that he was made to work as a helper/cleaner/chowkidar during the said period of his engagement. According to the Petitioner, since he had put in more 240 days in a calendar year and has served for about four years, his service could not have been discontinued by the Respondent-State without complying with the statutory requirements as is required under Chapter V of the Industrial Disputes Act, 1947 ('the Act' in short). According to him, the State Government in between illegally without issuing any advertisement or without complying with the procedure of law had also appointed a large number of candidates against the vacant posts of Driver/Cleaner/Helper. The Petitioner had categorically levelled allegations of not holding proper recruitment for filling up of the said vacant posts nor was any of the daily wagger worker who were already working with the department informed about the recruitment or given any opportunity for participating in the said recruitment process. He further alleged that since April, 2012 though he had made efforts for getting employment elsewhere but could not get the same and he was unemployed.

4. The Respondent-State in their Written Statement had categorically denied the contentions put forth by the petitioner-worker but had admitted the fact that he had been engaged periodically as and when there was availability of work. It was also undisputed by the Respondent-State that he was discharging duties that of a daily wagger worker as a Helper in the department. Further, from the pleadings in the Written Statement it is also an admitted position by the Respondent-State that the Petitioner's service was engaged continuously for the period of 89 days during the intervening

period. However, the Respondent-State contended that after 2<sup>nd</sup> of April, 2012 the worker had voluntarily abandoned the service and had not shown any interest to work any further and that it was not a case of any order or termination issued by the Respondent-State rather it is a case of abandonment of service by the worker himself and therefore the provisions of Act could not be made applicable in the given facts and circumstances. It was also contended by the Respondent-State that the recruitment in between which was held was after calling for the names of the candidates whose names were registered in the Employment Exchange and therefore the Petitioner was not entitled for the same.

5. During the course of the proceeding before the Labour Court, the petitioner-worker himself gave his evidence and he was also cross-examined on behalf of the Respondent-State. However, the Respondent-State in turn did not adduce any evidence whatsoever. In the absence of any evidence by the Respondent-State, the normal consequence would have been that the evidence of the Petitioner ought to have been given due weightage by the Court below. But, the Court below taking into consideration the evidence which has come on record and holding that since the initial appointment of the petitioner-worker was not in accordance with the recruitment rules applicable in the respondent-establishment, the appointment being bad the petitioner-worker was not entitled for any relief whatsoever and thus answering the reference in the negative rejected the claim application of the petitioner-worker, leading to the filing of the present writ petition.

6. Learned Counsel for the Petitioner however submits that the impugned award is bad in law for the reason that the Court below has not properly discussed certain facts which were necessary for consideration while answering the reference, first whether the Petitioner has in fact

worked for 240 days in a calendar year or not and, second whether the admission on the part of the Respondent-State in their Written Statement was sufficient evidence in favour of the Petitioner or not and, third whether so far as the contentions of the Respondent-State in their Written Statement regarding voluntary abandonment of service is concerned, the Court below was silent on this issue. That, the Labour Court has only gone on the issue of the initial engagement of the petitioner-worker while rejecting the claim application.

7. Having considered the rival contentions put forth on behalf of either side, what is necessary to appreciate is the fact that the Court below ought to have objectively considered the reference which had been made to it. The reference as narrated in the preceding paragraph clearly spells out that the Court below ought to have considered whether the termination of service of the petitioner-worker was legal or not based on the evidence which has been adduced on either side. In the present case it is only the evidence which has been led by the petitioner-worker which is on record. The Respondent-State has not either before the Court below or in the return filed in the present case narrated anything to show as to what prevented them in leading the evidence in the Court below.

8. In the evidence of the petitioner-worker it has been emphatically stated that he had worked with the Respondent-State between 1.3.2008 to 2.4.2012. This fact also stands supported from the Written Statement which was filed by the Respondent-State before the Court below wherein in paragraph 5 it has been very categorically accepted that the first party was temporarily engaged continuously for a period of 89 days each as a daily wage worker. Further in paragraph 2 of their Written Statement, the Respondent-State has also admitted the fact that the service of the petitioner-worker was taken by them as and when there was availability of

work, at the collector rate. These two admissions in the Written Statement categorically establish the admission on the part of the Respondent-State of engaging the petitioner-worker as a daily wage worker from 1.3.2008 to 2.4.2012.

9. In the given factual matrix of the case, the Court below ought to have considered the issue as to whether the petitioner-worker had worked for 240 days in a calendar year or not. This discussion for reasons best known is missing from the award of the Labour Court. Further, the fact that the Respondent-State has not led any evidence including their contentions so far as the voluntary abandonment of the service, the Court below ought to have discussed the said objection and reach to the conclusion whether it amounts to illegal termination or whether there was voluntary abandonment of service. This finding of the Court below also is silent on this issue. Likewise, it was also necessary for the Labour Court to have gone on the issue of the pleadings which have been made by the Respondent-State in their Written Statement and in the given factual matrix of the case it should have discussed as to why the requirement under Chapter V of the Act would not be applicable in the instant case.

10. The Supreme Court in the case of **Ramesh Kumar v. State of Haryana**, 2010 (2) SCC 543, held as under :

“18. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that the workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25-F. The High Court failed to appreciate that in the present case the appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court.”

**11.** It is also relevant at this juncture to refer to the case of **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, Haryana, (2010) 5 SCC 497**, wherein the Supreme Court relying upon its own decision rendered in the matter of *Pramod Jha v. State of Bihar*, reported in 2003 (4) SCC 619, held as follows :

**“21.** The legal position has been beautifully summed up in *Pramod Jha v. State of Bihar*, in the following words :

**10.** ...The underlying object of Section 25-F is two-fold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment of tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.”

**12.** In the given factual background of the case what clearly reflects from the evidence which has come on record is that the Respondent-State has failed to adduce any evidence in support of their pleadings or contentions. Further, from the Written Statement of the Respondent-State it evidently stands proved that the worker was in fact engaged by them between 1.3.2008 to 2.4.2012. From the pleadings in the Written Statement it is also evident that the Respondent-State had not paid any retrenchment compensation or, for that matter, compensation in any form in lieu of notice

or following the principles of retrenchment as is required under Section 25 of the Act.

**13.** The opinion of this Court stands fortified from the decision of the Supreme Court rendered in the matter of **Devinder Singh v. Municipal Council, Sanaur, 2011 (6) SCC 584**, wherein in paragraph 18 it was held as under :

**“18.** This Court has repeatedly held that the provisions contained in Section 25-F(a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative. *State of Bombay v. Hospital Mazdoor Sabha* AIR 1960 SC 610, *Bombay Union of Journalists v. State of Bombay* AIR 1964 SC 1617, *SBI v. N. Sundara Money* (1976) 1 SCC 822, *Santosh Gupta v. State Bank of Patiala* (1980) 3 SCC 340, *Mohan Lal v. Bharat Electronics Ltd.* (1981) 3 SCC 225, *L. Robert D'Souza v. Southern Railway* (1982) 1 SCC 645, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court* (1980) 4 SCC 443, *Gammon India Ltd v. Niranjana Das* (1984) 1 SCC 509, *Gurmail Singh v. State of Punjab* (1991) 1 SCC 189 and *Pramod Jha v. State of Bihar* (1984) 1 SCC 509.”

**14.** For the foregoing reasons, this Court is of the opinion that the impugned award dated 27.5.2016 lacks finding and reasoning in reaching to the said conclusion and it also silent so far as the issues and objections raised by either of the parties so far as working 240 days in a calendar year and also voluntary abandonment of service is concerned.

**15.** In the given factual background of the case, the impugned award deserves to be and is accordingly set aside and the matter is remitted back to the Labour Court for passing a fresh order in the light of the evidence and pleadings which have come on record.

**16.** Taking into consideration the fact that it is a matter of termination of service of the Petitioner, it is expected that the Court below shall pass a fresh order on the reference, on merits, as expeditiously as possible within a period of three months from the date of receipt of the records before the

Court below, after due consideration of the contentions and objections raised by either side.

**17.** The Registry of this Court is directed to forthwith send back the records to the Court below.

**18.** The writ petition stands disposed of, with the aforesaid observations.

Sd/-  
**(P. Sam Koshy)**  
Judge

/sharad/