

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.1 of 2016

Sawan Kumar Durgam aged about 26 years S/o Late Shri Durgam Lachchha Working as a Chowkidar at O/o Collector District Office Bijapur District Bijapur (Chhattisgarh)

---- Appellant

versus

1. State of Chhattisgarh, through its Commissioner Bastar Division Office at Jagdalpur District Bastar (Chhattisgarh)
2. The Collector Bijapur District Bijapur (Chhattisgarh)
3. The Chief Executive Officer Jila Panchayat Bijapur District Bijapur (Chhattisgarh)

---- Respondents

For Appellant	:	Shri Vinod Deshmukh, Advocate
For State/Respondents No.1&2	:	Shri U.N.S. Deo, Government Advocate
For Respondent No.3	:	Shri Rahul Tamaskar, Advocate

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

13/01/2016

1. The present appeal arises from order dated 11.11.2014 allowing Writ Petition (S) No.910 of 2011 to the extent that back-wages have not been granted consequent to reinstatement.
2. Learned Counsel for the Appellant submits that if the termination dated 19.10.2010 was found to be bad and for the fault attributable to the Respondents the Appellant wrongly remained out of service contrary to law till 11.11.2014, back-wages ought to have been granted. Reliance is placed on the pleading in paragraph 10.3 of the writ petition to submit that claim for back-wages had been made.
3. Learned Counsel for the State has opposed the appeal both on the grounds of being barred by limitation of 365 days for which no sufficient explanation has been furnished as also on merits. There should have been a specific demand of back-wages with an assertion that the Appellant was not gainfully employed in the meantime.

4. We have considered the submissions on behalf of the parties.
5. There is no quarrel with the broad proposition urged on behalf of the Appellant that where termination is found to be bad in law, back-wages should be normally granted while ordering reinstatement. But this is not an invariable rule. There has been a paradigm shift in recent years with the view now being taken that back-wages is not to be granted as a matter of course while ordering reinstatement. Much will depend on the facts of a case. This is based on the principle that the employee cannot have a double bonanza merely because the order of termination was set aside. There has to be a specific demand for back-wages coupled with an assertion that the delinquent was not gainfully employed in the meantime elsewhere. The pleadings in paragraph 10.3 states that the Appellant is required to be taken back in service with continuity.
6. In our opinion that does not amount to an assertion of claim for back-wages coupled with a statement of fact for not being gainfully employed. We therefore find no reason to interfere with the order of Learned Single Judge denying back-wages on the principle of 'no work no pay'.
7. Needless to state in the facts and circumstances of the case, if the termination was wrongful and the Appellant had made a claim for continuity of service, normally he is entitled to count the period that he was kept out of service for other service purposes.
8. The application is barred by limitation of 365 days. Since we have found no merit in the appeal itself, we condone the delay.
9. The writ appeal is dismissed except to the extent of clarification with regard to continuity of service.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE