

HIGH COURT OF CHHATTISGARH, BILASPUR
WP (L) No.61 of 2013

Shatrughan Lal Sahu S/o Shri Bhojram Sahu, Aged about 40 years, R/o Irrigation Colony, Darri, Thana-Darri, Tehsil-Katghora, Distt.-Korba (CG)

-----Petitioner

Versus

1. State of Chhattisgarh, Through-Secretary, Water Resources Department, Naya Raipur, Mantralaya, Raipur (CG)
2. Superintendent Engineer, Hasdev Barradge, Water Resources Sub Division Rampur, Teh.-Distt.Korba (CG)
3. Sub Divisional Officer Hasdev Barradge, Water Resources Sub Division Rampur, Teh.-Distt.Korba (CG)

-----Respondents

For Petitioner	:	Mr.Vionod Deshmukh, Advocate
For Respondents	:	Mr.D.R.Minz, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/01/2016

1. The petitioner was appointed as Daily Wager on 1.9.1984 with the Sub-Divisional Officer, Hasdev Barradge, Water Resources Department, Sub Division, Rampur, District Korba, he continued in service and ultimately, his services were discontinued on 28.2.1995. On dispute being raised and upon conciliation made by the Additional Collector, Korba, he was reinstated in service on 1.2.1995, but thereafter on 30.6.1996, his services were again terminated, against which, he raised Industrial Dispute before

appropriate Government and appropriate Government referred the matter to the Labour Court for adjudication as to whether termination of the petitioner is legal and in accordance with law.

2. The Labour Court, Korba by order dated 10.10.2012 held that the petitioner has only worked for 210 days from 1.12.1995 to 30.6.1996 during twelve calendar months preceding termination of his service and therefore, there is no breach of Section 25F of the Industrial Disputes Act, 1947 (hereinafter called as "ID Act") and rejected the claim of the petitioner.
3. Mr.Vinod Deshmukh, learned counsel appearing for the petitioner, would submit that 240 days has to be counted from the date of his engagement in the respondent department i.e.1.9.1984 till his date of termination i.e.30.6.1996, therefore, counting of only 210 days from 1.12.1995 to 30.6.1996 is unsustainable and bad in law. He would further submit that the Labour Court while passing the order impugned has ignored the pleading and evidence brought by the petitioner herein and therefore, matter may be remitted to the Labour Court for fresh adjudication of the matter in accordance with law.

4. On the other hand, Mr.D.R.Minz, learned Deputy Government Advocate for the respondents/State, would oppose the writ petition and submit that earlier the petitioner was terminated from his service on 28.2.1995, thereafter he was reinstated in service on 1.12.1995 and since 1.12.1995 to 30.6.1996 he worked only for 210 days, therefore, the Labour Court is absolutely justified in holding that the petitioner has not completed 240 days in twelve calendar months.
5. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.
6. In order to resolve the dispute, it would be appropriate to notice sub-section (2) of Section 25B of the ID Act which provides as under :-

25B. Definition of continuous service.-

- (1) xxx xxx xxx
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under n employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which

calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) ninety-five days, in the case of workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years,;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.”

Clause (a) of sub-section (2) of Section 25B of the ID Act provides that twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer.

7. A bare perusal of order of the Labour Court would show that the Labour Court has only counted the period from 1.12.1995 to 30.06.1996 for calculation of 240 days as enumerated in clause (a) of sub-section (2) of Section 25B of the ID Act. It is the case of the petitioner that he was in employment since 1.9.1984 and his services have been abruptly terminated on 28.2.1995 and on conciliation, he was engaged for few months and again he was terminated.
8. If such interpretation is allowed to be made, it will promote an unfair labour practice to the employer as the employer has taken back the services of the petitioner on 1.12.1995

and again he was terminated on 30.6.1996 i.e. within seven months from the date of his reinstatement.

9. In the matter of **Haryana State Electronics Development Corporation Ltd. and Mamni**¹, the Supreme Court has deprecated the practice of employer in terminating the service of the employee on the expiry of 89 days and thereafter reappointing after a gap of one or two days upon completion of each term and held that said practice is an unfair labour practice and such a course of action would defeat the object of the Industrial Disputes Act.
10. The Supreme Court in the matter of **Bhuvnesh Kumar Dwivedi v. M/s. Hindalco Industries Ltd.**² has held that artificial breaks made by respondent company therein with an oblique motive would amount to “unfair labour practice” defined in Section 2 (ra) of the ID Act where the employee therein worked for 6 years.
11. In view of the above, the writ petition is allowed and order dated 10.10.2012 (Annexure P/1) passed by the Labour Court, Korba in Case No. 14/I.D.Act/2008 is hereby quashed. Case is remitted to the Labour Court, Korba for fresh adjudication in accordance with law and to consider

¹ 2006 (3) L.L.N. 802

² 2014 AIR SCW 3157

whether termination of petitioner's service is legal keeping in view the decisions rendered by the Supreme Court in the aforesaid judgments and observation made hereinabove. The Labour Court would consider the matter afresh in accordance with law after affording an opportunity of hearing to the parties within a period of two months from the date of production of certified copy of this order. No order as to cost (s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-