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HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 52 of 2016**

1. State of Chhattisgarh Through The Secretary, Department Of Forest, Mahanadi Bhawan, Mantralaya Naya Raipur Chhattisgarh (The Petitioner No. 1 Was Not A Party Before The Learned Labour Court But Has Been Impleaded As Petitioner No. 1 In The Instant Petition As The Proper Course Is To Implead The State Government Through The Secretary Of The Concerned Department)
2. The Conservator of Forest, Forest Circle, Bilaspur Chhattisgarh
3. The Divisional Forest Officer, Bilaspur Forest Division, Marwahi Bilaspur Chhattisgarh

---- **Petitioners****Versus**

1. Gaurishankar Tiwari S/o Mangal Ram Tiwari, R/o Village Kona Post Kotmi Via Pendra Road, P.S. Pendra Road, Tahsil Pendra, District Bilaspur Chhattisgarh
2. The Judge, Labour Court, Bilaspur (Under I.D. Act.)

---- **Respondents**

For Petitioners : Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****02/03/2016**

1. This petition under Article 226/227 of the Constitution of India has been preferred to assail the award passed by the labour Court on 15-2-13 as also for setting aside the order dated 4-6-15 wherein petitioner's application for setting aside the *ex-parte* award has been rejected.
2. The respondent-workman was engaged in the establishment under the DFO, Marwahi as Forest Guard from 1977 to 2003. He was removed in the

year 2004 which led to raising of industrial dispute which was eventually referred for adjudication to the labour Court, Bilaspur. After submission of written statement the petitioner remained absent during the course of hearing before the labour Court, on which it was proceeded *ex-parte* and thereafter the award directing reinstatement without backwages was passed on 15-2-13. An application under Order 9 Rule 13 CPC for setting aside the *ex-parte* order was also rejected on 4-6-15.

3. Shri Shashank Thakur, learned GA would submit that the labour Court has recorded perverse finding regarding the workman having rendered 240 days work in the calender year preceding the date of termination, therefore, there being no violation of Section 25-F of the Industrial Disputes Act, 1947, the impugned award deserves to be set aside.
4. The labour Court has recorded a finding that the workman has proved that he worked from 10-4-77 to 3003 and during all these years, including the preceding calender year from the date of removal he was engaged for 240 days. The workman thus succeeded in establishing the fact, as there was no rebuttal by the State on account of its absence before the labour Court.
5. Admittedly, the workman was not provided any retrenchment compensation before his removal.
6. In the matter of **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited, (2014) 11 SCC 85**, the Supreme Court has reiterated the principle as to when the order passed by the Labour Court can be interfered by the High Court in exercise of powers under Article 227 of the Constitution of India. The following has been held in para 22 of the aforesaid judgment:

“22. A careful reading of the judgments reveals that the High Court can interfere with an order of the

Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred up on it. Therefore, we accordingly answer Point (i) in favour of the appellant.”

7. In the case at hand, the petitioner was proceed *ex-parte* before the labour Court, therefore, there being no rebuttal to the evidence led by the claimant, the labour Court's finding cannot be termed as perverse or suffering from any legal infirmity. Order rejecting prayer for setting aside the *ex-parte* award is also a reasoned order which has been passed after considering the reasons assigned by the petitioners for their non-appearance before the labour Court. It has been stated in the order that despite having received the notice and having submitted the written statement, the petitioners remained absent from the proceedings for which no reasonable explanation has been offered. It is not a case of non-service of notice, but it is a case of remaining willfully absent from the hearing after filing of written statement. In such cases, a very strong *bona fide* cause is required to be shown to prove the non-appearance, which the petitioner has failed to produce before the labour Court.
8. For the foregoing, this Court is of the considered opinion that the writ petition being devoid of any substance, it deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

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