

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.621 of 2009

Ganpat, S/o Dhelau Patel, Aged about 35 years, R/o Patel
Para, Sahaspur Lohara, Kabirdham, District Kabirdham (C.G.)
---- Petitioner

Versus

1. Presiding Officer, Labour Court, Rajnandgaon (C.G.)
 2. Divisional Forest Officer, Kawardha, Forest Division, District
Kabirdham (C.G.)
- Respondents

For Petitioner:	Mr. Basant Dewangan, Advocate.
For Respondent No.2 / State: -	Mr. S.M. Ali, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/11/2017

1. Learned counsel for the petitioner submits that the petitioner along with three other co-petitioners was terminated from service and the Labour Court rejected the claim. Other employees have also preferred writ petitions and the same were allowed and the matter was remanded to the Labour Court for fresh adjudication.
2. Learned State counsel would support the impugned order.
3. I have heard learned counsel for the parties.
4. The Labour Court has principally dismissed the case on the ground that there is delay of eight years in raising the industrial dispute. This Court in W.P.(Art. 227)No.653/2009

(Bhurva Ram v. Presiding Officer, Labour Court and another)

in which identical question is involved, a coordinate Bench of this Court has held in paras 9 and 10 as under: -

“9. There is considerable force in the submission of learned counsel for the petitioner that the claim could not be dismissed on the ground of delay. Labour Court is required to answer the reference made to it. This aspect was dealt with by the Supreme Court in the case of **Kuldeep Singh v. General Manager, Instrument Design Development and Facilities Centre and another**¹ in following words.

“30. In view of the above, law can be summarised that there is no prescribed time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate Government “at any time” refer the dispute to a board or court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference.”

10. Therefore, the approach of the Labour Court is not correct in law. This has resulted in illegality in exercise of jurisdiction. Therefore, the jurisdictional error is manifest.”

5. It has been further held in para 11 as under: -

“11. The Tribunal has not even considered the

1 (2010) 14 SCC 176

evidence oral and documentary on record. No reason whatever has been assigned as to why oral or documentary evidence was disbelieved. In fact there is no discussion on this aspect and in three lines, Labour Court has merely recorded that petitioner failed to prove that he worked for 240 days in one year. I have gone through the oral and documentary evidence led by the petitioner. The petitioner in his examination in chief has clearly deposed that he was working as Chowkidar in the nursery w.e.f. 1.1.1990. He has stated that duty which was performed by him. He also stated that his presence was recorded in the muster roll and he used to worked in 26 days, 30 days and 31 days in a month and in a year, he worked for more than 300 days for which he used to get Rs.1823/- per month. It is, therefore, seen that the Labour Court swayed by the delay aspect of the matter did not at all examine the oral and documentary evidence on record, to record finding of fact as to whether the petitioner succeeded in proving that he worked for 240 days in a month so as to establish requirement of continuous service as defined under the Industrial Disputes Act.”

6. Finally, the Coordinate Bench remanded the matter to the Labour Court. The aforesaid findings recorded by the coordinate Bench squarely applies to the facts of the present case in hand.
7. The impugned order is set aside and the matter is remanded back to the Labour Court for fresh adjudication in accordance with law, after hearing the parties.

8. The writ petition is allowed to the extent indicated herein-
above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma