



85

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.926 of 2004

Damodar, Son of Shri Jageshwar Prasad Lodhi, aged about 45 years, resident of village Birejhar, Tah and distt. Durg presently resided at Panchsheel Nagar, Mohlayee Road, Durg, Distt. Durg (CG)

----Petitioner

Versus

1. Chhattisgarh State Power Distribution Company Ltd. Through its Divisional Engineer (presently Executive Engineer) (O & M), Durg, Padmnabhpur, Distt.Durg (CG)
2. Presiding Officer, Industrial Court, Raipur (CG)
3. Presiding Officer, Labour Court, Durg (CG)

---- Respondents

And

Writ Petition No.1141 of 2004

Damodar, Son of Shri Jageshwar Prasad Lodhi, aged about 45 years, resident of village Birejhar, Tah and Distt. Durg presently resided at Panchsheel Nagar, Mohlayee Road, Durg, Distt. Durg (CG)

----Petitioner

Versus

1. Chhattisgarh State Power Distribution Company Ltd. Through its Divisional Engineer (presently Executive Engineer) (O & M), Durg, Padmnabhpur, Distt.Durg (CG)
2. Presiding Officer, Industrial Court, Raipur (CG)
3. Presiding Officer, Labour Court, Durg (CG)

---- Respondents

For Petitioner	:	Mr.P.P.Sahu, Advocate
For Respondent No.1	:	Mr.P.K.C.Tiwari, Senior Advocate with Mr.Kripesh G. Kela, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board



01/02/2017

1. The petitioner filed an application under Section 31(3) read with Section 11A and Section 61 of the Chhattisgarh Industrial Relations Act, 1960 (hereinafter called as "the Act of 1960") before the Labour Court stating inter-alia that he is permanent employee in terms of Standard Standing Order of the Madhya Pradesh Electricity Board (hereinafter called as "the Board") as he was employed in the year 1975 and was in employment till 24.9.85 and in fact, he was falsely implicated on 24.9.80 in a theft case, in which he was acquitted on 6.12.83, thereafter he made a request for continuance of his service, but he was not allowed to work, therefore, he be reinstated in service by granting appropriate relief.
2. The Board has filed its reply stating inter-alia that the petitioner was found involved in the theft case in which he was acquitted on 6.12.83, but he could not be reconsidered as he himself resigned by remaining absent w.e.f. 24.9.1980. In para 6 it has also been stated that the services of the petitioner are dispensed with on 24.9.1980 from which date he had terminated his employment by remaining absent for more than 10 consecutive days and the petitioner has filed an application on 7.10.1985/14.10.1985, therefore, the application is hopelessly barred by limitation and it deserves no

consideration.

3. On behalf of the petitioner, he examined himself and produced the documents Exs.P/1 to P/4, whereas on behalf of the Board, Ganesh Shankar Deshpande was examined. Except self-serving document no document was filed by the Board. Two Issues were framed, but no issue with regard to limitation was framed.
4. The Labour Court by its order dated 1.11.1997 allowed the application and overruled the plea of limitation holding that the Board had never terminated the services of the petitioner and it is the case of absence of work from 24.9.1980 and the provisions contained in Section 62(i) of the Act of 1960 would not be applicable and thereafter partly allowed the application by imposing stoppage of one annual increment and directed reinstatement of the petitioner.
5. Against the order of reinstatement, the Board preferred an appeal before the Industrial Court. The petitioner also preferred an appeal against denial of back wages.
6. Both the appeals were heard simultaneously by the Industrial Court and by the impugned order, the appeal preferred by the Board was allowed on the ground that the application of the petitioner was barred by limitation under Section 62 (i) of the Act of 1960.



38

7. Feeling aggrieved against the order of the Industrial Court, the petitioner filed the aforesaid two writ petitions. One is against setting aside the order of reinstatement and another is against non-payment of back wages.
8. Mr.P.P.Sahu, learned counsel appearing for the petitioner, would submit that it is not the case of termination by the Board, therefore, the provisions contained in Section 62 (i) of the Act of 1960 would not be applicable and as such, the Industrial Court is absolutely unjustified in allowing the appeal filed by the Board on that ground only.
9. On the other hand, Mr.P.K.C.Tiwari, learned Senior Advocate with Mr.Kripesh G. Kela, learned counsel appearing for respondent/Board, would submit that the petitioner's application was hopelessly barred by limitation as he himself has left the employment after he was found involved in the case of theft.
10. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised herein and also gone through the documents appended with the petition with utmost circumspection.
11. Section 62 (i) (A) of the Act of 1960 provides for commencement of proceedings which states as under:-

"62. Commencement of Proceedings.-
Proceedings before a Labour Court shall be commenced-

(i) in respect of a dispute falling under clause (a) of paragraph (A) of sub-section (1) of Section 61 within two years from the date of the dispute"

Provided that-

(a) if the dispute is connected with the termination of the services of an employee, such proceedings shall commence within a year from the date of termination of the services of the concerned employee."

12. Admittedly, it is the case of the Board that the petitioner's services were terminated. In the entire return, it has been emphasized that the petitioner was found involved in the offence on 24.9.80 for theft of copper wire, though he was acquitted on 6.12.83, but his case could not be reconsidered as he had resigned by remaining absent w.e.f. 24.9.1980. In para 6 of statement of claim, specific statement has been made that services of the petitioner were dispensed with on 24.9.1980 from which date he has relinquished his employment by remaining absent for more than 10 consecutive days and has filed an application on 7.10.1985/14.10.1985, therefore, his application is barred by limitation. On behalf of the Board, one Ganesh Shankar Deshpande has been examined. He has affirmed the fact mentioned in the written statement, but he has not stated that his services were terminated at any point of time by the Board nor any document was filed by him to demonstrate that his services were terminated by the Board for unauthorized absent.

13. The Industrial Court has applied the provisions contained in Section 62 (i) (a) of the Act of 1960 which prescribes the period of limitation if the dispute is connected with the termination of the services of an employee.
14. Rule 12 (3) (b) of the M.P. Industrial Employment (Standing Orders) Rules, 1963 (hereinafter called as "the Rules of 1963") provides the punishment for a major misconduct. Rule 12(4) of the Rules 1963 provides no punishment shall be imposed on an employee unless proved guilty of misconduct in an enquiry conducted in the following manner:-

"(a) The manager or other officer authorised by him in this behalf shall give to the employee a charge sheet clearly setting forth the misconduct charged and the circumstances appearing against him and requiring his explanation;

(b) The employee shall be given for submitting his explanation a period of at least 24 days if he is charged with a minor misconduct and at least 72 hours if he is charged with major misconduct;

(c) An employee shall be allowed to defend by himself or the representative of employees, if he so desires;

(d) Except in cases he admits the charge levelled against him the employee shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rests;

(e) The substance of the evidence shall be recorded and read over;

(f) An order of punishment shall be in writing and shall be issued over the signature of the manager or other officer authorised under standing order (1) (a). A copy of the order

passed awarding the punishment shall be given to the employee:

(g) In case of an employee other than the one belonging to the clerical, technical or supervisory staff the manager can suspend him pending enquiry into an alleged major misconduct for a period not exceeding four days;

(h) The manager may suspend a clerical, technical or supervisory employee for a period of three months pending enquiry into major misconduct alleged against him and shall pay suspension allowance to such employee at the rate of half of the average wage;

(i) The order of suspension shall be in writing and may take effect immediately on communication thereof to the employee. If no action is taken within a period of six months then the amount of wages for the period of suspension shall be payable in full."

15. Admittedly in this case, no domestic enquiry was conducted by the Board for termination of the petitioner. Plea of limitation was raised before the Labour Court in the statement of claim filed before the Labour Court. No evidence was adduced to support the plea of limitation by the Board. The Labour Court negatived the plea of limitation and after the order of reinstatement by the Labour Court, the petitioner's services were regularized on 1.1.1999 and he was promoted to the post of Assistant Grade-II on 27.6.2003 and he is continuing in service by interim order of this court dated 5.4.2004.

16. Taking into consideration the fact that no domestic enquiry was conducted against the petitioner and no evidence was

led by the Board to prove the plea of limitation and after the order of the Labour Court, the Board regularized the services of the petitioner and subsequently promoted on the higher post, the impugned order setting aside the order of the Labour Court on the ground of limitation cannot be sustained, it is hereby set aside.

17. The writ petitions are allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-
Sanjay K. Agrawal
Judge

B/-