

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.140 of 2004

Order reserved on: 7-12-2016

Order delivered on: 2-1-2017

State of Chhattisgarh, through the Executive Engineer, Rural Engineering Services, Bilaspur Division, Bilaspur (C.G.)

---- Petitioner

Versus

1. Ashwani Kumar, S/o Kanaithram, R/o Sindhi Colony, Kasturba Nagar, Through Tarabai, Naidu Chaal, Bilaspur (C.G.)
2. The Presiding Officer, Labour Court, Bilaspur (C.G.)
3. The State Industrial Court, Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. Gary Mukhopadhyay, Deputy Govt. Adv.
For Respondent No.1:	Mr. Somnath Verma, Advocate.

AND

Writ Petition No.4463 of 2004

Ashwani Kumar Nishad, aged 39 years, S/o Shri Kaneshar Ram Nishad, R/o Sindhi Colony, Kasturba Nagar, Bilaspur, Tehsil and District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Chief Secretary, Chhattisgarh Government, Raipur (C.G.)
2. Sub Divisional Officer, CADA, Road Sub-Division (Rural Engineering Service), Mungeli, District Bilaspur (C.G.)
3. Presiding Officer, Labour Court, Bilaspur (C.G.)
4. Industrial Court of Chhattisgarh, through the Registrar, Raipur (C.G.)
5. Executive Engineer, Rural Engineering Service, Bilaspur Division, Bilaspur (C.G.)
6. Executive Engineer, Public Works Department (B&R) Division-1,

Bilaspur (C.G.)

---- Respondents

For Petitioner:	Mr. Somnath Verma, Advocate.
For State/Respondents No.1, 2, 5 and 6: -	Mr. Gary Mukhopadhyay, Deputy Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Respondent No.1 in W.P.No.140/2004 filed an application under Section 31(3) of the Chhattisgarh Industrial Relations Act stating inter alia that he was appointed on the post of Driver on 25-4-1989, he worked regularly up to the year 1990 and thereafter, he started driver the jeep of the Department and he was terminated only by order dated 20-8-1993, and provisions of Section 29(1)(b) of the Chhattisgarh Industrial Relations Act were not complied with as such, the order of termination is bad. The Labour Court by its impugned order dated 12-2-1998 declaring the termination of respondent No.1 employee as illegal directed the petitioner / State to reinstate him along with back-wages against which W.P.No.140/2004 has been filed by the State questioning the impugned order whereas, W.P. No.4463/2004 has been filed by the respondent No.1 employee stating that despite order of the Labour Court, he is not being reinstated.
2. Since common question of law and fact is involved in both the writ petitions, they are heard together and are being disposed of by this common order.
3. Mr. Gary Mukhopadhyay, learned Deputy Govt. Advocate appearing on behalf of the State, would submit that there is no evidence to grant such award and full back-wages have been awarded. He would

further submit that the respondent employee has not completed two calendar months in a year, continuously while working as such.

4. Whereas, Mr. Somnath Verma, learned counsel appearing for respondent No.1 employee, would submit that the State Government has not led any evidence, however, the employee has proved that he had worked continuously for two calendar months in a year. He would further submit that the respondent employee has not been reinstated nor the benefit of Section 65(b) of the Chhattisgarh Industrial Relations Act has been extended to him from the date of filing of application till its disposal and as such, the writ petition filed on behalf of the State deserves to be dismissed on that count only.
5. I have heard learned counsel for the parties, considered their rival submissions made therein and also gone through the records with utmost circumspection.
6. The Labour Court has recorded a finding that the petitioner was appointed on the post of Driver on 25-4-1989 and he continuously worked till the date of termination *i.e.* 20-8-1993 but he was neither given notice nor retrenchment compensation while terminating his services and it has also not been proved that the petitioner was in gainful employment from the date of termination and till the date of award, therefore, the Labour Court directed reinstatement of the petitioner along with full back wages. On appeal being preferred by the Sub-Divisional Officer, CADA, the Industrial Court by its award dated 29-8-2003 upheld the award of reinstatement, however, partly modified the relief of full back wages restricting back wages to the extent of 50%.

7. The question for consideration would be whether the Labour Court is justified in directing reinstatement of the petitioner along with back-wages.
8. Learned counsel for the petitioner has supported the impugned award whereas the State counsel's submission is that the petitioner is not entitled for reinstatement and at the best, he would be entitled for monetary compensation only.
9. The point raised at the Bar is no longer *res integra* and stands determined by Their Lordships of the Supreme Court in umpteen number of judgments, few of them may be noticed profitably and usefully herein.
10. The Supreme Court in the matter of **Bharat Sanchar Nigam Limited v. Man Singh**¹ has observed as under:

“4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as “daily wagers” and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

6. Accordingly, the impugned judgment passed by the High Court as also the award dated 27-5-2005 passed by the Labour Court are set aside. We direct the appellant, Bharat Sanchar Nigam Ltd. to pay Rs 2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum.”

1 (2012) 1 SCC 558

11. Similar view has been taken by the Supreme Court in the matter of **Assistant Engineer, Rajasthan Development Corporation and another v. Gitam Singh**².
12. Yet again, recently in the matter of **Bharat Sanchar Nigam Limited v. Bhurumal**³, the Supreme Court has held thus:

“23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see *State of Karnataka v. Umadevi*⁴]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after along gap, would not serve any purpose.”

2 (2013) 5 SCC 136

3 (2014) AIR SCW 528

4 (2006) 4 SCC 1 : AIR 2006 SC 1806

13. In an identical matter i.e. WP(L)No.168/2013 (State of Chhattisgarh and others v. Sukhpal Singh and another), this Court by order dated 10.12.2013 granted monetary compensation in lieu of reinstatement. There against the workman preferred an appeal before a Division Bench of this Court in Writ Appeal No.68/2014 (Sukhpal Singh v. State of Chhattisgarh and others), which was dismissed by order dated 14.02.2014. Against the said order, the workman travelled up to the Supreme Court by filing SLP (C) No.25153-25154 of 2015. The said SLP was dismissed by the Supreme Court by order dated 24.08.2015 and affirmed the order passed by this Court.
14. Section 65(3) of the Chhattisgarh Industrial Relations Act, 1960 is *pari materia* to Section 17-B of Industrial Disputes Act, 1947. The Supreme Court in the matter of **Dena Bank v. Kiritikumar T. Patel**⁵ while considering the object, scope and ambit of Section 17-B of the Industrial Disputes Act, 1947, held as under:-

“21. As indicated earlier Section 17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character, Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words “full wages last drawn”. To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services

5 (1999) 2 SCC 106

had not passed since it has been set aside by the award of the Labour Court or the Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside, it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17-B to cast such a burden on the employer. In our opinion, therefore, the words “full wages last drawn” must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in *Visveswaraya Iron & Steel Ltd.*⁶ or the Bombay High Court in *Carona Sahu Co. Ltd.*⁷

23. As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution, it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be dehors the provisions contained in Section 17-B and while giving the direction, the court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in *Elpro International Ltd.*⁸ that in exercise of the power under Articles 226 and 136 of the Constitution, an order can be passed denying the workman the benefit granted under Section 17-B. The conferment of such a right under Section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution.”

15. In the case at hand, the respondent workman had worked only for 4 years and 4 months (25.04.1989 to 20.08.1993). Thus, considering

6 (1994) 84 FJR 46 : (1994) 1 LLJ 555 (Kant)

7 (1995) 70 FLR 25 : (1994) 2 LLN 834 (Bom)

8 1987 Lab IC 1468 : (1987) 2 LLJ 210 : (1987) 1 LLN 695

the settled legal position, it would appear to this Court that ends of justice would be served if instead of reinstatement, the respondent is paid monetary compensation. In several cases, this Court has consistently held that in cases where the workman has worked for 10 years or more the award of reinstatement will not be interfered and in cases, where the length of service prior to retrenchment was less than 10 years, monetary compensation would sub-serve the ends of justice. The present case falls in the later category, therefore, the award of reinstatement is set aside and instead the respondent workman is held entitled for compensation to the tune of Rs.2.00 lacs to be paid by the petitioner in full and final satisfaction of award within a period of 3 months from the date of order. If the amount is not paid within 3 months from today the respondent workmen would be entitled for 10% interest therein.

16. In the result, the writ petition is allowed in part to the extent indicated above.

W.P.No.4463/2004

17. This is the writ petition filed by the workman for enforcement of award dated 12-2-1998 passed by the Labour Court. Since the award impugned has been set aside in part by this Court as mentioned hereinabove, the petitioner is not entitled for the relief of reinstatement. The petitioner has also claimed that though no interim order was passed in favour of the State in the writ petition filed seeking quashment of impugned award yet the State offices neither reinstated the petitioner nor complied with the provisions contained in Section 65(3) of the Chhattisgarh Industrial Relations Act, 1960.

Section 65(3) of Act of 1960 provides as under:-

“65. Appeal.-

(1) to (2) *** *** ***

(3) Where in any case, a Labour Court, by its order directs reinstatement of any employee and the employer prefers and appeal before the Industrial Court against, such order, or any proceedings against the order of the Industrial Court in the High Court or the Supreme Court, as the case may be, the employer shall be liable to pay such employee during the pendency of such appeal, in the Industrial Court or such proceedings in High Court or the Supreme Court, as the case may be, full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule if the employee had not been, employed in any establishment during such period and an affidavit by such employee had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the Industrial Court or the High Court or the Supreme Court as the case may be, that such employee had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this Section for such period or part, as the case may be."

18. It is the case of the workman that despite award of the Labour Court which was stayed by the Industrial Court by order dated 3-4-1998 subject to compliance of Section 65(3) of the Act of 1960 neither he was reinstated nor he was paid full wages last drawn by him and he filed an application under Section 91(2) of the Act of 1960 for prosecution of the then Sub-Divisional Officer and the Labour Court by its order dated 25-9-2004 rejected this application finding no merit. From the aforesaid order, it is quite clear that the concerned Sub-Divisional Officer did not comply even the interim order of the Industrial Court dated 3-4-1998 staying the award subject to compliance of Section 65(3) of the Act of 1960. Not only this, the Industrial Court dismissed the appeal filed by the Sub-Divisional

Officer subject to certain modification on 29-8-2003 and consequently the State preferred W.P.No.144/2004 questioning the award passed by the Labour Court as modified by the Industrial Court on 13-1-2004 but no interim order was granted in favour of the State by this Court rather the interim application was not pressed on 8-1-2007 and consequently the application for interim stay was rejected. But the fact remains that the petitioner/State did not comply the provisions contained in Section 65(3) of the Act of 1960 and observed that provision in its breach, despite the fact that the workman filed separate writ petition for enforcement of the award, such a course is clearly impermissible in law, though this Court has partly allowed the writ petition filed by the State directing monetary compensation in lieu of reinstatement. Since, the workman was entitled for full wages last drawn during the pendency of the appeal preferred by the State before the Industrial Court and writ petition filed before the High Court and he has clearly filed an affidavit that he was not gainfully employed anywhere, in the considered opinion of this Court, the workman will be entitled for full wages last drawn by him inclusive of any maintenance allowance admissible to him under Section 65(3) of the Act of 1960 from 3-4-1998 till the date of this order along with 10% interest. Such a payment will be made within three months. The writ petition is allowed to the extent indicated herein-above.

19. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge