

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (L) NO. 5218 OF 2008

State of Chhattisgarh, through: Executive Engineer, Public Works Department, Khairagarh Division, Rajnandgaon (C.G.)

... Petitioner

Versus

Smt. Fulmat Bai, D/o Parasram Kanwar, aged about 52 years, R/o Boirdih, Post- Shikari Mohka, District- Rajnandgaon (C.G.)

... Respondent

For Petitioner	:	Mr. B. Gopa Kumar, Deputy Advocate General.
For Respondent	:	Mr. H.B. Agrawal, Senior Advocate, assisted by Ms. Priti Yadav, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/06/2017

1. Challenge in this writ petition is to the award dated 6.2.2008 passed by the Labour Court, Rajnandgaon in Case No. 9/I.D.Act/ 2005(Ref.).
2. The terms of reference for consideration before the Labour Court was, whether the termination of services of respondent-worker was legal and proper. If not, what relief could be granted to her and what directions could be issued to the petitioner-employer in this regard.
3. The claim of the respondent-worker before the Court below was that she was working under the petitioner-department at Chhuria Sub Division. Allegation was that the respondent-worker having worked for a continuous long period was abruptly terminated from services vide order dated 13.5.2003. According to the respondent-worker, the termination order was issued on the basis of an order of the State Government dated 24.4.2003, wherein it was reflected that all those Gangman who have put in more than 30 years of services or have completed the age of 60 years should be terminated from services. According to the respondent-worker, this action of the petitioner-department was bad in law as she could not be terminated from service without attaining the age of retirement.

4. The petitioner-department in their written statement opposed the claim of the respondent-worker and submitted that since the respondent-worker had completed 30 years of services, in view of the government instructions dated 24.4.2003 her services were liable to be terminated, and therefore the action of the State Government was justified.

5. The Labour Court after considering the evidence which have come on record and also taking into consideration the pleadings of either party, reached to the conclusion that the action on the part of the petitioner-department was bad in law and therefore ordered for reinstatement of the respondent-worker with full back wages. It is this order which is under challenge in the present writ petition.

6. Learned Deputy Advocate General appearing for the petitioner-department alleges that the impugned award is bad in law and therefore deserves to be set aside. He submits that the Court below has not taken into consideration the fact that the action of the State Government was on the basis of the government instruction dated 24.4.2003. He also submits that since the initial appointment of the respondent-worker itself was not in accordance with the scheme framed by the department nor was it in accordance with any rules applicable in the department, the respondent-worker does not have an enforceable right upon her. He further submits that the Labour Court has committed an error of law in considering the case of the respondent-worker as a contingency paid employee, whereas she was in fact a daily wage employee.

7. Learned Senior Counsel appearing for the respondent-worker however refers to a Writ Petition (S) No. 1212 of 2007 (Yudhisthir Mali v. State of Chhattisgarh & Others), decided on 1.3.2007, as also an order dated 4.1.2007 passed in a bunch of writ petitions, leading among being

the Writ Petition No. 108 of 2005 (Govind v. State of Chhattisgarh & Another), wherein it has been held that a person engaged in the work-charged contingency establishment could be retired only on attaining the age of 62 years and thus ordered for the quashment of the government instructions and the circulars. He further submits that a similar judgment has been relied upon by the Labour Court for granting relief to the respondent-worker of reinstatement with full back wages. Lastly, learned Senior Counsel for the respondent-worker submits that pending the present writ petition before this Court, the petitioner-department vide order dated 19.8.2008 has also regularized the services of the respondent-worker and as such the petition now is of only academic interest and the present writ petition need not be adjudicated upon and the same deserves to be rejected.

8. The aspect of the respondent-worker being regularized in services during the pendency of this petition is not disputed by the learned Deputy Advocate General. However, he submits that in the instant case, this Court may only consider the fact that the full back wages awarded by the Court below may be modified as the respondent-worker had not worked for the said period and therefore applying the principles of 'no work no pay' the back wages part may be modified.

9. On perusal of the records it appears that on 18.9.2008 while admitting the petition, this Court had ordered for grant of 50% of back wages to the respondent-worker and subject to the compliance of the said order, the remaining part of the award had been stayed.

10. Given the aforesaid factual matrix of the case, this Court is of the opinion that it would be justified if the impugned award is modified to the extent of entitlement of the respondent-worker of reinstatement with 50% back wages, which she has already received, instead of full back wages.

11. For the fact that the respondent-worker has been regularized, this Court does not intend to interfere with the impugned award any further except the modification in the quantum of back wages which stands modified to 50% instead of full back wages and the writ petition thus deserves to be rejected.

12. With the aforesaid modification in the impugned award, the writ petition is dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/