

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION (L) NO. 2854 OF 2009**

State of Chhattisgarh, through Divisional Forest Officer, Forest Division,  
Kawardha, Kabirdham (C.G.)

**... Petitioner**

**Versus**

1. Prasadani, S/o Tururam Patel, R/o Chomar, Post- Rampur, District  
Rajnandgaon (C.G.)
2. The Labour Court, Rajnandgaon (C.G.)

**... Respondents**

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| For Petitioner   | : | Mr. B. Gopa Kumar, Deputy Advocate General. |
| For Respondent 1 | : | Mr. Pankaj Agrawal, Advocate.               |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**27/06/2017**

1. Challenge in the present Writ Petition is to the award dated 24.4.2008 whereby the Labour Court, Rajnandgaon has allowed the claim application of the respondent-worker and has ordered for reinstatement with 50% back wages, in Case No. 74/I.D./2007(Ref.).

2. Brief facts of the case are that the respondent-worker in the instant case was working as Chowkidar under the petitioner-department at the Forest Division, Kawardha. The respondent-worker was illegally removed from services after putting in about 15 years of service, in the year 2003. He raised an industrial dispute before the State Government which in turn vide its order dated 24.5.2007 made a reference to the Labour Court, Rajnandgaon, with the following terms of reference:

“Whether the termination of services of Shri Prasadani, S/o Tururam Patel is legal and proper. If not, for what relief he is entitled and in this regard what directions should be given to the non-applicant?”

3. The worker as well as the department appeared before the Labour Court and submitted their respective statement of claim and written

statement. Respondent-worker made a categorical statement in his pleading that he had been working against a vacant post of Chowkidar at Salhewara Range under the Forest Division, Kawardha, since 1988 onwards. He further submitted that on the said post he had been continuously working till 2003 when his services were abruptly discontinued. He also submitted that he had continuously served the department without any interruption and before discontinuance of his services, no notice under Section 25-F of the Industrial Disputes Act (for short, 'the Act') or, for that matter, any retrenchment compensation was paid to him and therefore since the mandatory requirement under Chapter-V of the Act has not been followed, the action on the part of the department amounts to illegal termination.

4. The petitioner-department in their written statement denied the contentions of the respondent-worker and submitted that he has not worked for more than 240 days and that his substantive engagement was only as a daily wage employee that too on the availability of work. It was further contended by the department that since the nature of employment of the respondent-worker was as a daily wage employee, the requirement of strictly following the principles of natural justice or, for that matter, complying with the provisions of Chapter-V of the Act does not arise.

5. Before the Labour Court, the respondent-worker examined himself and on the part of the petitioner-department one Shri B.R. Khute was examined. The worker in his evidence has categorically stated that he was working at Salhewara Range as a Chowkidar since 1988 and continued to work on the said post till 2003. The worker further in his deposition has stated that his services were not discontinued on account of any misconduct nor was any notice issued neither any retrenchment compensation or any other compensation given to him. The petitioner-

department in their evidence, however, made an oral denial of the worker not completing 240 days of services in a calendar year and also denied that he was engaged against any vacant post. They had also submitted that the status of the respondent-worker was that of a daily wage employee alone. Thus, they prayed for the rejection of the claim of the respondent-worker.

6. Considering the evidence which have come on record, the Labour Court reached to the conclusion that from the evidence of the management witness itself it is evident that the provisions of Section 25-F of the Act have not been followed and that the worker was not granted any compensation nor any notice or pay in lieu of notice was paid to him and thus the Labour Court allowed the claim of the respondent-worker with the relief of reinstatement with 50% back wages.

7. Learned Deputy Advocate General for the petitioner-department assails the impugned award on the ground that the Court below has failed to appreciate that the worker was substantially holding a post of daily wage employee and therefore he would not be entitled for any compensation as is required under Section 25-F of the Act neither was there any necessity for issuance of a notice or wages in lieu of notice. He further assails the impugned award on the ground that the worker in the instant case has not been able to establish the fact that he had worked for more than 240 days in a calendar year. According to the learned Deputy Advocate General, the burden of proving the same was upon the respondent-worker. He relies upon the decision of the Hon'ble Supreme Court rendered in the case of Bhavnagar Municipal Corporation & others v. Jadeja Govubha Chhanubha & another, 2014 (16) SCC 130.

**8.** Learned Counsel for the respondent-worker however opposing the petition submits that the award passed by the Labour Court is a well reasoned and speaking order and warrants no interference by this Court. According to him, the respondent-worker has proved his case that he had discharged his duties, by making a categorical statement in his deposition that he was working at the Salhewara Range since 1988 till 2003. He further submits that the worker had also stated that before discontinuance he has not been paid any retrenchment compensation nor was any notice issued to him. He further submits that the burden thereafter shifted upon the petitioner-department to establish that the respondent-worker had not worked for more than 240 days and since the petitioner-department has not proved their case by leading cogent evidence, the Labour Court has rightly reached to the conclusion that the act on the part of the petitioner-department in terminating the services of the respondent-worker was bad in law and therefore he prays for dismissal of the writ petition.

**9.** Having considered the rival contentions put forth on behalf of either side and on perusal of the record, what clearly reflects from the evidence particularly the evidence of the employer is the admission on their part of the respondent-worker working with the petitioner-department in the past as a Chowkidar. He had also deposed that the respondent-worker whether had worked for more than 240 days could be established only from the records available with the department. That there was also a categorical statement by the management witness that no record whatsoever has been produced before the Labour Court to substantiate their contention.

**10.** In the given factual background of the case as there is an admission on the part of the petitioner-department that the respondent-worker had worked with the department in the past, the burden was therefore shifted upon the employer i.e. the petitioner, to produce cogent record before the

Court below to show that the respondent-worker had not worked continuously for 240 days in a calendar year. The management could have easily produced the muster-roll or attendance register or at least the wages register to prove the number of days that the worker had worked in a year or in the past. In the absence of which, the finding of the Court below cannot be said to be a perverse finding.

**11.** The law in this regard is well settled that in the event of discontinuation of a worker without compliance of the provisions of Chapter-5 of the Act, more particularly under Section 25-F of the Act, the only consequence would be that such termination is to be declared as illegal termination and for which, the worker is entitled for reinstatement in service.

**12.** In Hari Nandan Prasad & Another v. Employer I/R to Management of Food Corporation of India & Another, 2014 (7) SCC 190, the Hon'ble Supreme Court in para 17 has held as under:-

**“17.** ...At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of retrenchment in paying the aforesaid dues in accordance with Section 25-F of the I.D. Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well...”

Applying the same analogy and again reiterating the same, the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Limited v. Bhurumal, 2014 (7) SCC 177, in paragraph 27, has held as under:-

**“27** ...In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months' period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.”

**13.** So far as the decision of the Hon'ble Supreme Court in Bhavnagar Municipal Corporation (supra), which has been cited by the learned Counsel for the Petitioner, is concerned, with due respect, it would go against the Petitioner, as in paragraph 8 of the said judgment the Hon'ble Supreme Court has taken note of the admission on the part of the employer to a certificate in respect of employment, on the basis of which the Hon'ble Supreme Court refused to interfere with the findings of the Court below. Thus, the said judgment is distinguishable on its facts itself when compared to the facts of the present case.

**14.** This Court is also not inclined to interfere with the impugned award for the reason that the petitioner-department has already reinstated the respondent-worker and who is working with the department since 2008 onwards and as such has put in about 10 years of service. It will be too harsh if we now try to remove him from service again.

**15.** For the foregoing reasons, this Court does not find any strong case made out for interfering with the impugned award. The writ petition thus fails and is accordingly dismissed.

Sd/-  
**(P. Sam Koshy)**  
Judge