

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 6099 of 2010**

State of Chhattisgarh through Divisional Forest Officer, Forest Division,
Rajnandgaon (CG)

---- Petitioner**Versus**

Yaduram Shyam S/o Gendram, R/o Sadak Chirchari, Tahsil, Churia, District
Rajnandgaon (CG)

---- Respondent

For State/Petitioner	:	Shri B. Gopa Kumar, Dy. Advocate General
For Respondent	:	Shri Atanu Ghosh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****29/06/2017**

Challenge in the present writ petition is the award dated 13.05.2010 passed in Case No.19/I.D.Act/2008(Ref.) whereby the Labour Court, Rajnandgaon has allowed the case of the respondent-employee and granted relief of reinstatement without back-wages.

2. The State Govt. had made the following terms of reference to the Labour Court, Rajnandgaon for adjudication:

“Whether the termination of services of Yaduram Shyam S/o Gendram was legal and proper? If not, what relief he is entitled for and what direction should be issued to the non-applicant employer in this regard?

3. The respondent-workman filed his detailed statement/claim before the Court below stating that he had been initially engaged as a Guard in the year 1994 at Sadak Chirchari Depot under the Forest Division, Rajnandgaon.

According to the respondent-workman, he continued to discharge his duty on the same status till 2000 when abruptly his services were discontinued by the Department. Later on, he raised a dispute under the provisions of ID Act on the basis of which the reference was made to the Labour Court.

4. The Department entered appearance before the Labour Court and submitted their written statement categorically denying the claim of the workman and also denying the fact that the workman had worked for a continuous period of 240 days in a calendar year with the department. It was the contention of the petitioner department that the substantive post of the respondent was that of a daily wage worker and therefore, he did not have any indefeasible right in his favour. It was also contended by the Department before the Labour Court that the dispute being raised at a belated stage, the reference should have been dismissed on the ground of delay and latches.

5. Taking into consideration the evidences which have come on record and also considering the pleadings of the parties, the Labour Court vide its award dated 13.05.2010 answered the reference in favour of the workman holding that the discontinuance of service amounts to illegal termination and the respondent workman would be entitled for reinstatement without any back-wages.

6. It is this award dated 13.05.2010 which is under challenge in the present writ petition.

7. Counsel for the State-petitioner assailing the impugned order would submit that the Court below has committed an error of law in as much as it has not appreciated the contention of delay and latches raised by the department in its proper perspective. According to the counsel for the petitioner, the services of the respondent were discontinued in the year 2000 and he raised a dispute in the year 2008. As such, there is a delay of about 8 years in raising the dispute and no justified reasons or explanations have

been given by the respondent-worker for not raising the dispute for 8 years. It was also contended by the counsel for the petitioner that the substantive post of the respondent was only that of a daily wage worker and therefore, there was no indefeasible right created in his favour. Thus, prayed for quashment of the impugned award.

8. Counsel for the respondent-workman, however, opposing the petition submits that after the impugned order was passed, the department had reinstated the respondent worker and since then he has been discharging his duties and that he has been put in about 7 years of service now. Therefore, the impugned award may not be interfered. It has also been argued by the counsel for the respondent that it is a case where the State has not produced any evidence to disprove the evidence of the worker before the Labour Court. In the absence of any evidence on the part of the State to disprove the evidence of the worker, the inference that has been drawn by the Labour Court is proper, legal and justified and does not warrant any interference. Lastly, it is contended that the findings of the Labour Court is a finding of fact and that there does not appear any perversity calling for judicial review invoking the writ jurisdiction of this Court and prayed for dismissal of the writ petition.

9. Having heard the rival contention put forth by the counsel appearing on either side and on perusal of the record what clearly reflects is that the workman in the instant case had entered appearance before the Labour Court as a witness and made a statement that he was initially engaged in the year 1994 as a Guard at Sadak Chirchari Depot under the Forest Division, Rajnandgaon. In addition, one Yogeshwar Thakur, the Clerk at Sadak Chirchari Depot under the Forest Division, Rajnandgaon was examined who in his evidence has admitted the fact that certificate Ex. P-4 was issued by the Department which certifies that the respondent-worker was working

continuously since 1994 to 2000 establishing the fact that he has worked for 240 days in a calendar year before his termination. This witness has also stated before the Court below that the proof of employment can be established from the muster roll maintained by the Department for the purpose of marking attendance and also for releasing the wages payable to the respondent-worker. He has further admitted the fact that he personally knows the respondent-worker for the reason that he was working in the same depot where the workman is claimed to have posted as a Guard.

10. So far as the issue of delay that has been raised by the State counsel is concerned, the said issue stands well settled by a catena of decisions of the Supreme Court starting from the case of Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-processing Service Society Limited and another¹, Gurmail Singh Vs. Principal, Govt. College of Education and others² and Kuldeep Singh Vs. General Manager, Instrument Design Development and Facilities Centre and another³.

11. In view of the aforesaid legal pronouncements of the Supreme Court, this Court does not find the issue of delay decided by the Labour Court as bad in law or perverse in any manner. It is also a settled position of law that under the writ jurisdiction, this Court would not interfere with the order passed by the Labour Court as if sitting as an Appellate Authority particularly in a case under I.D. Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can interfere with factual aspect only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.

¹ (1999) 6 SCC 82

² (2000) 9 SCC 496

³ (2010) 14 SCC 176

12. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court does not find any infirmity in the decision making process warranting interference.

13. The Supreme Court in the case of **Harjinder Singh v. Punjab State Warehousing Corporation [2010 (3) SCC 192]** held as under:-

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and /or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and others similar legislative instruments are social welfare legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

'10. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.'

(State of Mysore v. Workers of Gold Mines⁴, AIR p.928, para 10.)”

This view has further been reiterated in the case of **Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited [2014 (11) SCC 85]**.

14. The Petitioner through the present writ petition has failed to show either there being any perversity in the finding or the Court below having exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified. In addition, this Court is also not inclined to interfere with the impugned award on the ground that the worker has already put in about 7 years of service after the order of

⁴ AIR 1958 SC 923

reinstatement. In the given facts and circumstances, this Court is of the opinion that no strong case has been made out calling for interference with the impugned award of the Labour Court as the same is based on the finding of fact and the evidences which have come on record.

15. Thus, the present writ petition being devoid of merits, the same is accordingly dismissed.

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