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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 6622 of 2007**

State of Chhattisgarh through Superintendent, Industrial Training
Institute, Rajnandgaon, District Rajnandgaon (Chhattisgarh)

---- **Petitioner****Versus**

1. Dwarika Prasad S/o Shri Makhanlal Sahu, village & post – Jangalpur,
Tehsil – Dongargaon, District Rajnandgaon, (Chhattisgarh)
2. The Labour Court, Rajnandgaon through the Presiding Officer, District
- Rajnandgaon (C.G.)

---- **Respondents**

For Petitioner/State : Shri S. P. Kale, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****10 /03/2017**

The State-petitioner has preferred this petition under Article 226/227 of the Constitution of India assailing the order/award dated 03.02.2007 passed by the Labour Court, Rajnandgaon in case No. 109/I.D.Act/2004(Ref.). Vide the impugned order the Labour Court on a reference being made by the State Govt. in respect of the termination of services of respondent no.1 has answered the reference holding the termination to be illegal and violative of the provisions of Industrial Disputes Act and ordered for reinstatement in service with 50 % back wages in favour of respondent no.1.

2. The relevant facts in the present case are that respondent no.1 in the year 2004 is said to have raised an industrial dispute before the appropriate authority in respect of the termination of his services by the petitioner-State.

Claim of the respondent no.1 was that vide order dated 14.10.1997 he was engaged as a peon at Mini Industrial Institute, Dongargarh. He continued to discharge his duties till 25.10.1999 i.e. for well over two years time. Suddenly, the petitioner discontinued the services of respondent no.1 w.e.f. 25.10.1999 onwards. Before discontinuing his services, no notice whatsoever was issued, neither was any compensation paid nor was any notice pay given to the respondent no.1. For all these reasons, respondent no.1 raised an industrial dispute alleging the non compliance of the mandatory provisions under chapter V of the Industrial Disputes Act more particularly the non compliance of the provision under Section 25-F of the said Act.

3. The matter was referred to the State Labour Court, Rajnandgaon with the terms of reference “whether the termination of service of Dwarika Prasad S/o Makhan Lal Sahu was legal and justified ? If not, what relief he has entitled for and what directions could be issued to the employer in this regard?

4. Either of the parties on receipt of notice entered appearance and submitted their respective claims. The respondent no.1 after giving facts as narrated in the preceding paragraph raised violation of the Industrial Disputes Act and stated that the petitioner had not issued any notice or salary in lieu of notice, neither was his services discontinued for unsatisfactory work or for certain misconduct. Thus, respondent no.1 prayed for declaration of the discontinuation/termination of services to be illegal and claimed for reinstatement with full consequential benefits.

5. The petitioner who was the second party before the Court below also entered appearance and denied the claims put forth by respondent no.1 worker. It was contended by the petitioner that the services of respondent

no.1 was on contract basis and therefore there was no substantive indefeasible right created in his favour. It was contended that the order of appointment itself reflected that the services could be discontinued at any point of time without any notice. The worker had accepted the said condition of employment and therefore he cannot turn around and question the discontinuation once having accepted the Clause in the order of appointment. It was also contended that since the appointment of respondent no.1 was on contract basis, there was no necessity for compliance of Section 25 F of Industrial Disputes Act, therefore, the claim of respondent no.1 was not sustainable. It was also contended that even though the appointment was on contract basis but the worker was substantively a daily wage worker, therefore, so far as the daily wage workers are concerned, their discontinuance did not require any notice or for that matter an enquiry to be conducted neither was there any requirement of show cause etc. to be issued.

6. After considering the evidences which have come on record the Court below reached to the conclusion that the order of engagement of respondent no.1 as an employee under the petitioner stood established. It was the finding of the Court below that the worker having worked with the petitioner continuously for a period of more than 240 days in a calendar year also stood established from the evidences which have come on record. The learned Labour Court also found that there was an admission on the part of the Management witness that before discontinuing the services, no notice or notice pay or any sort of compensation even retrenchment compensation were provided to the employee. For all these reasons, the discontinuance of service was held to be bad in law and illegal. Thus, answering the reference in favour of the worker, the Court below vide its order dated 03.02.2007 declared the termination illegal and granted the relief of

reinstatement with 50 % back wages in favour of the worker.

7. It is this order dated 03.02.2007 which is under challenge in the present writ petition.

8. Assailing the said order counsel for the State-petitioner submitted that the impugned order is bad in law for the reason that the Court below has not appreciated the fact that the substantive status of the worker was that of a daily wage worker and therefore there would not have been any requirement of payment of retrenchment compensation or compliance of Section 25-F of ID Act. It was also contended that the Court below ought to have considered the fact that the engagement of the worker was for a particular nature of work and the moment the work was over, the engagement of the worker stood automatically discontinued, therefore, the worker was not entitled for any relief. Thus, prayed for setting aside of the impugned award.

9. Counsel for respondent no.1, however, prayed for dismissal of the writ petition on the admitted facts of the case. According to the counsel for respondent no.1, the engagement of the worker, the discontinuance of the worker, the continuous employment of the worker for the period more than 240 days before termination, non granting of any compensation or retrenchment compensation and also non issuance of any notice before termination or non payment of salary in view of notice are all admitted factual positions which by itself are sufficient to hold that the termination was illegal termination and also violative of Section 25 F of the ID Act. It was lastly contended by the counsel for respondent no.1 that pursuant to the award passed in favour of the respondent worker, the petitioner has already reinstated the worker and he is working right from the time of the award being passed i.e. for almost 10 years time now and therefore the

award need not be quashed.

10. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record so far as the facts are concerned, there is no dispute or contradiction and as such it becomes an admitted position of the worker having put more than 240 days in a calendar year before termination. The non compliance of Section 25 F of ID Act holds the discontinuance to be an illegal termination and therefore this Court has no hesitation in reaching to the conclusion that the finding of the Labour Court holding the termination to be illegal does not warrant any interference and as such the said finding is confirmed.

11. In *Vikramaditya Pandey Vs. Industrial Tribunal & Anr.*¹ it was laid down by the Supreme Court that once the termination of service has been held to be illegal, ordinarily the normal relief would be that of reinstatement with full back wages. The similar view has further been reiterated by the Supreme Court in the case of *Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others*² and also in the case of *State of Madhya Pradesh and Others V. Arjunlal Rajak*³ wherein also it has been emphatically held by the Supreme Court that in the case of non compliance of the provisions of Section 25 F of ID Act, ordinarily a workman is entitled to be reinstated with or without back wages.

12. The full Bench of Madhya Pradesh High Court in the case of *Munshi Singh S/o Balwant Singh Kushwah v. Nagar Panchayat, Jaura*⁴ (2009) 4 M.P.L.J. 57 also held that once it is found that the termination order is violative of Section 25 F of ID Act then the employee is entitled for reinstatement.

1 AIR 2001 SC 672

2 (2006) 5 SCC 127

3 (2006) 2 SCC 711

4 2009 (4) M.P.L.J. 57

13. The Supreme Court in case of Haryana Urban Development Authority Vs. OM Pal, 2007 (5) SCC 742 has held that the relief of reinstatement with back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on facts situation obtaining in each case.

14. In view of the aforesaid legal position and also keeping in view the fact that after the award being passed, in compliance of Section 17 'B' of ID Act, the respondent no.1 worker has already been reinstated in employment and he having put in about 10 years of service subsequently, this Court does not intend to disturb the order of reinstatement. However, for the reasons mentioned in the aforesaid paragraphs so far as the granting of back wages is concerned, this Court reaches to the conclusion that the respondent no.1 would not be entitled for back wages by applying the principles of "No Work No Pay", more particularly when the status of respondent no.1 was that of a daily wage worker.

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