

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No.2863 of 2007**

Chhattisgarh State Ware Housing Corporation through its Branch Manager, Rajnandgaon, Purani Krishi Upaj Mandi Chowk, Rajnandgaon (CG).

---- **Petitioner**

Versus

1. Labour Court, through its Presiding Officer, Rajnandgaon, Distt. Rajnandgaon (CG).
2. Churendra Kumar S/o Mohan Lal Sahu, R/o Maharajpur, Post Singhola, District Rajnandgaon (CG).

---- **Respondents**

For Petitioner	:	Shri SS Baghel, Advocate.
For respondent No.2	:	Shri HS Ahluwalia, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/03/2017

1. Challenge in this petition is to the award of the Labour Court, Rajnandgaon, dated 09.01.2007 passed in Case No.11/ID Act/Reference/2004. Vide the said order, the court below while answering the reference made by the State have answered the same holding that the termination of the respondent No.2 was bad in law and granted relief of reinstatement with 10 percent backwages.
2. It is this award dated 09.01.2007 which is under challenge in this petition.
3. Learned counsel appearing for the petitioner submits that it is a case where the impugned award of reinstatement is bad in law for more than one reasons. According to the petitioner, the respondent No.2 had never been engaged by the petitioner to work under them and since there was

no employer and employee relationship, the dispute itself was bad in law and was liable to be rejected. It was further contended that as per the pleading of respondent No.2 itself he had worked with the petitioner till 1994. However, the dispute in the instant case has been raised only in the year, 2004. The delay has not been properly explained and that the authorities concerned could not have entertained the dispute after such a long time, and as such, the reference should have been answered accordingly and further the Labour Court on this ground alone should have refused grant of backwages.

4. It was further contended by the petitioner that since the dispute was raised by the respondent No.2 worker, burden of proof was upon him to prove his case of illegal termination or non compliance of the provisions of Industrial Disputes Act and also the fact that whether he was engaged as an employee of the petitioner corporation. He himself should have discharged this burden, in which he has failed. In the absence of any cogent evidence to establish these grounds by the respondent No.2, his case cannot be said to have been proved before the court below. Hence, prayed for quashing of the award impugned.
5. He relies upon the decision of Supreme Court in case of Bharat Sanchar Nigam Limited Vs. Man Singh, reported in 2012 (1) SCC 558, wherein the Supreme Court in somewhat similar situation have ordered for payment of lump sum compensation in lieu of reinstatement. The petitioner thus prayed for modification of the award so that if at all the worker is entitled for any relief, he may be provided with some monetary compensation.
6. Learned counsel for the respondent No.2 opposing the petition submits

that the award is a reasoned and speaking award and does not warrant any interference. He submits that respondent No.2-employee had entered in the witness box before the court below and have established his case and which has been taken note of by the Labour Court and therefore, the present petition being devoid of merit is liable to be rejected.

7. Having heard the rival contentions put forth on either side and on perusal of records certain undisputed facts which have come on record is the fact that the respondent No.2 has worked with the petitioner from 1992 to 1994. The reference that was made to the Labour Court was on the question of law whether the termination of the respondent No.2 by the respondent was proper, legal and justified. If not, to what relief he is entitled for.
8. The law by now is well settled by a series of decisions of Supreme Court that the provisions of Industrial Dispute Act does not prescribe any period of limitation for raising the dispute. If the dispute has been raised and reference has been made, the reference cannot be rejected on the ground of limitation or on the ground of delay and laches. The Supreme Court in a series of judgments have held that if at all if the dispute is raised at a belated stage, the only relief that could be given to such employee would of monetary relief, if any, applicable prospectively. He may not be entitled for monetary benefit for the period when he did not raise the dispute.
9. Another aspect which cannot be brushed aside is the fact that though the petitioner in the instant case have denied engagement of respondent No.2 at all, but the petitioner's witness i.e. Namdeo Bhopte,

Branch Manager of Ware House (Godown incharge) has admitted the fact that respondent No.2 has worked with the petitioner's establishment in between 01.08.1992 to 28.10.1992. This acceptance of employment of the respondent No.2 by the witness of the petitioner corporation falsify the entire stand taken by the petitioner before the court below in their written statement.

10. Yet, another fact which has to be borne in mind is that after the award, the respondent No.2 has till date not reported for duty at the petitioner's establishment nor has he at any point of time approached the petitioners for compliance of provisions of Section 17-B of the Industrial Disputes Act. According to petitioner, for the last more than 10 years, the respondent No.2 has not shown any interest for taking employment with the petitioner's establishment. Even if the evidence which have come on record is taken into consideration, the fact undisputedly appears that the respondent No.2 had worked from 1992 to 1994. Even if his working from 1992 to 1994 is accepted, even then, the fact remains that he has raised a dispute after a long time from the date of discontinuance which itself is sufficient indication of his not being too keen about his service.
11. This view of the court further get strengthened from the attitude of the respondent No.2, inasmuch as, though there is an order of reinstatement in his favour with 10 percent backwages, he has not shown any interest for seeking compliance of the said award or at least the compliance under Section 17-B of the Industrial Disputes Act.
12. At this juncture, it would be relevant to refer to decision of Supreme Court in case of Bharat Sanchar Nigam Limited (Supra), wherein in some what similar situation where the workmen who had worked from

1984 to 1985 was terminated in the year, 1986 and who had raised an industrial dispute after about 5 years i.e. in the year, 1991, the Supreme Court has held 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 respondents - 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.”

13. Similar view has also been taken by this court in case of State of Chhattisgarh & Others Vs. Panchram Marar (WPL No.192 of 2013, decided on 01.01.2014) and other connected matters wherein it has been held that relief of reinstatement should not be awarded as a matter of routine in all the cases. The total facts of the case has to be assessed in its proper perspective. If we take into consideration the facts of the present case, right from 1994 onwards, as has been claimed by the petitioner for about 22 years he has been out of employment and at this juncture, if we consider the relief of reinstatement, that may not be advisable both in the interest of employer as well as in the interest of the employee.

14. The view taken by the Supreme Court in case of Bharat Sanchar Nigam Limited (Supra) has been further reiterated in case of Assistant Engineer, Rajasthan Development Corporation and Another Vs. Gitam Singh, reported in 2013 (5)SCC 136.

15. In view of above factual matrix of the case and applying the principles of law laid down by the Supreme Court in abovereferred cases and also one of the decision of this court in WPL No.192 of 2013, this court is of the opinion that the order of reinstatement with 10 percent backwages passed by the court below was not proper, legal and justified. In the given facts, grant of monetary compensation to the respondent No.2 would meet the ends of justice. Thus, it is ordered that for the period the respondent No.2 had served with the petitioner's establishment, he would be entitled for a sum of Rs.25000/-for each years service that he has rendered with the petitioner and for all practical purposes, the period of service rendered would be treated from 1992 to 1994.
16. With the aforesaid modification in the award dated 09.01.2007, the petition is allowed in part.

Sd/-
(P. Sam Koshy)
Judge

inder