

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 3657 of 2007

R.D. Tripathi S/o Shri Late Sita Ram Tripathi, aged about 37 years, Junior Technical Assistant, State Warehousing Corporation, District - Durg (C.G.)

---- Petitioner

Versus

1. The Presiding Officer, Labour Court, Durg, District Durg (CG)
2. Toap Singh S/o Jarhu Ram Dedsena, aged about 45 years, Sikola Basti, Ward No.15, Police Station - Mohan Nagar, District - Durg (C.G.)
3. Shri S.R. Matale District Manager, State Civil Supplies Corporation, Durg, District - Durg (C.G.)

---- Respondents

For Petitioner	:	Shri Vikram Sharma, Advocate
For Respondent No.2	:	Shri C.K. Sahu, Advocate
For Respondent No.3	:	Shri S.S. Baghel, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

25/10/2017

Heard.

1. This petition under Article 226 of the Constitution of India is directed against Award dated 15.11.2006 by which the Labour Court, Durg, has passed an award of reinstatement of respondent No.2 with back wages.
2. Respondent No.2 raised a dispute that he has been illegally retrenched by the petitioner and respondent No.3 while working as *Hammal* in the godown of State Warehousing Corporation. On dispute so raised, the appropriate Govt. referred the dispute for adjudication to the Labour Court. A statement of claim was filed by respondent No.2-workman before the Labour Court to which reply was filed by the petitioner and respondent

No.3. The parties were allowed to lead evidence. By the impugned Award, the Labour Court recorded a finding that respondent No.2 was employee of the petitioner as well as respondent No.3. On this finding, an award has been passed both against the petitioner and respondent No.3 and in favour of respondent No.2- workman.

3. Learned counsel for the petitioner argues that the impugned award of the Labour Court suffers from gross perversity inasmuch as the Labour Court has recorded a perverse finding of existence of relationship of employer and employee between the petitioner and respondent No.2. It is contended that in the statement of claim filed by workman- Toap Singh, prayer for restatement in the service of respondent No.3/State Civil Supplies Corporation was made and the facts stated in the statement of claim only indicated the place of work without there being any averment of there being any relation of employer and employee. The next submission of learned counsel for the petitioner is that in the evidence of the employee Toap Singh himself as also in the statement of other witnesses namely Sadhuraam, Ramdas Tripathi and S.R. Matale, District Manager of Civil Supplies Corporation, there is no evidence of relationship of employer and employee. He submits that the Labour Court grossly misread the evidence, which only prove that the respondent-employee was engaged as *Hammal* for the work of loading and unloading of bags in the godown of State Warehousing Corporation through another *Hammal* and there was no relationship of employer and employee. It is next submitted that the Award of the Labour Court is *per se* illegal because according to finding, employee was engaged both by the State Civil Supplies Corporation and State Warehousing Corporation.
4. On the hand, learned counsel for the respondent No.2-workman argues that the Labour Court has recorded a finding of fact, based on appreciation of oral and documentary evidence on record and the argument of the petitioner is more in re-appreciation of evidence on record which is not permissible in these proceedings. He would submit that even if there is no

documentary evidence of engagement, it has come as an overwhelming oral evidence on record that respondent No.2 was engaged in the work of *Hammal* (Loader) for loading and unloading of bags in the godown of State Warehousing Corporation which was under the charge of the petitioner. The arrangement of payment of wages through another person would not alter the relationship of employer and employee between the petitioner and respondent No.2. Therefore, the finding of fact, it is argued, are not liable to be interfered with.

5. Learned counsel for respondent No.3 would submit that respondent No.2 was not the employee of respondent No.3.
6. I have considered the rival submissions made by learned counsel for the respective parties and perused the records.
7. The statement of claim filed by respondent No.2 states that he was working in the State Warehousing Corporation for 10-12 years as a *Hammal* (Loader). According to the pleadings, the work of loading and unloading was done in the godown of State Warehousing Corporation. However, in the relief clause, prayer has been made that S.R. Matale non-applicant No.1 therein be directed to reinstate the petitioner in service with back-wages.
8. In the written statement of the petitioner, the existence of relationship of employer and employee was denied. It was stated that respondent No.2 was not engaged by the State Warehousing Corporation and he was engaged by the leader of *Hammal* (Loader Union) who used to deploy Loaders for work of loading and unloading and also used to make payment.
9. The respondent-employee in his statement (annexed along with the petition) has admitted that there was no appointment order in his favour issued by State Warehousing Corporation. He also admitted that agency which uses the godown of Warehousing Corporation for storage purposes, they engage the *Hammals* (Loaders). He further admits that in the State Warehousing Corporation, there is neither any account opened in his name nor is there any register of attendance of *Hammals* (Loaders) and even the

Warehousing Corporation does not issue any employee card and, in fact, there is no such record with the State Warehousing Corporation. He has further admitted that whenever work is required, their Leader engage and disengage them and he pays them. He further admitted that he was not asked by the petitioner to leave the work. He also admitted that in the State Warehousing Corporation Godown, the material belonging to State Civil Supplies Corporation is stored and the payment are made only by Civil Supplies Corporation and for that reason, a representative of State Civil Supplies Corporation is made In charge of the centre as their representative. He has also admitted that under the instructions of the representative of the Civil Supplies Corporation, payments are made.

10. Sadhuram who was one of the *Hammal* (Loader) has clearly stated in his statement (Annexure P-6) that he was the In-charge and all payments were used to be made by him as In-charge to other Loaders. Moreover, the statement of this witness shows that payments are made by the department whose material is stored in the godown of Warehousing Corporation.
11. The statement of S.R. Matale, Manager, State Civil Supplies Corporation (Annexure P-5) shows that goods belonging to State Civil Supplies Corporation used to be stored in the godown of the Civil Supplies Corporation along with the goods of Food Corporation of India, Marketing Federation, Fertilizers Company, Forest Department etc. The work of loading and unloading was given to Sadhuram and he engages the group of *Hammals* (Loaders) for loading and unloading. Thereafter, according to the work done, they make payment.
12. From the aforesaid evidence on record, it is clear that as far as respondent No.2 workman is concerned, he had no relationship with the petitioner/State Warehousing Corporation either as employee or in any other capacity whatsoever. The evidence also shows that godown of Warehousing Corporation was being used by the State Civil Supplies Corporation and in connection with the work of loading and unloading and

storage of goods, *Hammals* (Loaders) are used to be paid by Civil Supplies Corporation that too through one agent who, in turn, used to make payment to the Loaders. Therefore, even if the entire evidence is looked on the face of it, there is hardly any evidence to establish relationship of employer and employee as between the petitioner and respondent No.2 so as to fasten any liability on the petitioner for reinstatement. It is interesting to note that respondent No.2 had prayed for reinstatement with the State Civil Supplies Corporation only and not with the petitioner, obviously because even according to the employee, he used to be engaged for loading and unloading goods of Civil Supplies Corporation and the payment used to be made by Civil Supplies Corporation.

13.It has to be noted that Award has been challenged only by the petitioner/Warehousing Corporation and not by the Civil Supplies Corporation/respondent No.3. The Award is for reinstatement of respondent No.2 and both the State Civil Supplies Corporation and State Warehousing Corporation have been directed to reinstate respondent No.2 and paid back-wages. This, thus, reflects perversity of the finding recorded by the Labour Court and, therefore, warrants interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

14.In the result, the writ petition is allowed and the impugned Award in so far as fastening of liability on the petitioner is concerned, is set aside.

Sd/-
(Manindra Mohan Shrivastava)
Judge