

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.901 of 2004**

Nagar Panchayat, Lormi through its Chief Municipal Officer, Nagar Panchayat, Lormi, Post Office Lormi, Distt. Bilaspur (CG).

---- **Petitioner**

Versus

1. Ram Swaroop Rathore, S/o Shri Fagu Ram Rathore, R/o Mukam, Mazgaon, Post Sarath, Lormi, Distt. Bilaspur (CG).
2. The Presiding Officer under Industrial Disputes Act, Labour Court, Bilaspur (CG).

---- **Respondents**

For Petitioner	:	Shri Rishi Rahul Soni, Advocate.
For respondent No.1	:	Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/03/2017

1. The present petition has been preferred assailing the award dated 16.12.2003 passed by the Labour Court, Bilaspur, in Case No. 25/ID Act/1994 (Ref.) whereby the Labour Court in a reference which was made to it have answered the same in the affirmative and have passed an award against the petitioner for reinstatement of respondent No.1 in service with full backwages with continuity of service.
2. Brief facts of the case are that, the respondent No.1 in the instant case had raised an industrial dispute before the Deputy Labour Commissioner, Chhattisgarh, who vide order of reference dated 24.03.1994 referred the dispute to the Labour Court with the following reference:

“i. Whether the termination of the services of the

respondent No.1 was legal and justified ?

ii. If not, what relief he is entitled for ?. What directions can be granted to the employer in this regard. ?

3. The Labour court registered the case as reference case No.25/ID Act/1994 (Ref.). The respondent No.1 entered before the Labour Court and filed his statement of claim whereby it was mentioned that he was infact appointed as Nakedar by the petitioner w.e.f. 11.05.1990 and he continued to work on the said post till 03.12.1992. Suddenly his services were without any notice or intimation abruptly stopped w.e.f. 03.12.1992. According to respondent No.1, he had continuously served the petitioner for a period of 2 years and 7 months during which period the services of the respondent No.1 was to the utmost satisfaction of the superior authorities in the department. The contention of the workmen was that termination of his service is bad in law and is against the principles of natural justice. In addition, the said sort of termination would amount to a stigmatic order, therefore, the order of termination deserves to be set aside. It was also contended that before discontinuance of service of respondent No.1, the petitioner have not cared to comply with the mandatory provisions of Chapter-V of Industrial Disputes Act, inasmuch as, he was not paid any retrenchment compensation neither was any notice issued or wages in lieu of notice paid to him and for all these reasons also the discontinuance of service of respondent No.1 would amount to an illegal termination. Therefore, the respondent No.1 was entitled for reinstatement with all consequential benefits.
4. The petitioner, the second party before the Labour court, opposes the

petition and has categorically denied the fact that services of the respondent No.1 was being discontinued on account of any misconduct or anything as such. According to the petitioner, the services of the respondent No.1 was not at all satisfactory. Therefore, if the services of such an employee was discontinued, the same may not fall within the ambit of retrenchment or illegal termination. It was also contended by the petitioner that the services of the respondent No.1 was that of a daily wage employee and as such there was no indefeasible right created in his favour in any manner. The services of a daily wage worker comes to an end on the evening of each days work and it stands discontinued unless engaged again. There was no occasion for issuance of any order of termination as such.

5. After pleadings were complete, the respondent No.1-workmen got himself examined and closed his evidence. Likewise, on behalf of the petitioner also the evidence of one Sanad Kumar Tiwari was examined and the evidence was closed. Subsequently, on the basis of the evidence which have come on record, the Labour court reached to the conclusion that the services of the respondent No.1 amounts to an illegal termination and had also held that prior to the issuance of discontinuance of service, the petitioner have not cared for compliance of any sort of compensation to the respondent No.1 nor have they issued any notice to the respondent No.1. So far as misconduct alleged against the respondent No.1 is concerned, there was no evidence adduced before the Labour Court at all in this regard. Thus, for all the above reasons, the termination order of respondent No.1 was bad in law

and therefore had ordered for reinstatement with full backwages.

6. The contention of counsel for the petitioner is that the award of Labour court is bad in law for the reason that the court below has failed to appreciate the fact, that the status of the respondent No.1 in any case was only that of a daily wage worker and therefore, unless any indefeasible right is created in his favour, his discontinuance of service as a daily wager would not fall within the ambit of retrenchment or illegal termination. According to him, the status of the respondent No.1 was a daily wage worker and that his services could be discontinued simplicitor or for dis-satisfactory work. There was no necessity for issuance of any notice or show cause notice be given to such kind of worker. It was further contended by the counsel for the petitioner that in any case, grant of full backwages and benefit of continuity in service is also bad in law.
7. It is also argued that the evidence of respondent No.1 was also lacking of his continuously working for 240 days in a calendar year immediately preceding the termination.
8. Counsel for the respondent No.1 however, opposes the petition and submits that termination of the respondent No.1 was to accommodate some other person in his place. The said termination would amount to illegal termination. To add with it, the respondent No.1 also submitted that since before discontinuance no retrenchment compensation or any sort of compensation much less the wages in lieu of notice period was also not paid to the respondent No.1.
9. Thus, for all these reasons the findings of the Labour court cannot be

said to be bad in law or contrary to law warranting interference of this court. Thus, the petition deserves dismissal.

10. Counsel for the respondent No.1 further submitted that if for any reason this court is not inclined to grant full backwages, at least the respondent No.1, in the given factual matrix of the case, is entitled for 50 percent backwages and consequential benefits. He relies upon the decision of Supreme Court in case of Hari Nandan Prasad and Another Vs. Employer I/R To Management of Food Corporation of India and Another, wherein in respect of one of the petitioner, the Supreme Court had ordered for grant of 50 percent backwages.
11. Having heard the rival contentions put forth on either side and on perusal of records, what is undisputed in the present case is that, the respondent No.1 having been discharging the duties of Nakedar is not in dispute. The respondent No.1 having worked from 1990 to 1992 also unrebutted establishing his working continuously for 240 days in a calendar year.
12. Another undisputed fact is that prior to removal of his employment, he was not given any sort of compensation like retrenchment compensation or anything such. Neither was he issued any show cause notice or wages in lieu of notice.
13. The workmen having worked for 2 years and 7 months stood proved from his evidence as there was not much abstracted from his cross examination. Further, from the evidence of petitioner, employment part of the respondent No.1 has been proved. Thus, his engagement from 1990 to 1992 stands proved. From the aforesaid evidence and

pleadings which have come on record, indisputably, no retrenchment compensation have been paid to the respondent No.1 by which it could be said that there has been compliance of Section 25-F of the Industrial Disputes Act.

14. From the averments made in the preceding paragraphs, it clearly reflects that there has been a blatant violation of the provisions of Section 25-F of the Industrial Disputes Act before discontinuance of service of respondent No.1. In case, if there is a violation of the said provisions, discontinuance of service amounts to illegal termination and the natural consequence would be that of reinstatement. It is mandatory on the part of the employer to ensure that in order to retrench the workmen who has been in continuous service for more than 240 days in the industry, the employer needs to give notice or a months' pay in lieu of notice in addition to the compensation envisaged under Section 25-F of the Industrial Disputes Act as retrenchment compensation.
15. In the instant case there is a clear violation of aforesaid mandatory provisions. Thus, the order of reinstatement granted by the Labour Court does not warrant any interference and the same is upheld.
16. This view of the court stands fortified from the decision of Supreme Court in case of Ajaypal Singh Vs. Haryana Warehousing Corporation, reported in 2015(6) SCC 321 and from the decision of Supreme Court in case of Hari Nandan Prasad and Another Vs. Employer I/R to Management of Food Corporation of India and Another, reported in 2014(7) SCC 190.
17. Now, the only issue which needs deliberation is the fact whether grant of

full backwages by the Labour court was proper, legal and justified.

18. From the evidence which have come on record it shows that the contention of the workmen himself was that he has worked for about 2 years and 7 months before he was terminated. He was discontinued w.e.f. 03.12.1992. The award of the Labour court was passed on 16.12.2003 as such the period during which the respondent No.1 was out of employment was about 11 years . Another fact which cannot be brushed aside is the fact that the status of the respondent No.1 was that of daily wage worker with absolutely no indefeasible right in his favour. Considering the fact that it took almost 9 years for the labour court to decide the matter in respect of termination of the respondent No.1, the petitioner cannot be saddled with the liability and responsibility of backwages for the entire period.
19. Taking into consideration the entire facts and circumstances of the case particularly the period spent on litigation and the original status of the respondent No.1 workmen of being a daily wage worker, this court is of the opinion that ends of justice would meet if the order of Labour court for grant of full backwages is modified to the extent of respondent No.1 being entitled for 25 percent backwages for the period that he was out of employment instead of full backwages.
20. Accordingly, the petition is allowed in part to the extent that the order of reinstatement is upheld. The backwages part of the award is ordered to be reduced from full backwages to 25 percent for the period the respondent No.1 was out of employment.
21. The Supreme Court in case of Haryana Urban Development Authority

Vs. OM Pal, 2007 (5) SCC 742 has held that, employment of daily wager/casual employee in different establishments even under the same employer or controlling authority would not amount to his being in continuous service. Further, relief of reinstatement with backwages 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. The respondent-workmen having worked for a very short period, the Labour Court committed a serious illegality in directing reinstatement with full backwages.”

22. It has been informed by the counsel for the petitioner that after the award was passed by the Labour Court, the respondent No.1 has been taken back in employment, as such, it is only the issue of backwages which has to be settled. Let 25 percent of backwages as ordered by this court be released to the respondent No.1 within a period of 90 days from today. If the payment is not made within the time granted, then the said amount shall carry interest @ 6 percent per annum from the date of termination till its actual payment.
23. The writ petition is thus allowed in part to the above extent. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge