

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (L) NO. 2835 OF 2011

1. State of Chhattisgarh, through the Secretary, Department of Water Resources, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Chief Engineer, Jal Sansadhan Vibhag, Bilaspur (C.G.)
3. Executive Engineer, Hasdeo Nahar Jal Prabandh Sambhag, Janjgir, District Janjgir-Champa (C.G.)
4. Sub Divisional Officer, Minimata Bango Canal, Sub Division No. 17, Bilaspur (C.G.)

... Petitioners

Versus

Sudheer Kumar Sharma, S/o Madanlal Sharma, R/o Arpa Sinchai Colony, Sector-C, Qr. No. H-25, Sakri, District Bilaspur (C.G.)

... Respondent

For Petitioners	:	Mr. Gary Mukhopadhyay, Dy. Govt. Advocate.
For Respondent	:	Mr. K.P.S. Gandhi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/06/2017

1. Challenge in the present Writ Petition is to the award dated 3.7.2010 pronounced on 19.11.2010 by the Labour Court, Bilaspur, in Case No. 57/I.D.Act/2009(Ref.), whereby the Labour Court has ordered for grant of relief of reinstatement to the respondent-worker, without back wages.
2. Before narrating the facts of the case, it would be pertinent to take note of the fact that pursuant to the impugned award passed by the Labour Court, the petitioner-department has reinstated the respondent-employee and who is still working with the petitioners for last almost 7 years.
3. Brief facts of the case are that the respondent in the instant case had raised an industrial dispute before the conciliation officer alleging of his illegal termination by the petitioner-department. The appropriate authority vide its order dated 24.11.2009 referred the matter to the Labour Court, Bilaspur for adjudication on the following terms of reference :

“Whether the dispute raised by Shri Sudheer Kumar Sharma S/o Madan Lal Sharma after 10 years of his termination from service is maintainable? If yes, whether the termination of service of the applicant is legal and proper? If not, to what relief he is entitled for? In this regard what directions should be given to the employer?”

4. The parties to the dispute entered appearance before the Labour Court and submitted their respective statement of claim and written statement. In the statement of claim, the respondent-employee submitted that on 6.12.1993 he was initially engaged as a Helper with the petitioner-department and was posted under the Sub Divisional Officer, Arpa Canal, Sub Division No.3, Bilaspur which was later on converted in the name of Minimata Bango Canal, Sub Division No.17, Bilaspur and worked continuously on the said post till October, 1999 when abruptly on 31.10.1999 without any explanation or any retrenchment compensation or any notice, his services were terminated/discontinued. This, according to him, was in violation of Section 25-F of the Industrial Disputes Act and also amounts to an illegal termination and therefore he was entitled for reinstatement with all consequential benefits.

5. The petitioner-department who was the second party before the Labour Court submitted their written statement denying all the contentions of the respondent-worker so far as his continuous employment with the petitioner and of his having completed more than 240 days in a calendar year. According to the petitioners, the need for the compliance of the provisions of Section 25-F of the Industrial Disputes Act was not required, on the ground that the respondent-worker was only a daily wage worker and also that he had not worked for more than 240 days in a calendar year and thus they prayed for the rejection of the reference before the Labour Court.

6. The Labour Court after the pleadings were complete and the evidence were recorded, finally vide impugned award dated 3.7.2010 held that the action on the part of the petitioner-department in discontinuing the services of the respondent is in clear violation of the provisions of the Industrial Disputes Act and thus the Labour Court granted the relief of reinstatement to the respondent-worker but without back wages with continuity in service, directing the petitioner-department to reinstate the respondent-worker within 30 days from the date of pronouncement of the award on his original post. It is this award which is under challenge in the present writ petition.

7. Learned Counsel for the petitioner-department challenges the impugned award primarily on the ground that the respondent-worker had raised the dispute after more than 10 years from the date of his alleged termination and therefore he would not be entitled for any relief. It was also contended by the learned Counsel for the petitioner-department that since the substantive post on which the respondent was engaged was that of a daily wage employee, the provisions of the Industrial Disputes Act would not had been applicable upon the respondent-worker. He further contended that the respondent since was admittedly engaged as a daily wage worker and engaged only subject to availability of work, in the absence of any proof of availability of work the relief granted by the Labour Court was bad in law.

8. Per contra, learned Counsel for the respondent-worker submits that the present petition is devoid of merit, for the reason that the petitioner has not been able to show any perversity in the finding of the Labour Court nor can the finding arrived at by the Labour Court can be said to be contrary to the evidence. That in the absence of these two ingredients the scope of

judicial review by the High Court in exercise of its extraordinary writ jurisdiction gets minimal. Therefore, the petition deserves to be rejected.

9. Having considered the rival contentions put forth by either side and on perusal of the records, so far as the contention of the petitioner with regard to the reference being raised at a belated stage is concerned, the said issue is no longer *res integra*, as the law has been well settled by the Hon'ble Supreme Court in a series of decisions starting from the case of *Ajaib Singh v. Sirhind Cooperative Marketing-cum-processing Service Society Limited and another*¹, *Gurmail Singh v. Principal, Govt. College of Education and others*² and *Kuldeep Singh v. General Manager, Instrument Design Development and Facilities Centre and another*³. In view of the said authoritative pronouncements, the contention raised by the learned Counsel for the petitioner in this regard stands negated.

10. So far as the arguments made on the merit of the case in respect of denial of the employment and the working of 240 days in a calendar year etc., are concerned, the management has examined one Shri S.R. Minj, Sub Divisional Officer, who has accepted that no retrenchment compensation or any notice prior to retrenchment was given to the respondent-worker. He has also accepted the fact that the principles of 'last come first go' was not followed while discontinuing the services of the respondent-worker. In addition, the worker himself has produced the documents from Exhibit P-1 to Exhibit P-25 of which Exhibit P-1 to Exhibit P-16 are the documents relating to the attendance, showing the attendance of the respondent-worker while he was working in the petitioner-department, which also establishes of his having worked continuously for 240 days in a calendar year.

1(1999) 6 SCC 82

2(2000) 9 SCC 496

3(2010) 14 SCC 176

11. So far as the relief of reinstatement is concerned, true it is that the respondent-worker had raised a dispute after almost a decade and that in the given facts and circumstances, the Labour Court ought not have granted the relief of reinstatement but could have at best considered granting of compensation in lieu of reinstatement in view of the recent trend and a large number of pronouncements made by the Hon'ble Supreme Court as well as by this High Court.

12. However, considering the view that the petitioners themselves had promptly reinstated the worker in services and then after a considerable period of time have filed the present writ petition seeking for interference and as on date the respondent-worker is still in employment of the petitioners, this Court finds it difficult to interfere with the impugned award of reinstatement granted by the Labour Court. This view of this Court stands fortified by a recent decision of the Hon'ble Supreme Court in the case of *Gaukaran Yadav v. State of Chhattisgarh & Others*, decided on 3.1.2017, in Civil Appeal No. 34 of 2017.

13. In view of above, the present writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge