

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 1606 of 2011**

1. State of Chhattisgarh through the Secretary, Department of Water Resources, D.K.S. Bhawan, Mantralaya, Raipur (CG)
2. The Sub Divisional Officer, Janjgir Branch Nahar Jal Prabandh, Division No. 03, Birra, District Janjgir-Champa (CG)

---- Petitioners**Versus**

Lakhanlal Yadav S/o Shri Reshamlal Yadav, R/o Village & Post- Dhivra,
Police Station & Tahsil Jaijaipur, District Janjgir-Champa (CG)

---- Respondent

For State/Petitioners	:	Shri B. Gopa Kumar, Dy. Advocate General
For Respondent	:	Shri K. P. S. Gandhi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28/06/2017**

Challenge in the present writ petition is the award dated 03.10.2008 whereby the Labour Court, Bilaspur in Case No.40/IDA/2005(Ref.) has allowed the case of the respondent-employee and granted relief of reinstatement without back-wages but with continuity of service.

2. The case of the respondent-employee before the Labour Court was that he had been initially engaged by the petitioners' establishment on 01.05.1988 and he was working as a Chowkidar under petitioner no.2. The respondent continued on the said post without interruption till 24.08.1997 on which date his services without any order in writing were terminated/discontinued.

3. Case of the respondent-employee was that he had been put in service for about 9 years and as such, he had attained the status of permanent employee. Therefore, the petitioners before discontinuing the services of the

respondent ought to have followed the mandatory provisions of the Industrial Disputes Act more particularly should have granted compensation as is envisaged under Section 25 F of the Industrial Disputes Act. Thus, the respondent-employee had sought for declaring his termination to be bad in law and for reinstatement with all consequential benefits.

4. The petitioners entered appearance before the Labour Court and filed their written statement and denied the claim of the respondent that he had worked for more than 240 days in a calendar year and therefore, he would be entitled for the compliances as are required under the Industrial Disputes Act. It was further contended by the petitioners that the substantive status of the respondent was that of a daily wage employee and therefore, there was no indefeasible right created in his favour. It was also contended by the Department before the Labour Court that the dispute being raised at a belated stage, the reference should have been dismissed on the ground of delay and laches.

5. After considering the pleadings and the evidences which have come on record, the Labour Court vide its impugned award dated 03.10.2008 answered the reference against the petitioners holding that since there is no period of limitation prescribed under the Industrial Disputes Act, it cannot be said that the respondent-employee could not have been raised the dispute at a belated stage. The Labour Court further found that the petitioners have also not established before the Court as to the fact that the respondent-employee had not worked continuously from 01.05.1988 till the date of discontinuance i.e. 24.08.1997. In addition, there was an admission on the part of the Management witness before the Court below in respect of the employment of the employee as a Chowkidar since 01.05.1988, document of which was also produced before the Court below. Further, in his cross-examination also, the Management witness has accepted the fact that the services of the respondent

were discontinued on 24.08.1997 and the fact that there was no retrenchment compensation or for that matter allegation of misconduct charged against the respondent-employee. Considering all these facts, the Court below reached to the conclusion that the discontinuance of the employee by the petitioners amounts to illegal termination and ordered for reinstatement without backwages but with continuity of service.

6. It is this order dated 03.10.2008 which is under challenge before this Court in the present writ petition.

7. Learned counsel for the petitioners assailing the impugned order would submit that the Court below has committed an error of law in as much as it has not appreciated the contention of delay and laches raised by the department in its proper perspective. According to the counsel for the petitioners, the services of the respondent were discontinued in the year 1997 and he raised a dispute in the year 2005. As such, there is a delay of about 8 years in raising the dispute and no justified reasons or explanations have been given by the respondent-worker for not raising the dispute within 8 years of time. Therefore, the reference should have been answered against the respondent worker. It was also contended by the petitioners that the substantive post of the respondent was only that of a daily wage worker and his services stood discontinued in the year 1997 and therefore, the moment he was reengaged, it should be a fresh employment. Therefore, the award of continuity of service passed by the Labour Court is bad in law and prayed for the quashment of the same.

8. However, counsel appearing for the respondent employee opposes the petition on the ground that the award passed by the Labour Court is a well reasoned and speaking order and the same does not warrant any interference. He submits that since the finding of the Labour Court is based on the evidences which have come on record, it would amount to the finding of fact

which cannot again be interfered lightly by this court. He further submits that the petitioners have not been able to show any perversity in the finding of the Labour Court and unless there is a perverse finding, the writ Court should not interfere with the order of the Labour Court. Thus, prayed for dismissal of the writ petition.

9. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record, so far as the first contention of the State-petitioners in respect of the delay is concerned, the issue stands well settled by a catena of decisions of the Supreme Court starting from the case of Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-processing Service Society Limited and another¹, Gurmail Singh Vs. Principal, Govt. College of Education and others² and Kuldeep Singh Vs. General Manager, Instrument Design Development and Facilities Centre and another³.

10. In view of the aforesaid legal pronouncements of the Supreme Court, this Court does not find the issue of delay decided by the Labour Court as bad in law or perverse in any manner. So far as the order of reinstatement is concerned, there was a specific averment on the part of the petitioners themselves who had engaged the respondent on 01.05.1988 and this fact is not disputed, rather admitted. They have also admitted the fact that the respondent had continued in employment till 24.08.1997 which amounts to the respondent having put in service for about ten years. This is sufficient to draw an inference that the respondent must have worked continuously for a period of 240 days in a calendar year. In the given factual matrix of the case, if the Labour Court reaches to the conclusion that the discontinuance/termination of the respondent-employee is bad in law, the same cannot be held to be contrary to the evidences which have come on record.

¹ (1999) 6 SCC 82

² (2000) 9 SCC 496

³ (2010) 14 SCC 176

11. It is also a settled position of law that under the writ jurisdiction, this Court would not interfere with the order passed by the Labour Court as if sitting as an Appellate Authority particularly in a case under I.D. Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can interfere with factual aspect only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.

12. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court does not find any infirmity in the decision making process warranting interference.

13. The Supreme Court in the case of **Harjinder Singh v. Punjab State Warehousing Corporation [2010 (3) SCC 192]** held as under:-

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and /or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and others similar legislative instruments are social welfare legislative instruments and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

'10. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.'

(State of Mysore v. Workers of Gold Mines⁴, AIR p.928, para 10.)”

⁴ AIR 1958 SC 923

This view has further been reiterated in the case of **Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited [2014 (11) SCC 85]**.

14. The Petitioners through the present writ petition have failed to show either there being any perversity in the finding or the Court below having exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified.

15. This Court is also reluctant to set aside the impugned order of the Labour Court for the reason that pursuant to the award, the petitioner State Govt. has reinstated the respondent in service since 2008 and since then he has been continuously working. As such, he has been put in service for almost 10 years after the award was passed.

16. In this view of the matter, this Court does not find any strong case on behalf of the petitioners made out calling for interference with the impugned award of the Labour Court and the petition being devoid of merits, the same is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**