

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No.2831 of 2011**

1. State of Chhattisgarh Through Secretary, Department of Water Resources, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh.
(Petitioner No. 1 was not a party before the learned Labour court, but has been impleaded as petitioner no. 1 in the instant petition as the proper course is to implead the State Govt. through the secretary of concerned department).
2. Executive Engineer, Hasdeo Nahar Jal Prabandhan Sambhag, Janjgir, Distt. Janjgir Champa (CG).

---- Petitioners**Versus**

Tirith Ram Rathore S/o Faguram Rathore, aged about 36 years, R/o village Khokhra, Tehsil Janjgir, Distt. Janjgir Champa (CG).

---- Respondent

For Petitioner	:	Shri B. Gopa Kumar, Dy. A.G.
For respondent	:	Shri KPS Gandhi, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****29/06/2017**

1. Challenge in the present writ petition is to the award dated 03.07.2010 passed by the Labour court, Bilaspur, in Case No.10/ID Act/2010(Ref.).
Vide the impugned order, the court below while answering the reference had allowed the claim in favour of the worker awarding relief of reinstatement in employment without backwages.
2. Brief facts of the case is that, the respondent had raised a dispute before the court below that he was initially appointed in the year, 1986 as Labour under the present petitioner at Hasdeo Dam Water Resources Project, Division, Janjgir, Distt. Janjgir Champa. According to the worker, he had continuously worked till 1997 when abruptly his services were

discontinued without payment of any compensation or retrenchment compensation, neither any notice or wages in lieu of notice was paid or issued to him.

3. The petitioner-department entered appearance before the court below and denied the claim of worker that he continuously worked with the petitioners. It was also submitted that since the status of the worker was that of daily wage worker, it was not necessary for the department to comply with the provisions of Section 25-F of the Industrial Disputes Act.
4. After considering the pleadings and evidence which have come on record, the Labour Court vide order dated 03.07.2010 answered the reference in favour of the worker holding that there was no legal bar in raising industrial dispute at a belated stage and also given a finding that discontinuance from employment of the respondent-worker amounted to illegal termination and thus, ordered for reinstatement without backwages. It is this award which is under challenge in this petition.
5. Learned counsel for the petitioner mainly stressed his argument on the fact that dispute in the present case was raised at a belated stage after about 11 years from the date of termination from service. It appears that the worker was not interested in his employment and that was the reason he did not raise industrial dispute initially and thus, the Labour Court should not have granted the relief of reinstatement and the impugned award thus deserves to be set aside/quashed. It was also argued that in addition to the delay and laches, the worker otherwise also does not have any legal right for the relief of reinstatement as his substantive engagement was that of daily wage worker and therefore, no

defeasible right accrued in his favour.

6. Counsel for the respondent however opposing the petition submits that it is a case where a perusal of order impugned clearly reflects that the findings arrived at by the court below are finding of facts which do not warrant any interference. He further submits that it is not the contention of the petitioner-State that the findings arrived at is perverse or contrary to the evidence on record. It was further argued that in the absence of any contention of award being perverse or contrary to evidence, the scope of interference by the writ court gets minimized and the writ court would not act as an appellate authority and substitute its own finding and thus prayed for dismissal of the petition.
7. Having considered the rival contentions put forth on either side and also taking note of the fact that what is primarily noticed by this court is the fact that subsequent to the award being passed, the petitioner's establishment have infact reinstated the respondent and he is still discharging his duties continuously since the date of reinstatement. This fact is not dispute by the either side. If we further proceed to take into consideration the question of delay and laches raised by the petitioner on the appeal of the workmen, the same has been considered and answered by the Labour Court in para 8 of its award wherein he has discussed on the various judicial pronouncements of the Supreme Court in this regard. This court also is in complete agreement to the findings arrived at by the court below keeping in view that law in this regard being *no longer res integra*. The issue of delay 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.

8. In view of the same, the finding of the Labour Court so far as delay part is concerned, does not warrant any interference. So far as merits of the case is concerned, the evidence which have come on record, particularly the evidence of management witness Shri UK Singh clearly reflects that there is no dispute so far as employment of the worker from 1986 to 1997 is concerned. There is also admission on the part of the management witness that prior to discontinuance of service, the respondent worker was not paid any retrenchment compensation nor was he served with any notice or wages in lieu of notice before his services were terminated.
9. In view of the aforesaid factual matrix of the case, this court has no hesitation in reaching to the conclusion that the findings arrived at by the Labour court is proper, legal and justified and that there is no perversity or a finding contrary to the evidence.
10. 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

1 (1999) 6 SCC 82

2 (2000) 9 SCC 496

3 (2010) 14 SCC 176

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.

11. 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.

12. 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.)”

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

14. This court all the more is not inclined to interfere with the finding of the Labour court in the light of recent judgment of Supreme Court in Civil

4 AIR 1958 SC 923

Appeal No.34 of 2017 arising out of SLP(Civil) No.24257 of 2016 (Gaukaran Yadav Vs. State of Chhattisgarh & Ors.), decided on 03.01.2017, whereby the Supreme Court has refused to entertain with the findings of the Labour Court only on the ground that the State had reinstated the employee and by which he was continuous in service when the SLP was taken up for hearing before the Supreme Court.

15. Accordingly, the present petition filed by the State-employer also fails and is dismissed.

Sd/-
(P.Sam Koshy)
Judge

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