

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 155 of 2017**

Municipal Council, Khairagarh Through S. S. Som, S/o Late Shri C. S. Som, Aged About 61 Years, Presently Working As Chief Municipal Officer, Municipal Council, Khairagarh, District Rajnandgaon (Chhattisgarh). ---- **Petitioner**

Versus

Shiv Kumar Yadu S/o Shri Natthuram Yadu, R/o Purana Tikrapara, Ward No. 18, Khairagarh, District Rajnandgaon (Chhattisgarh). ---- **Respondent**

For Petitioner : Shri Alok Tiwari, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Oral Order****21/07/2017**

Heard.

1. By this petition, under Article 226 of the Constitution of India, the petitioner seeks to challenge the award of reinstatement passed by the Labour Court in favour of respondent Workman.
2. Learned counsel for the petitioner argued that the award of reinstatement is unsustainable in law as the Labour Court has not properly appreciated the evidence on record. It is submitted that the respondent/Workman failed to prove by clinching documentary evidence that he had worked continuously for 240 days in a calender year so as to be entitled to claim protection of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act of 1947') against retrenchment without retrenchment compensation. It is next contended that the respondent/Workman was not selected by any recruitment procedure or open advertisement inconformity with Article 14 of the Constitution of India but he was simply daily wage employee, who was engaged to perform work of temporary nature. Therefore, award of reinstatement was not warranted. Lastly, it is submitted that the order of reinstatement with reinstatement on regular basis without respondent having been subjected to process of selection prescribed

under the law, is illegal and is excess of jurisdiction.

3. The last contention of learned counsel for the petitioner is that in any case, in view of development of law, even if retrenchment is found to be illegal, reinstatement need not be taken recourse to in all the cases and where the employer does not have work, in lieu of reinstatement, compensation alone would be payable.
4. After going through the order passed by the Labour Court and the documents which have been placed on record, including the evidence led by the workman, it cannot be said to be a case of no evidence. The employee has emphatically stated regarding he having been employed and worked continuously in the Establishment for more than 240 days. The employer did not lead any oral or documentary evidence. The muster roll are in possession of the employer. The Workman at the best could lead oral evidence and if the employer wanted to dislodge the oral testimony, it was his burden to produce muster roll and lead oral evidence of those officers under whom the respondent workman was working at the time of retrenchment. The respondent employer having failed to lead any oral and documentary evidence either to establish its case or to impeach credibility of the oral evidence led by the employees, the findings of fact recorded by the Labour Court do not warrant any interference by this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India. It is not a case where findings are perverse either on the ground of it being based on legally inadmissible evidence or without due application of mind to any other clinching evidence contrary to the findings.
5. In view of well settled judicial pronouncement of the Supreme Court in the case of **Bangalore Water Supply & Sewerage Board Vs. A. Rajappa and others [(1978) 2 SCC 213]**, which has stood the test of time and has been restated through various judicial pronouncement of the Apex Court from time to time, the argument of the employer that protection of Section 25-F of the Act of 1947 would be available only to those who have been recruited against sanctioned post by following the procedure prescribed for selection must fail.
6. The protection of the nature provided under Section 25-F of the Act of 1947 cannot be denied only on the ground that engagement of the workman was

without following the procedure prescribed for regular selection or that it was without any sanctioned post.

7. The argument that instead of directing reinstatement only compensation not to be awarded, is not based in any material but argument raised for the first time before this Court.
8. After going through the award passed by the Labour Court, this Court does not find that any such objection was raised by the petitioner's counsel before the Labour Court. The petitioner had an occasion and opportunity both to raise such plea in his reply to the statement of claim and establish the same by leading cogent, oral and documentary evidence that there was no work left for which the respondent/ workman could be reinstated and that even if Section 25-F of the Act of 1947 is found to have been violated, the petitioner would offer to pay compensation. In the absence of there being any factual foundation for such claim, I am not inclined to interfere with the order of reinstatement.
9. The apprehension that the order of reinstatement would be treated by respondent employee as regular employment, is without any basis. There is nothing in the award that the petitioner shall be treated as regular employee. All that the award speaks is that the statement of claim is particularly allowed with order of reinstatement without back wages.
10. In the result, I do not find any ground to interfere with the award of Labour Court and the petition is therefore dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge