NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1703 Of 2015

- Tukaram S/o Late Shri Chunnu Ram Sahu @ Chunu Ram Sahu Aged About 42 Years Forest Range Doundi, Forest Division Durg, Dist. Durg, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Forest Department, Mantralaya, Mahanadi Bhawan, Raipur, (Chhattisgarh)
2. The Chief Conservator Of Forest, Chhattisgarh, Raipur, (Chhattisgarh)
3. The Conservator Of Forest Durg Circle, Durg, (Chhattisgarh)
4. The Divisional Forest Officer, Forest Division Durg, Distt. Durg, (Chhattisgarh)
5. The Forest Range Officer, Forest Range Doundi, Forest Division Durg, Distt. Durg, (Chhattisgarh)

---- Respondents

WPS No. 1277 Of 2015

- Vinay Kumar Namdev S/o Shri Late B.L. Namdev Aged About 45 Years R/o Village Dau Choura, Khairagarh P.S. & Tahsil Khairagarh District Rajnandgaon Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Forest Department, New Mantralya, Mahanadi Bhavan, Hasaud, Naya Raipur District Raipur Chhattisgarh
2. The Principal Chief Conservator Of Forest Arenya Bhavan Medical College Raod, Raipur Chhattisgarh
3. The Conservator Of Forest Durg Circle, Durg Chhattisgarh
4. The Divisional Forest Officer Khairagarh Forest Division Khairagarh, District Rajnandgaon Chhattisgarh

---- Respondents

WPS No. 1426 Of 2015

- Durga Prasad S/o Manthir Ram Aged About 41 Years R/o Village Sakraud, Post Office- Rahud, Tahsil Gunderdehi, District Balod, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Public Works Department, Mantralaya, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Sub-Divisional Officer, Public Works Department, Durg Division No.1, District Durg, (Chhattisgarh)
3. The Executive Engineer, Durg Division, District Durg, (Chhattisgarh)

---- Respondents

WPS No. 2256 Of 2015

- Sandeep Verma S/o Shri Vipeen Verma Aged About 50 Years R/o Bramhanpara, Lormi, Tahsil Lormi, District Bilaspur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary Water Resources Department. Dau Kalyan Singh Bhawan Raipur Chhattisgarh
2. Executive Engineer, Water Resources Division Raigarh Chhattisgarh
3. Chief Engineer, Mahanadi Godavari Kachhar Water Resources Department Raipur Chhattisgarh

---- Respondents

WPS No. 2206 Of 2015

- Balram Sahu S/o Bhuneshwar Sahu Aged About 50 Years Presently Working As Sthal Sahayak, (Site Assistant), Under The Office Of Sub Divisional Officer, Irrigation Project Sub Division, Aarang, R/o Village-Abhanpur, P.S. And Tah. Abhanpur, Civil & Revenue Distt. Raipur (CG)

---- Petitioner

Vs

1. State Of Chhattisgarh Through- Secretary, Water Resources Department, Mantralaya, Mahanadi Bhawan, P.S. Rakhi, Tah. Aarang, Naya Raipur, Distt. Raipur (Chhattisgarh)
2. The Executive Engineer Mahanadi Jalashay Project, Raipur, Distt. Raipur (Chhattisgarh)
3. The Sub Divisional Officer Mandhar Branch Construction, Sub Division, Arang, Distt. Raipur (Chhattisgarh)

---- Respondents

WPS No. 2215 Of 2015

- Nur Singh Sahu Son Of C. R. Sahu Aged About 50 Years Occupation Sevice, Presently Working As Sthal Sahayak (Site Assistant) Under The Office Of Sub Divisional Officer, Mandhar Branch, Construction Sub Division, Aarang, R/o Village Kenri P.S. And Tahsil Abhanpur, Civil And Revenue District Raipur, Chhattisgarh **---- Petitioner**

Vs

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mantralaya, Mahanadi Bhawan, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur, Chhattisgarh
2. The Executive Engineer, Mahanadi Jalashay Project, Raipur, District Raipur Chhattisgarh
3. The Sub Divisional Officer Mandhar Branch Construction Sub Division, Aarang, District Raipur, Chhattisgarh

---- Respondents

WPS No. 2264 Of 2016

- Pila Das @ Pila Ram S/o Shri Rupau Das Satnami, Aged About 42 Years R/o Bahungaon, Tahsil Bemetara, District Bemetara (Chhattisgarh).

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Urban Administration Department, Mahanadi Mantralaya, New Raipur District Raipur (Chhattisgarh).
2. Municipal Council (Nagar Palik Parishad) Bemetara, Through Chief Municipal Officer, Bemetara, District Bemetara (Chhattisgarh).
3. President, Nagar Palik Parishad, Bemetara, District Bemetara (Chhattisgarh).

---- Respondents

WPS No. 2279 Of 2016

1. Mohitram Yadav S/o Jagatram Yadav, Aged About 37 Years R/o Village Chhindari, Post And Tahsil Chhuikhadan, District Rajnandgaon, (Chhattisgarh)
2. Suklal Rajak, S/o Chaitu, Aged About 42 Years R/o Village Chhindari, Post And Tahsil Chhuikhadan, District Rajnandgaon, (Chhattisgarh)
3. Duvas Ram S/o Sukhiram, Aged About 38 Years R/o Village Chhindari, Post Chhuikhadan, Tahsil Chhuikhadan, District Rajnandgaon, (Chhattisgarh)
4. Vishnuram, S/o Ramviraj, Aged About 43 Years R/o Village Beertola, Post Chhuikhadan, Tahsil Chhuikhadan, District Rajnandgaon, (Chhattisgarh)
5. Dheerajdas, S/o Rahandas, Aged About 42 Years R/o Village Chhindari, Post Chhuikhadan, Tahsil Chhuikhadan, District Rajnandgaon, (Chhattisgarh)

6. Ganesh, S/o Manglu, Aged About 46 Years R/o Village Chhindari, Post Chhuikhadan, Tahsil Chhuikhadan, District Rajnandgaon, (Chhattisgarh)
7. Suresh, S/o Suhkhiram, Aged About 39 Years R/o Village Chhindari, Post Chhuikhadan, Tahsil Chhuikhadan, District Rajnandgaon, (Chhattisgarh)
8. Atmaram, S/o Dhanuk, Aged About 36 Years R/o Village Chhindari, Post Chhuikhadan, Tahsil Chhuikhadan, District Rajnandgaon, (Chhattisgarh)

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhavan, Raipur, District Raipur, (Chhattisgarh)
2. Executive Engineer, Public Works Department, Division Khairagarh, Tehsil & Post Khairagarh, District Rajnandgaon, (Chhattisgarh)

---- Respondents

WPS No. 2466 Of 2015

- Arjun Banjara S/o Late Nardo Banjara Aged About 40 Years Working As Peon, Public Works Department, Dhouradarha, Police Station And Tahsil Baramkela, District Raigarh, Chhattisgarh.

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur, Chhattisgarh.
2. Chief Engineer, Public Works Department, Range Bilaspur, District Bilaspur, Chhattisgarh.
3. Superintendent Engineer, Public Works Department, Bilaspur, District Bilaspur, Chhattisgarh.
4. Executive Engineer, Public Works Department, Raigarh, Police Station And District Raigarh, Chhattisgarh.
5. Sub Engineer, Public Works Department, Dhouradarha, (Baramkela), District Raigarh, Chhattisgarh.

---- Respondents

WPS No. 2451 Of 2016

1. Salik Ram S/o Amru Halba Aged About 56 Years R/o Village Bhurkanhar Tahsil & District Balod (Chhattisgarh) Present Working In The Executive Engineer Water Resources Department Balod, District Balod (Chhattisgarh)
2. Nrigpal S/o Shri Nagkhay Aged About 55 Years R/o Village Koshmi Tahsil Dondi District Balod (Chhattisgarh)
3. Kejuram S/o Shri Dauaram Aged About 56 Years R/o Village Kosmi Tahsil Dondi District Balod (Chhattisgarh)
4. Tekram S/o. Shri Dukhuva Aged About 51 Years R/o Village Kosmi Tahsil Dondi District Balod (Chhattisgarh)
5. Lakhan Lal S/o Shri Bisaru Halba Aged About 58 Years R/o Village Garka Tahsil Dondi District Balod (Chhattisgarh)
6. Santu Ram S/o Fagugu Ram Bareth Aged About 59 Years R/o Village Hathud, Tahsil Dondi District Balod (Chhattisgarh)
7. Rajkumar S/o Chandu Ram Halba Aged About 51 Years R/o Village Parsadihi Tahsil Dondi District Balod (Chhattisgarh)
8. Sudarshan S/o Bhanu Halba Aged About 51 Years R/o Village Parsadihi Tahsil Dondi District Balod (Chhattisgarh)
9. Rain Singh S/o Thansingh Halba Aged About 58 Years R/o Village Parsadihi Tahsil Dondi District Balod (Chhattisgarh)
10. Smt. Sam Bai W/o Nandu Halba Shri Nagkhay Aged About 59 Years R/o Village Parsadihi Tahsil Dondi District Balod (Chhattisgarh)
11. Gautariha S/o. Rama Halba Aged About 57 Years R/o Village Kotera Tahsil Dondi District Balod (Chhattisgarh)
12. Chaitu Ram S/o Nandu Ram Patel Aged About 55 Years R/o Village Badgaon Tahsil Dondi District Balod (Chhattisgarh)

13. Pardeshin Bai D/o Binghhawar Aged About 55 Years R/o Village Samblepur Tahsil Dondi District Balod (Chhattisgarh)

---- Petitioners

Vs

1. State Of Chhattisgarh Through The Secretary, Water Resources Department Mahanadi Bhawan Mantralaya, Naya Raipur (Chhattisgarh)
2. Executive Engineer, Water Resources Department Balod, District Balod Chhattisgarh.

---- Respondents

WPS No. 3548 Of 2014

1. Goutam Ram S/o Ghamsuram Aged About 44 Years R/o Village Badgada P.S. Khairagarh Civil & Revenue Distt. Rajnandgaon C.G.
2. Vijay Ram S/o Shri Guharam Aged About 48 Years R/o Village Badgada P.S. Khairagarh Civil & Revenue Distt. Rajnandgaon C.G.

---- Petitioners

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Water Resource Department, Mahanadi Bhawan, Naya Raipur C.G.
2. The Executive Engineer, Water Resources Division Chhuiekhadan Civil & Revenue Distt. Ranjandgaon C.G.

---- Respondents

WPS No. 4903 Of 2014

- Nakul Singh Thakur S/o Shankar Singh Thakur Aged About 48 Years Occupation Daily Wage Employee Forest At Madna Kasthagar P.S. Gaurela Marwahi Forest Division, Pendra Road Distt. Bilaspur Civil & Revenue Distt. Bilaspur C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department of Forest, Mahanadi Bhawan, Mantralaya, New Raipur, PS Rakhi, District Raipur C.G.
2. Chief Conservator Of Forest Bilaspur Circle, At Sindhi Colony, Jarhabhata P.S. Civil Line Bilaspur Distt. Bilaspur C.G.
3. Divisional Forest Officer Marwahi Division, Pendra Road Distt. Bilaspur C.G.

---- Respondents

And

WPS No. 4816 Of 2016

- Devdat Sharma S/o Shri Damodar Prasad Sharma, Aged About 45 Years R/o Village Shivaji/Deeparapara, Ward No. 23, Dongargarh, Thana And Tahsil Dongargarh, District Rajnandgaon (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through : The Secretary, Forest Department, New Mantralaya, Mahanadi Bhavan, Hasaud, Naya Raipur, District Raipur (Chhattisgarh)
2. The Principal Chief Conservator Of Forest, Arenya Bhavan Medical College Road, Raipur (Chhattisgarh)
3. The Conservator Of Forest, Durg Circle, Durg (Chhattisgarh)
4. The Divisional Forest Officer, Khairagarh Forest Division Khairagarh, District Rajnandgaon (Chhattisgarh)
5. The Forest Circle Officer, Forest Circle Dongargarh, District Rajnandgaon (Chhattisgarh)

---- Respondents

Mr. Jitendra Gupta, Advocate, for the Petitioner, in WPS No. 1703/2015.
Mr. Bharat Rajput, Advocate, for the Petitioners, in WPS No. 1277/2015 and WPS No. 4816/2016.
Mr. B.P. Singh, Advocate, for the Petitioners, in WPS No. 1426/2015.

Mr. Vinod Deshmukh and Mr. KPS Ghandhi, Advocates, for the Petitioner, in WPS No. 2256/2015.
Mr. K.P. Sahu, Advocate, for the Petitioner, WPS No. 2206/2015 and WPS No. 2215/2015.
Mr. Sanjay Patel, Advocate, for the Petitioner, in WPS No. 2264/2016.
Mr. Anup Majumdar, Advocate, for the Petitioner, in WPS No. 2279/2016.
Mr. CJK Rao, Advocate, for the Petitioner, in WPS No. 2466/2015.
Mr. Hemant Kesharwani, Advocate, for the Petitioner, in WPS No. 2451/2016.
Mr. H.S. Ahluwalia, Advocate, for the Petitioners, in WPS No. 3548/2014.
Mr. K.N. Nande, Advocate, for the Petitioner, in WPS No. 4903/2014.
Mr. Y.S. Thakur, Additional Advocate General, for the State.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : 27.04.2017
Delivered on : 16.05.2017

Per **P. Sam Koshy, J.**

1. This bunch of Writ Petitions, except for Writ Petition (S) No. 2279 of 2016, Writ Petition (S) No. 2264 of 2016, Writ Petition (S) No. 2451 of 2016 and Writ Petitions (S) No. 4816 of 2016, has been placed before the Division Bench by the learned Single Bench vide its order dated 5.10.2015 passed in Writ Petition (S) No. 4903 of 2014 and other analogous petitions and have been referred to be considered and decided by a larger Bench in view of the matter assuming general importance.

2. The reason to send these matters to the Division Bench also was on account of the fact that the different Single Benches of this High Court have taken a view that once the order of retrenchment/discontinuance of employment is set aside by the Labour Court and the workman is reinstated in employment it has to be presumed that he stood in continuous employment. In other words, the period during which the workman was out of employment by virtue of an illegal termination order would also have to be counted for the purpose of calculating the total length of service. This view according to the learned Single Bench referring the matter to the larger Bench was perhaps contrary to the view laid down by the Hon'ble Supreme Court in the landmark judgment of

Secretary, State of Karnataka and Others v. **Umadevi and Others**, **2006 (4) SCC 1**, as also in the case of **Hindustan Aeronautics Limited** v. **Dan Bahadur Singh & Others**, **2007 (6) SCC 207**.

3. The four Writ Petitions which have been referred to in paragraph 1 herein above are those which are not referred by the learned Single Bench in its order dated 5.10.2015, but are matters which have been separately ordered by the learned Single Bench to be listed along with this bunch of referred matters as the issue involved remains similar.

4. Brief facts relevant for the purpose of adjudicating the issue involved in the present case are that the workers involved in these cases are all employees working in the office of the Respondents, i.e., either in the Forest Department or in the Public Works Department or Water Resources Department; some are in the Irrigation Department and likewise a few are also employees of the Municipal Council. They were all initially appointed as daily wage workers and have worked for a considerable period of time. Services of these workmen stood discontinued on different dates and years. The alleged discontinuance of the respective workmen was challenged before the concerned Labour Court and in each of the cases, the Labour Court has allowed the case in their favour and has granted the relief of reinstatement. By virtue of the order of reinstatement, those workmen are still continuing in services. Details of each of the workers in this bunch of Writ Petitions can be visualized from the chart given below:

S.N.	Case No.	Workmen's name	Deptt.	Date of Appoint-ment	Date of Removal	Date of Award of Labour Court/ Industrial Court	Date of Reinstate-ment
1	WPS 4903/2014	Nakul Singh Thakur	Forest	1987	1994	15.2.2012	Exact date not known
2	WPS 1703/2015	Tukaram	Forest	1992	25.1.2000	28.3.2007	15.5.2007
3	WPS 1277/2015	Vinay Kumar Namdev	Forest	17.3.1995	18.2.2000	27.7.2009	Exact date not known
4	WPS 1426/2015	Durga Prasad	PWD	1991	Permanent Gangman	4.2.1999	Exact date not known

5	WPS 2256/2015	Sandeep Verma	Water Resources Deptt.	1.1.1990	1995	16.2.2012	26.3.2012
6	WPS 2206/2015	Balram Sahu	Irrigation Deptt.	1.1.1989	31.7.1994	15.11.11	27.1.2012
7	WPS 2215/2015	Nursingh Sahu	Water Resources Deptt.	15.5.1989	31.7.1994	15.11.11	27.1.2012
8	WPS 2264/2016	Pila Das	Municipal Council	27.12.1987	11.1.2000	2.9.2015	8.12.2015
9	WPS 2279/2015	Mohit Ram & Others	PWD	1992	Permanent Gangman	15.12.04	Exact date not known
10	WPS 2466/2015	Arjun Banjara	PWD	9.7.1989	3.6.1995	25.11.97	9.7.1998
11	WPS 2451/2016	Salikram	Water Resources Deptt.	11.3.1994	Permanent Gangman	23.9.1997	Exact date not known
12	WPS 3548/2014	Goutamram & Another	Water Resources Deptt.	1988	12.2.2000	7.1.2006	Exact date not known
13	WPS 1416/2016	Dev Dat Sharma	Forest	1.11.1990	19.2.2000	21.6.2010	15.7.2010

5. It is pertinent to mention at this juncture that the award of reinstatement passed in favour of these workmen has in due course of time attained finality wherein except for two of the cases the State has not challenged any of the award of the Labour Court and in the two cases where the State has challenged the award, the petitions of the State have got dismissed so far as challenge to the order of reinstatement is concerned.

6. The State Government had initially taken a policy decision for regularizing all those daily wage employees who have completed 10 years of service as on 31.12.1988. Subsequently, in the light of the judgment of the Umadevi (supra), the State of Chhattisgarh vide its memo dated 5.3.2008 again took a policy decision holding that all those daily wage employees who are in continuous employment from 1.1.1989 to 31.12.1997 shall be considered for regularization. The workmen herein had claimed the relief for grant of regularization in view of the memo of the State Government, dated 5.3.2008. However, the claim of each of the workmen has been rejected on the ground that they did not have 10 years of continuous service as is required. The State Government did not count

the period during which these workmen were out of employment on account of alleged retrenchment/discontinuance of service which was ultimately set aside/quashed by the Labour Court.

7. All the workmen before this Court have filed these petitions seeking for a relief that the authorities concerned may be directed to consider the period from the initial date of appointment till the reinstatement was made and the subsequent period as continuous service for the purpose of calculating the length of service. According to the workmen, consequent on the retrenchment order having been set aside, as a natural consequence it has to be presumed that their service would deem to have been continued as if the order of retrenchment/discontinuance did not exist for all practical purposes and therefore the entire period right from the date of initial engagement till the order of reinstatement and the subsequent period has to be treated as in service, without break.

8. The contentions of the learned Counsels for the petitioners-workmen is that undisputedly they had worked as a daily wage employee for a continuous long period of time which was inclusive of continuous 240 days in a calender year and thereafter they were abruptly discontinued and the Labour Court declared the discontinuance to be illegal termination as the compliance of the mandatory provisions under Chapter V of the Industrial Disputes Act was not followed and thus had set aside the termination order. According to the workmen, the effect of the setting aside of the order of illegal termination would relate back to the date of discontinuance and for all practical purposes it should be treated as if the said action of illegal discontinuance never existed. According to the workmen, a void action of discontinuance from service is just void and it would be as if it does not exist at all and if the said action is considered to be void the workmen are entitled for consequential benefits relating back to the

date of discontinuance at least to the extent of getting the benefit of continuity of service.

9. Shri Yashwant Singh Thakur, learned Additional Advocate General, opposing the claim of the workmen submitted that the substantive status of the workmen is that of a daily wage worker. That, a daily wage worker does not have an indefeasible right created in his favour as that of a regular employee, to seek the benefit of continuity in service in respect of a case where his services having been discontinued and subsequently reinstated at the interference of the Labour Court. According to learned Additional Advocate General, the reinstatement of the employee has to be treated as a fresh appointment in view of his status being of a daily wage employee. According to him, the spirit of the judgment of the Hon'ble Supreme Court in the case of Umadevi (supra) and the subsequent judgments pronounced in this regard is that, what is primarily to be considered is whether there has been actual working by the respective workers continuously for a period of 10 years on the basis of which his claim for regularization could be made.

10. In support of his contentions, learned Additional Advocate General has relied upon the decisions in the case of **Secretary, State of Karnataka and Others** v. **Umadevi and Others**, **2006 (4) SCC 1**, as also in the case of **Hindustan Aeronautics Limited** v. **Dan Bahadur Singh & Others**, **2007 (6) SCC 207**. Based upon the principles laid down by the Hon'ble Supreme Court in the aforesaid two judgments, learned Additional Advocate General tries to emphasize and bring the case of the respective workmen within the ambit of 'litigious employment' and who, according to the learned Additional Advocate General, would not be entitled for any relief. Banking upon the aforesaid ratio and principles laid down in the aforesaid two judgments, learned Additional Advocate General submitted that the period during which the

workmen had been out of employment because of retrenchment the said period could not be counted for the purpose of counting the length of service, or for that matter, treating the said period as in continuous employment.

11. In view of the aforesaid discussions, the moot questions which have to be adjudicated upon in the present bunch of Writ Petitions are, (*i*) whether the workmen herein would fall within the category of 'litigious employment', (*ii*) whether the period during which these workmen were out of service can be treated as being in continuous employment.

12. The Hon'ble Supreme Court in the case of **Dipali Gundu Surwase** v. **Kranti Junior Adhyapak Mahavidyalaya**, 2013 (10) SCC 324, in paragraph 22 has held as under:

> **"**The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer**"**

13. At this juncture, it would also be relevant to refer to the case of **Harjinder Singh** v. **Punjab State Warehousing Corporation**, 2010 (3) SCC 192, wherein in paragraph 21 referring to the powers of the High Court under Article 226/227 of the Constitution it was held as under:

> **"21.** Before concluding, we consider it necessary to observe that while exercising jurisdiction under Article 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 other similar legislative instruments are social welfare legislations 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..**"**

14. Keeping in view the aforesaid two principles of law laid down by the Hon'ble Supreme Court, if we consider the facts of the present cases it would clearly reflect that in all the cases, there was an order of illegal discontinuance of services of the workers involved, which was questioned before the Court of law, under the Industrial Disputes Act and the Labour Court, in some cases the Industrial Court and in some cases the High Court, has found the illegal discontinuance to be bad in law and has set aside the same. The order of the Labour Court stands complied with. Now the only issue is, whether the period in which the workers have been out of employment should be calculated in continuity of service or not?

15. As per Merriam Webster Dictionary (on-line), the word “reinstate” means to put (someone) back in a job or position that had been taken away to place again in a former position. To restore to a previous effective state. As per the Law Lexicon, 4th Edition, the word “reinstate” means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed. The Black's Law Dictionary as well as the Shorter Oxford English Dictionary also give the meaning of “reinstate” as has been defined in the Law Lexicon referred to above.

16. In the matter of **Jasmer Singh** v. **State of Haryana & Another**, 2015 (4) SCC 458, in a case where the Industrial Tribunal has set aside the termination order and finding the workers of having worked for more than 240 days in a calender year, the action of the employer to be violative of Section 25-F and ordered for reinstatement with continuity of service and with back wages. The Single Judge of the High Court had set aside the same. The Division Bench had affirmed the order of the Single Judge. However, the Hon'ble Supreme Court in the aforesaid

judgment dealing with the previous precedents on the subject held that in the event if the order of discontinuance or termination is held to be bad, the worker would be entitled to be reinstated with continuity of service and full back wages, and in the process had set aside the two orders of the High Court and affirmed the order of the Tribunal granting reinstatement with continuity of service and full back wages.

17. Way back in the year 1979, the three-Judge Bench of the Hon'ble Supreme Court while considering the similar issue in the case of **Hindustan Tin Works (P) Ltd.** v. **Employees**, 1979 (2) SCC 80, in paragraph 9 held as follows:

> **"9.** It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived deprived workman of his earnings.....If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.**"**

18. In 2002 (9) SCC 492, **Gurpreet Singh** v. **State of Punjab & Others,** the three-Judge Bench of Hon'ble Supreme Court while dealing with the issue of continuity of service, in paragraph 3, held as under:

> **"3.** Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position,

> direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside that part of the impugned order.**"**

19. A similar view has also been taken by the Single Bench of this Court in **Writ Petition (L) No. 2207 of 2013** wherein while deciding the writ petition it was held that, "*In the opinion of this Court when their disengagement/retrenchment has been found vitiated by the Labour Court by its award, the legal effect of the said order would be that the Petitioners were entitled to continue in service, but they were denied engagement by the respondents, therefore such plea that they were not in continuous service is not entertainable*".

20. In the case of **State of Jharkhand & Others** v. **Kamal Prasad & Others**, 2014 (7) SCC 223, dealing with the similar issue the Hon'ble Supreme Court in paragraph 14 has held as under:

> **"14.** The Division Bench of the High Court after referring to the case of Secretary, State of Karnataka & Ors. v. Umadevi & Ors., has clearly held that if a person has served for 10 years or more, then it is the duty of the State Government to consider his case for regularization in the post. The said conclusion came to be reached by relying on Articles 309, 14, 16 of the Constitution of India. Relying upon Umadevi & Ors. (supra), the High Court has further referred to the judgment in the State of Karnataka & Ors. v. M.L. Kesari & Ors. which is considered by this Court and this Court has clearly held that the case of Umadevi & Ors. (supra) cast a duty upon the State Government to take steps to regularize the services of those irregularly appointed appointees, who had served for more than 10 years without the benefit or protection of any interim order. Further in the said case, this Court has declared that it has been clearly ordered that one time settlement/measure should be taken within six months i.e. from 10.04.2006. With reference to the aforesaid decision the learned senior counsel appearing on behalf of the respondent-employees placed reliance upon Article 142 of the Constitution in support of the submission that order of the Supreme Court be respected and implemented by its true meaning and spirit. Therefore, the Division Bench of the High Court accepted the same and came to the conclusion that the claims of the respondent-employees for regularization in their posts are fit cases and they became unfortunate only because of the creation of the State of Jharkhand over which the employees had no control and could not have prevented creation of the State of Jharkhand and because of that reason only, one State cannot take a different stand with

> respect to the employees appointed by same process. The State Government cannot throw the employees jobless after 30 years of their continuous service in public employment guaranteed under Article 16 of the Constitution, which would result in great injustice since their source of income will be taken away and thereby the employees and their families will suffer due to the arbitrary action of the State Government of Jharkhand which deprived a person of life and liberty guaranteed under Articles 19 and 21 of the Constitution of India.**"**

21. In the landmark decision in the case of **Olga Tellis & Others** v. **Bombay Municipal Corporation & Others**, 1985 (3) SCC 545, the Hon'ble Supreme Court in very categorical terms dealing with Article 21 and comparing it with the right to livelihood held that, "*The sweep of the right to life conferred by Article 21 is wide and far reaching. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. Right to work is the most precious liberty that man possesses. It is most precious liberty because, it sustains and enables a man to live and the right to life thus is a precious freedom. Life means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed*".

22. Now if we look into the facts of the present case, undisputedly, by now it has to be accepted that these workmen were initially appointed on different dates as mentioned in the aforementioned chart. Perusal of the said chart would reveal that all the workmen have put in a considerable period of time from the date of their appointment before they were discontinued in service and after the order of the Labour Court which in due course of time has attained finality they have also been reinstated. From the date of reinstatement also till date all the

workmen are still working with the Respondents and from the date of reinstatement also they have put in a considerable period of time. All these workers have been slogging with the Respondents with a hope and legitimate expectation of being regularized one day. Based upon the judgment of Umadevi (supra), the State of Chhattisgarh also has issued a circular on 5.3.2008. The object of the said circular also was for considering the persons who had completed more than 10 years of service they should be regularized. The alleged order of termination of service of the daily wage workers was held to be illegal by the Labour Court. The effect of the termination order being set aside would mean that the workmen remained in continuous employment as if the order of discontinuance never existed. All these workmen as on date are all middle aged persons and would not be now in a position for getting a regular employment elsewhere.

23. Considering the fact that the Industrial Disputes Act is a social welfare legislation and the circular dated 5.3.2008 also being the circular of the State Government issued keeping in mind the welfare of the poor workers and has been issued for the promotion and welfare of the people ensuring equality and equity between the workers appointed on daily wage basis and the post against which these persons are discharging so as to subserve the common good that can occur to the workers for the long service rendered by the respective workmen.

24. Once when we reach to the conclusion that the implication of the order of dismissal, removal or termination being set aside it has to be construed as, the workers would be put in the same position at which they were, but for the illegal dismissal, removal or termination order. If this analogy is applied to the facts of the present cases then all the workmen before this Court would squarely fall within the ambit of the

category of workers who would be eligible for regularization in terms of the circular dated 5.3.2008.

25. In view of the legal precedents enumerated in the preceding paragraphs and also considering the facts and circumstances of the present cases, this Court is of the opinion that the claim of these workmen for consideration of regularization in terms of the circular dated 5.3.2008 is just, proper and legal.

26. Accordingly, these Writ Petitions are allowed. The question of law discussed earlier to be decided in these petitions is answered in the affirmative in favour of the petitioners-workers holding that they would not fall in the category of litigious worker and that they would be entitled for continuity of service for the period they were out of employment while they were litigating before the Labour Court.

As a consequence, the workers in those cases where the claim has been rejected by the respective Respondents on the ground of there being break in service or the claim of the workers being rejected on the ground of their not serving the Respondents prior to 31.12.1997 are all set aside/quashed. The Respondents are directed to consider the case of these petitioners-workers for regularization in accordance with the circular granting them the advantage of continuity of service from the date of their initial engagement till date.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

/sharad*/