

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 179 of 2013

1. Shri Bajrang Metalic And Power Limited And Anr. Gondwara, Urla Industrial Area, Raipur, Through Its General Manager (Human Resources) PS Urla, Raipur, Civil & Revenue Dist Raipur, CG
2. Assistant General Manager (Electricals) Shri Bajrang Metalic And Power Ltd, Gondwara, Urla, Industrial Area, Raipur, Civil & Revenue Dist Raipur, CG

---- Petitioner

Versus

1. Abdul Khalil Khan S/o Abdul Jalil Khan Aged About 38 Years R/o Prem Nagar, Thakkar Bapa Ward, Gudhiyari, Dist Raipur, CG
3. Industrial Court Of C.G. Mahanadi Khand, Dks Bhawan, Raipur, Dist Raipur, CG
4. Labour Court Anand Nagar, Raipur, Dist Raipur, CG

---- Respondents

For Petitioner	:	Mr. N.K. Vyas, Advocate
For Respondent	:	Mr. J.K. Gupta, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

30/11/2017

Heard.

1. This petition under Article 227 of the Constitution of India arises out of order dated 10.07.2013 passed by the Industrial Court affirming order dated 03.04.2013 passed by the Labour Court in purported exercise of power under Section 84 of the MP(CG) Industrial Relations Act, 1960 (for short "the Act of 1960") directing the employer to pay 50% of the wages as subsistence allowance.
2. Learned counsel for the petitioner would argue that under the scheme of Section 84 of the Act of 1960, even when the Labour Court reaches to a prima facie conclusion that the employee has been discharged or dismissed illegally, an order has to be passed at the option of the employer either to

reinstate or to pay 50% of the wages. Referring to the order passed by the Labour Court, learned counsel for the petitioner would urge that without giving an option to the petitioner, the Labour Court passed an order of payment of subsistence allowance and thereby exceeded its jurisdiction under the law.

3. Learned counsel for the respondents would submit that the employer has been playing a game of hide and seek in the Court. The employer came out with the stand that the petitioner has not been terminated which was not accepted by the Labour Court and on prima facie consideration, it was found that the petitioner was discharged illegally. Therefore, the order of payment of subsistence allowance was just and proper.
4. After hearing learned counsel for the parties and having examined the statutory scheme of Section 84 of the Act of 1960, this Court is of the considered opinion that the Labour Court exceeded his jurisdiction. Section 84 of Act of 1960 provides for protection to an employee in certain cases. The provision being relevant, is extracted herein below :

“S.84(1) Protection to employees in certain cases : [(1) If, after giving the employer a reasonable opportunity of being heard and after making such enquiry as may be deemed fit, if prima facie appears to the Labour Court trying an offence under Section 86 that the services of the employee had been terminated in contravention of sub-section (1) of the Section 83, or in an industrial dispute relating to the discharge or dismissal of an employee referred to it for decision, arbitration or adjudication, the Court is prima facie satisfied that the discharge or dismissal was not justified, the court may direct the employer at his option to reinstate the employee or pay to him till the final disposal of the case subsistence allowance which shall not be less than half the average pay of the employee with effect from the date as the court may determine.”

5. The statutory scheme as engrafted in Sub Section (1) of Section 84 of the Act of 1960 clearly shows that the provision is beneficent and exceptional in nature where on prima facie satisfaction, even though final adjudication has not taken place, the Labour Court is empowered to issue direction to the employer either for reinstatement or for payment of subsistence allowance which shall not be less than half the average pay of the employee with effect from the date as the Court may determine.

6. A rational, logical and purposeful interpretation of the said provision would lead to an irresistible conclusion that upon prima facie satisfaction by the Labour Court that the discharge or dismissal was not justified, the Court may not directly issue a direction either for reinstatement or for payment of subsistence allowance. The word “the Court may direct the employer at his option to reinstate the employee or pay to him till the final disposal of the case subsistence allowance” would clearly show that the exercise of power is dependent upon the option of the employer. Therefore, even after the Labour Court came to the conclusion that the discharge was prima facie bad in law, an option ought to be taken from the employer as to whether the employer wishes to reinstatement or pay wages. This having not been done, to my mind, the Labour Court exceeded his jurisdiction. This aspect was not appreciated by the Industrial Court in appeal.
7. In the result, impugned order is set aside. The party shall appear before the Industrial Court on **09.12.2017** along with the order of this Court and the Labour Court shall seek an option of the employer and the employee will have to submit in writing on the same day and thereafter appropriate order shall be passed as early as possible in terms of Section 84 of the Act of 1960.
8. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge