

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 7466 of 2007**

Municipal Corporation, Rajnandgaon through its Commissioner, Municipal Corporation, Rajnandgaon, District Rajnandgaon (CG)

---- Petitioner**Versus**

1. Smt. Kamrrunisha W/o Ummat Husain, R/o Stationpara Ward no.10, Tah. & Dist. Rajnandgaon (CG)
2. Presiding Officer, Labour Court, Rajnandgaon (CG)

---- Respondents

For Petitioner : Shri Waquar Naiyer under instruction of Shri Anand Shukla,
Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/02/2018**

Present is a petition under Article 226 of the Constitution of India. The challenge is to the award dated 05.12.2006 passed by the Labour Court, Rajnandgaon in Case No. 30/ID Act/2004 (Ref). Vide the impugned award, the Labour Court has answered the reference in favour of respondent no.1 employee and has ordered for reinstatement with 30% back wages.

2. Brief facts of the case are that respondent no.1 was a daily wage worker engaged by the petitioner Corporation. She was initially engaged in 1989 and continued to work as and when engaged by the petitioner till 14.01.2000 when her services stood discontinued. Subsequently, she raised an industrial dispute and the appropriate Government vide order dated 10.09.2003 referred the matter to the State Labour Court, Rajnandgaon which was registered as Case No. 30/ID Act/2004 (Ref). Following was the term and reference made to the Labour Court:

“Whether the termination of services of Smt. Kamrrunisha is legal and proper? If not, what relief she is entitled for and what direction should be given to the petitioner in this regard?

3. Both respondent no.1 worker and the petitioner Corporation entered appearance before the Tribunal and submitted their respective written statement and also adduced evidence in respect of their respective stands. Finally the Labour Court vide impugned award held that the discontinuance of services of respondent no.1 amounts to illegal termination and therefore, awarded the relief of reinstatement with 30% back wages.

4. It is this award which is under challenge in the present writ petition.

5. Contention of the counsel for the petitioner is that respondent no.1 in fact was not a regular worker of the petitioner establishment and that her status was that of a daily wage worker. He submits that there was no substantive right created in her favour seeking for a relief of reinstatement with the petitioner establishment. Since the appointment of respondent no.1 itself was not in accordance with the rules of recruitment in the petitioner establishment nor was the appointment following some constitutional scheme, she would not have been entitled for any relief and the Labour Court ought to have rejected the claim application.

6. However, perusal of the record would show that respondent no.1 employee had made specific statement giving details of the nature of employment, the place of posting and duration of employment. It was the statement of respondent no.1 that she was engaged with the petitioner since 1989 and she continued to work till January, 2000 when her services stood discontinued. Perusal of the record would also show that though her services were discontinued in the year 2000 but the dispute was raised for the first time in the year 2003 and the reference was made in the year 2004. No proper explanation has been given for the delayed raising of industrial dispute.

7. Further what is also reflected is that to counter the contention of respondent no.1, the petitioner establishment had examined one K. K. Choukse as the witness on behalf of the Municipal Corporation, Rajnandgaon. He in his deposition has categorically accepted and admitted the fact that respondent no.1 was engaged periodically by the petitioner for different nature of work and the details of the worker engaged is available in the muster roll. He has accepted the fact that though there was an order of Labour Court for presentation of muster roll and attendance register before it yet the Municipal Corporation has not produced the record before the Labour Court. He, in his cross examination, has accepted the fact which would also be clear from the finding given by the Labour Court in paragraph-7 that respondent no.1 had been working in PWD and Education Department of the Municipal Corporation. Thus, the employment part of respondent no.1 stood established from the evidence of the petitioner's witnesses itself.

8. What is also relevant is that, in spite of specific direction, the petitioner failed to produce the documents before the Labour Court to disprove the fact that respondent no.1 was not engaged continuously for a period of more than 240 days. In the absence of which, drawing of an adverse inference in this regard is as per the settled legal position laid by the Supreme Court and therefore, no fault can be found with the finding arrived at by the Labour Court.

9. Another reason why this Court is not inclined to interfere with the impugned award at this juncture is that after the award was passed on 05.12.2006, the petitioner had acted upon the order and reinstated respondent no.1 as has been admitted by the counsel for the petitioner. Hence, after the award was passed, respondent no.1 has remained in employment with the petitioner for a period of more than 11 years. The petitioner having put respondent no.1 in service continuously for a considerable period of time after

the award was passed is also a ground on which this court is not inclined to interfere with the impugned award.

10. However, what cannot be brushed aside is the fact that admittedly, the worker was out of employment from the date of discontinuance till she was reinstated by the order of the Labour Court. The substantive status of the worker was that of a daily wager. It is a settled law that a daily wager does not have an indefeasible right in his/her favour nor can he/she claim for the benefits which a regular employee could have claimed for. Under the circumstances, this Court is of the opinion that awarding of back wages to the extent of 30% to the worker was not proper. Moreover, the awarding of back wages is also not proper for the reason that the worker appears to have raised the dispute itself after a delay of more than 3 years from the date of discontinuance. In the given circumstances, the awarding of 30% back wages to respondent no.1 is uncalled for and the same is accordingly set aside.

11. Thus, the impugned award stands modified to the extent of respondent no.1 being entitled only for reinstatement without any back wages.

12. The petition thus stands allowed in part.

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