

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 1213 of 2008**

Steel Authority of India Ltd. through Managing Director, Bhilai Steel Plant, Bhilai

---- Petitioner**Versus**

1. Pratap Das S/o Shri Ubhay Das, village Bodegaon, P.O Nankathi, Tahsil & District Durg (CG)
2. President, State Industrial Court, Chhattisgarh, Raipur (CG)

---- Respondents

For Petitioner	:	Shri B. D. Guru, Advocate
For Respondent no.1	:	Shri Avinash Chand Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17/01/2018**

The challenge in the present writ petition is to the order dated 17.04.2007 passed by the State Industrial Court, Chhattisgarh, Raipur in Civil Appeal No. 101/CGIR Act/ A-II / 2006. Vide the impugned order, the learned Industrial Court has partly allowed the appeal of respondent no.1 employee and ordered for reinstatement of service without back wages.

2. Brief facts of the case are that respondent no.1 Pratap Das had got an employment with the petitioner claiming himself to be a land oustee and declaring himself as grandson of Land Acquisition Certificate (LAC) holder late Fakir. It was claimed that he was the adopted son of late Fakir, on the basis of which, he had obtained employment on 30.12.1989 and worked up till 08.08.1994 as a plant attendant. Subsequently, it was learnt that respondent no.1 had fraudulently obtained employment as he was not in fact the son of

late Fakir in any manner and that there was no proper document to establish that he was the adopted son of late Fakir. A departmental enquiry was initiated and the services of respondent no.1 were terminated by order dated 09.08.1994.

3. This order dated 09.08.1994 was subjected to challenge in a proceeding under Section 31 (3) of the MPIR Act before the Labour Court, Durg where the case was registered as Case No.82/MPIR Act C./94. The Labour Court after considering the evidence which has come on record vide order dated 14.11.2006 rejected the application filed by respondent no.1 holding that firstly the departmental enquiry to be proper, legal and justified and secondly, the misconduct also stood proved from the cross examination of the employee himself before the Court. In his cross-examination, the employee has in very categorical term accepted that he is the son of Ubhay Das and his grandfather's name is Gaya Ram. He has further accepted that his father's or grandfather's property was never acquired by the Steel Authority of India Ltd. and he had obtained employment on the basis of adoption deed which was executed by late Fakir. However, this adoption deed was neither notarized nor attested by any competent officer and the employee has also not been able to depose as to who were the signatories to the adoption deed. On this evidence, the Labour Court had dismissed the claim application.

4. This order of the Labour Court was put to challenge before the Industrial Court in an appeal under Section 65 of the MPIR Act and vide impugned award, the Industrial Court set aside the order of termination and reinstated the services of the employee without back wages.

5. It is this order of the Industrial Court which is under challenge in the present writ petition.

6. Contention of the counsel for the petitioner is that the finding of the Industrial Court is totally perverse and is not sustainable for the reason that the

Industrial Court has relied upon a circular dated 26.09.1975 for ordering reinstatement but the said circular already stood revised and modified by a separate circular issued by the Department on 11.02.1988 (Annexure P-6). He submits that the inquiry and misconduct having been proved it was found that the employment was on the basis of a false certificate, therefore, there cannot be any condoning of the said misconduct by the employer if the original source of recruitment itself is bad. The employee cannot subsequently improve upon his case on the ground of sympathy to retain employment. The nature of employment itself shows it to be an employment obtained on fake documents. Thus, prayed for the petition to be allowed.

7. Having considered the facts and circumstances of the case, particularly the specific finding of facts arrived at by the Labour Court vide its order dated 14.11.2006 and also taking note of the fact that the Industrial Court in paragraph-7 of its impugned order has also reached to a categorical finding that the order of the Labour Court does not seem to be in any manner illegal, the Industrial Court could not have gone into the question of reconsidering the issue of reinstatement. Moreover, if at all if the Industrial Court wanted to grant the benefit of circular dated 26.09.1975 to the employee, at best, the Industrial Court should have sent the matter back to the appointing/disciplinary authority to consider the case of the employee in the light of the circular dated 26.09.1975. It appears that at no point of time, either before the Labour Court or before the Industrial Court, the case of the employee was considered in the light of the circular dated 26.09.1975. Moreover, Annexure P-6 is a document dated 11.02.1988 where there is a specific reference to the earlier circular dated 26.09.1975 and a policy decision has been framed by the Department for taking uniform decision in the case of persons who are getting employment on false certificate or by impersonating themselves and that the uniform punishment would be that of termination of service.

8. If that be so, the circular dated 26.09.1975 relied upon by the Industrial Court was not in force on the date when the impugned order was passed. Therefore, this Court has no hesitation in holding that once when the circular was not in force, the reliance of the said circular would not be sustainable.

9. Given the facts and circumstances of the case, particularly the specific finding of facts of the Labour Court which has also been found to be proper, legal and justified by the Industrial Court, this Court is of the opinion that the impugned order passed by the Industrial Court is not sustainable and the same deserves to be and is accordingly set aside to the extent of granting the relief of reinstatement.

10. Be that as it may, counsel for the petitioner as on date submits that the respondent no.1 employee in the instant case, in compliance of the provisions of Section 65 (3), was being granted the last wage drawn pending the petition. Now, he has also crossed the age of superannuation, therefore, since July 2017 i.e. the period of his crossing the age of superannuation, the grant of last wage drawn has also been stopped.

11. In view of the same, this court holds that whatever has already been paid to the respondent no.1 employee shall not be recovered. However, the respondent no.1 shall not be entitled for any relief of his employment with the petitioner i.e. Steel Authority of India Ltd.

12. Accordingly, the appeal stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE