

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION NO.314 OF 2006**

1. State of Chhattisgarh through Secretary, Water Resources Department, Mantralaya Bhawan, Raipur, Chhattisgarh.
2. Executive Engineer, Hasdev Kharang Maniyari Aykat Division CADA Bilaspur through Sub Division Officer, Bango Aykat Sub Division No.5, Akaltara, Tahsil Janjgir, District Bilaspur.

...Petitioner(s)**Versus**

1. Majid Ali S/o Late Insan Ali, in front of SBR College, Firoz Pan Centre, Jarhabhata, Distt. Bilaspur, Chhattisgarh.
2. Presiding Officer, Industrial Court Raipur (CG).
3. Presiding Officer, Labour Court, Bilaspur (CG).

... Respondent(s)**WRIT PETITION (L) NO.4887 OF 2009**

Majid Ali S/o Late Insan Ali Aged About 65 Years R/o Bharti Nagar, Near Hiradhar Poltry Form, Bilaspur Chhattisgarh.

...Petitioner(s)**Versus**

1. State of Chhattisgarh Through The Secretary, Irrigation Department, D. K. S. Bhawan Mantralaya, Raipur Chhattisgarh.
2. The Executive Engineer, Water Management Division, Janjgir District Janjgir Champa Chhattisgarh.
3. The Executive Engineer, Hasdev Kharun Maniyari Ayakat, Bango Ayakat Sub Division No. 5 Akaltara , Tahsil Janjgir District Janjgir Champa Chhattisgarh.
4. Executive Engineer, Water Management Division Janjgir, District Janjgir Champa Chhattisgarh.

... Respondent(s)

For Petitioner/State	:	Shri Adhiraj Surana, Dy. Govt. Advocate
For Respondent-employee:		Shri Ashok Shukla, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26.09.2018**

1. These are two writ petitions arising out of the order passed by the Labour Court, Bilaspur, in case No.109/MPIR Act/90, dated 15.05.1997 and the order passed by the Industrial Court, Raipur in Appeal No.291/MPIR Act/97, dated 19.08.2004.
2. Since the factual matrix of both the cases being the same except for the fact that challenge is by the employer as well as by the employee, this court proceeds to decide both these petitions by this common order.

3. Brief facts of the case is that, the employee involved in the case namely Mazid Ali was initially engaged as daily wage employee on the post of Chowkidar on 09.12.1983. Having put in about more than 7 years of service, the concerned employee moved an application under Section 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 (in short, the Act, 1960) before the Labour Court, Bilaspur where the case was registered as case No.109/MPIR Act/90 seeking for confirmation/permanency of the petitioner under Water Resources Department of the State of Chhattisgarh.
4. Considering the continuous length of service of the employee since 09.12.1983, after due consideration of the evidence and the witnesses who have been examined, the Labour Court vide order dated 15.05.1997 allowed the application of the petitioner granting relief of confirmation/permanency on the post of Chowkidar w.e.f. two years prior to the date from which the application before the Labour Court was filed. The date from which the permanency was made effective was 05.06.1988. It was also ordered that the claimant thereafter would be entitled for all the actual benefits which were paid to a permanent employee.
5. The said order of the Labour Court was subjected to challenge before the Industrial Court by the State vide Appeal No.291/MPIR/97. The Industrial Court vide order dated 19.08.2004 rejected the appeal of the State maintaining the order of the Labour Court except for modifying the order to the extent of treating the employee as permanent employee from the date immediately on completion of six months time from the date of his initial engagement i.e. 09.12.1983. However, the Industrial Court had also observed that the actual

benefits which the petitioner would be entitled for would be from the date that has been specified by the Labour Court i.e. 05.06.1988. It is these orders which have been questioned in the two writ petitions. WP No.314 of 2006 was filed by the State assailing the two orders and WPL No.4887 of 2009 was filed by the employee concerned seeking for enforcement of the order of the Industrial Court dated 19.08.2004.

6. The contention of the petitioner-State in WP No.314 of 2006 is that the order of the Labour Court is without any basis and no substantial, strong and cogent evidence has been adduced by the worker before the Labour Court for establishing his claim for confirmation/permanency. According to the State, it is only an evidence which has been adduced by the State which has been taken into account by the two courts while deciding the claim in favour of the concerned employee.
7. The counsel for the employee in WPL No.4887 of 2009 submits that though the petitioner had an award in his favour as early as on 15.05.1997 and which has been further confirmed vide order dated 19.08.2004, the employee concerned has till date not been able to get the fruits of the order passed in his favour in spite of all these period having lapsed. He further submits that in due course of time the employee concerned has also crossed the age of superannuation and as on date he is critically ill and bedridden and he is in dire need of the benefits that would accrued to him for his personal attention, care and treatment which he is undergoing and thus prayed for dismissal of the petition filed by the State.

8. Having heard the rival contentions put forth on either side and on perusal of records particularly the evidence which has been adduced before the Labour Court, it is undisputed on either side that the initial date of engagement of the employee concerned was 09.12.1983. The evidence of the witness on behalf of the State has admitted in his deposition before the Labour Court that the said employee was in fact engaged by the department and he was discharging the duties of Chowkidar.
9. This being the admitted position and as per the evidence thereafter, the burden of proving whether the employee was in continuous employment with the State Govt. or not shifted upon the State Govt. which they could have easily proved by producing muster roll or the payment register by which the payment has been made to the employee periodically. In case if the employee was not engaged during the said period or was not paid wages for the said period, it could have been easily detected from the muster roll as well as from the payment register. The witness on behalf of the State have not produced these records and on the contrary have admitted engagement of the employee from 09.12.1983 and on subsequent period. The obvious inference which could have been drawn by the Labour Court was that the concerned employee has infact proved or established his case for the benefits of confirmation/permanency. There is no further evidence brought on record even before the Industrial Court by any pleadings by the State while challenging the findings of the Labour Court to disprove the finding arrived at by the Labour Court, neither is there any such strong material produced in

the present petition i.e. in WP No.314 of 2006 where the State has challenged the two orders.

10. Given the aforesaid concurrent findings of fact of two courts i.e. order dated 15.05.1997 and 19.08.2004 passed by the Labour Court and Industrial Court respectively, this court does not find any perversity or illegality on the part of the Labour Court as well as by the Industrial Court in reaching to the said conclusion and the writ petitions i.e. WP No.314 of 2006 filed by the State being devoid of merit deserves to be and is accordingly dismissed.
11. The petition i.e. WPL No.4487 of 2009 filed by the employee also substantially being that for the confirmation of the order dated 19.08.2004 i.e. the order passed by the Industrial Court since the writ petition preferred by the State itself has been rejected confirming the two orders, the writ petition preferred by the employee becomes inconsequential.
12. The State Govt. in the light of their writ petition getting rejected are duty bound to comply with the order passed by the Industrial Court on 19.08.2004. Taking into consideration the physical critical condition of the employee, the office of the State Govt. shall process whatever benefits that the employee concerned would have been entitled for in the light of the order of the Industrial Court and get the order implemented at the earliest preferably within a period of 60 days from the date of receipt of certified copy of this order.

Sd/-
(P. Sam Koshy
Judge