

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 23/07/2018

Order Delivered on 08 /08/2018

WP227 No. 657 of 2009

- Jagelal S/o Banafer Patel, Aged about 38 years, R/o Patel Para, Sahaspur Lohara, Kabirdham, Distt. Kabirdham C G.

---- Petitioner

Versus

1. Presiding Officer Labour Court, Rajnandgaon, C.G.
2. Divisional Forest Officer Kawardha, Forest Division, Distt. Kabirdham CG.

---- Respondents

For Petitioner : Shri Basant Deewangan, Advocate.

For the Respondents : Shri Dilman Rati Minj, Dy. G A.

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. By the instant writ petition, the petitioner/claimant is challenging the legality and validity of the impugned award dated 26.06.2008 passed by the Judge under ID. Act, Labour Court, Rajnandgaon, whereby the Court below have rejected the application of the petitioner.

2. Brief facts of the case, are that the petitioner was employed with respondent No.2 and was posted as Chowkidar within the forest range of Sahaspur Lohara, Kabirdham, C.G. He was appointed in the year 1990 and worked continuously till the year 2000 that is February, 2000 when respondent No.2 removed the petitioner from service without any prior notice or opportunity of hearing even no departmental enquiry was conducted before passing the order of removal.
3. On an application made by the petitioner the State Government referred the case for adjudication to the Court of Judge under ID. Act, Labour Court, Rajnandgaon. After considering the material Labour Court rejected the claim considering that the claim has been made after lapse of 8 years and, further, that the petitioner failed to prove that he worked for 240 days in a year.
4. Learned counsel for the petitioner submits that two other persons were also removed from service and the Labour Court have rejected their claims on the same grounds, he further submits that the Co-ordinate Bench of this Court have allowed the writ petition bearing WP(227) No. 653/2009 and the matter was remanded back to the Labour Court for fresh adjudication.
5. This Court while considering the case of the petitioner in WP227 No. 653 of 2009 **Bhurva Ram Versus Presiding Officer, Labour Court & Anr** in which identical question was involved and the coordinate Bench of this Court has held as under :-

“(9). There is considerable force in the submission of learned counsel for the petitioner that the claim could not be dismissed on the ground of delay. Labour Court is required to answer the reference made to it. This aspect was dealt with the Supreme Court in the case of **Kuldeep Sing Versus General Manager, Instrument Design Development and Facilities Centre and Another** in following words.

“30. In view of the above, law can be summarised that there is no prescribed time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate Government “at any time” refer the dispute to a board or court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference.”

(10). Therefore, the approach of the Labour court is not correct in law. This has resulted in illegality in exercise of jurisdiction. Therefore, the jurisdictional error is manifest.

(11). The Tribunal has not even considered the evidence oral and documentary on record. No reason whatever has been assigned as to why oral or documentary evidence was disbelieved. In fact there is no discussion on this aspect and in three lines, Labour Court has merely recorded that petitioner failed to prove that he worked for 240 days in one year. I have gone through the oral and documentary evidence led by the petitioner. The petitioner in his examination in chief has clearly deposed that he was working as Chowkidar in the nursery w.e.f 1.1.1990. He has stated that duty which was performed by him. He also stated that his presence was recorded in the muster roll and he used to worked in 26 days, 30 days and 31 days in a month and in a year, he worked for more than 300 days for which he used to get Rs. 1823/- per month. it is, therefore, seen that the Labour Court swayed by the delay aspect of the matter did not at all examine the oral and documentary evidence on record, to record finding of fact as to whether the petitioner succeeded in proving that he worked for 240 days in a month so as to establish requirement of continuous service as defined under the Industrial Disputes Act.”

6. In another matter of WP(227) No. 621/2009 between **Ganpat Versus Presiding Officer Labour Court & Anr** coordinate Bench of this Court relying on the order passed in WP(227) No.653/2009 have allowed the writ petition and remanded the same for fresh adjudication to the Labour Court.
7. The finding recorded by the coordinate Bench of this Court in WP(227) No. 653/2009 squarely applies to the facts of the present case in hand.
8. In view of the above, the impugned order is set aside and the matter is remitted back to the Labour Court for fresh adjudication in accordance with law. The Labour Court will afford opportunity of hearing to the parties.
9. Accordingly, this writ petition is allowed to the extent as indicated above.

Sd /-

(Parth Prateem Sahu)

Judge