

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 4971 of 2009**

Naresh Kumar Chandrakar S/o Shri Keju Ram Chandrakar, aged about 48 years, occupation Ex-conductor, R/o C/o Shri R. G. Pathak Advocate, Baijnathpara Road Raipur, District Raipur, CG

---- Petitioner**Versus**

1. Chhattisgarh Infrastructure Development Corporation, through the Managing Director CIDC, Ghadi Chowk Raipur, District Raipur, CG
2. Chhattisgarh Infrastructure Development Corporation, through the Divisional Manager (Parivahan Vibhag) CIDC, Raipur, District Raipur, CG
3. The State Industrial Court Chhattisgarh, Raipur
4. The Labour Court Raipur, District Raipur, CG

---- Respondents

For Petitioner	:	Shri Bharat Rajput, Advocate
For Respondents 1 & 2	:	Ms. Purnima Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****19/02/2018**

The present writ petition under Article 226/227 of the Constitution of India has been filed challenging the order passed by the State Industrial Court Chhattisgarh, Raipur in Civil Appeal No. 102/MPIR/93 decided on 27.09.2005. Vide the impugned order, the learned Industrial Court has set aside the order of the Labour Court dated 03.03.1993 passed in Case No. 39/89 MPIR.

2. The factual expose, succinctly adumbrated in a nutshell is that the petitioner herein was initially appointed as a Badli worker on daily wage on 14.07.1988. His initial appointment was for a period of two months starting from 14.07.1988 onwards and he got periodical extension of two months each

till 18.01.1989. However, before completion of the last contractual period, the services of the petitioner got terminated vide order dated 07.01.1989 on charge of misconduct. The charge for which services of the petitioner were terminated was that on 25.12.1988 when the petitioner was working in the bus of the respondent Corporation had permitted 17 passengers out of total 34 passengers to travel without ticket.

3. This order of termination was subjected to challenge before the Labour Court under Section 31 (3) read with Section 61 MPIR Act. After considering the evidences which had come before it, the Labour Court reached to the conclusion that the punishment which was imposed upon the petitioner was highly disproportionate, harsh and not commensurate to the gravity of the charges established. Thus, the Labour Court vide order dated 03.03.1993 set aside the order of termination and ordered for reinstatement in service without back wages.

4. This order of the Labour Court was subjected to challenge in an appeal under Section 65 of the MPIR Act before the State Industrial Court at Raipur where the case was registered as Civil Appeal No. 102/MPIR/93. The learned Industrial Court after considering the facts and circumstances of the case and also taking note of the evidence led by the appellant reached to the conclusion that the substantive appointment of the appellant was that of a Badli worker, his contractual engagement was up till 18.01.1989 and even if the order of appointment was set aside, he could only be an employee till 18.01.1989. Therefore, the Industrial Court vide its order dated 27.09.2005 set aside the order of reinstatement passed by the Labour Court and held that the appellant shall be entitled only for the monetary benefits that he would have been otherwise entitled for up till 18.01.1989 i.e. till the period of employment was valid with the respondent Corporation.

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

6. Contention of the learned counsel for the petitioner is that the finding of the Industrial Court is bad in law, perverse, illegal, improper and therefore is liable to be set aside. According to the counsel for the petitioner, since the petitioner's services were terminated on charge of misconduct, the Department ought to have established and proved its case beyond all reasonable doubts. In the instant case, there is no sufficient evidence come on record with which it could be said that the charge has been proved before the Labour Court. Under the circumstances, the order of reinstatement by the Labour Court was proper, legal and justified and the same did not warrant interference by the Industrial Court. Counsel for the petitioner further submits that the finding of the Industrial Court that the petitioner had not completed six months period and that his employment itself was only up till 18.09.1989 is contrary to the provisions of Section 25 (2) (b) of the Industrial Disputes Act, 1947. It is the contention of the counsel for the petitioner that subsequent to the order of the Labour Court also the petitioner had been reinstated and he continued his services over a decade till the order of the Industrial Court was passed in the year 2005 and thereafter he has been rendered jobless. He submits that the passengers were permitted to travel in the bus without ticket stands proved from the fact that it was only after the checking was over, the fare from these passengers were collected and tickets were issued. If there had been malafide on the part of the petitioner, he would have in fact collected fare from these passengers in advance and would not have given tickets to them. The fact that he had not collected money for issuance of ticket goes to establish that the petitioner was not at fault in any manner. Counsel for the petitioner contended that even the Panchnama would establish the fact that the petitioner had not collected fare from these passengers because they had recently boarded the

bus and before fare could be collected, raid was conducted. As such, the petitioner was innocent and he had not committed any misconduct. Thus, counsel for the petitioner prayed for setting aside of the order of the Industrial Court along with prayer for reinstatement. He relied upon the judgment of the Supreme Court in the case of *Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana)* reported in (2010) 5 SCC 497.

7. Per contra, counsel for the Corporation opposing the petition submits that there is no merit in the case and the same deserves to be rejected. According to the counsel for the Corporation, what cannot be lost sight is the fact that the petitioner substantively is a Badli worker. He did not have any indefeasible right created in his favour. Moreover, the status of the petitioner was that of a contractual employee being engaged for a period 60 days and the moment 60 days is over, the services of the petitioner stand automatically discontinued. He submits that it was not the first time that the petitioner was involved in the said misconduct. A perusal of the record more particularly the order of termination itself shows that on an earlier occasion also the petitioner had committed similar offence of taking passengers in the bus without tickets and he was also punished for the said offence. When the petitioner repeated the said offence, the Department had no other option but to dismiss the petitioner from service. Therefore, the finding of the Industrial Court is proper, legal and justified and the same does not warrant any interference.

8. Having heard the contentions put forth on either side and on perusal of the record what is undisputed is the fact that the petitioner was initially appointed on 14.07.1988 and the engagement was for a period of two months which stood extended on a couple of occasions and finally the last contract was for the period 19.12.1988 to 18.01.89.

9. What is also not in dispute is that the order of termination of the petitioner was issued even before the petitioner could serve the respondent

Corporation continuously for a period of more than six months. What also cannot be brushed aside is the substantive status of the petitioner being that of a Badli worker whose services were for a specific period. The substantive nature of job of the petitioner being a Badli worker which by itself means that he was engaged as a substitute and for a specific period which goes to establish the fact that beyond the specific period, he does not have an indefeasible right created in his favour. The Management may or may not extend the contract period and the concerned employee does not have as a matter of right any claim for extension.

10. Another aspect which also needs to be taken note of the fact is that the petitioner had not even completed six months of service. Though counsel for the petitioner has referred to Section 25 (2) (b) of the Industrial Disputes Act but the same provision would not be applicable for a Badli worker. Moreover, the order of termination reflects the past conduct of the petitioner wherein he was earlier also punished for a similar nature of offence which further goes against the petitioner. The fact that there were 17 persons without ticket in the bus out of total 34 passengers boarded also stands established from the evidence of the party who have accepted the fact that the 17 persons were found without ticket and they were issued tickets after the raid was conducted. At the same time, except for the oral evidence led by the petitioner, there is no evidence whatsoever adduced by him to corroborate or substantiate his version or contention. On the contrary, the respondent Corporation has examined two persons both of whom were members of the raid team who had raided the bus on 25.12.1988 and as such, the misconduct stood clearly established.

11. The Supreme Court in the case of **Karnataka State Road Transport Corporation and Another vs. S.G. Kotturappa and Another** reported in **(2005) 3 SCC 409** in paragraph-16 referring to the status of a Badli worker has held as under:

“16. ... The services of a Badli worker may be discontinued, if for any reason he is not found suitable for the job for which his services were utilised as Badli. A Badli worker is eligible for payment of wages only for the number of days his services are utilised.)”

So far as the compliance of the provisions of Section 25-F & 25-B of the Industrial Disputes Act is concerned, in paragraph-18 the Supreme Court has held as under:

“18. It is not a case where the respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947. The Badli workers thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial Disputes Act nor were the mandatory requirements of Section 25-F of the Industrial Disputes Act required to be complied with before terminating his services, unless they complete 240 days' service within a period of twelve months preceding the date of termination.”

Likewise, in paragraph-20 the Supreme Court has held as under:

“20. The terms and conditions of employment of a Badli worker may have a statutory flavour but the same would not mean that it is not otherwise contractual. So long as a worker remains a Badli worker, he does not enjoy a status. His services are not protected by reason of any provisions of the statute. He does not hold a civil post.”

12. In the light of the aforesaid judgment of the Supreme Court if we consider the impugned order passed by the Industrial Court, it makes evidently clear that the Industrial Court also in its judgment has taken the same view. Thus, the view of the Industrial Court stands fully fortified from the aforesaid judgment of the Supreme Court in the case of Karnataka State Road Transport Corporation (supra) .

13. So far as the judgment of the Supreme Court in the case of Anoop Sharma (supra) relied upon by the counsel for the petitioner is concerned, the same is distinguishable on its facts itself as the same is not in respect of a person who was a Badli worker. The status of the worker involved in the said case was different from that of the worker involved in the present dispute.

Thus, the ratio and principles laid down in the said judgment would not come to the aid of the present petitioner.

14. In the given facts and circumstances of the case and also taking note of the judgment of the Supreme Court in the case of Karnataka State Road Transport Corporation (supra), this Court does not find any illegality or perversity in the finding arrived at by the Industrial Court. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

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