

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 133 of 2012**

Mana Ram Yadav, S/o. Suna Ram Yadav, Aged about 49 years, R/o. Village Patharripara, Near I.T.I. Korba, District Korba, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: Secretary, Water Resources Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Executive Engineer, Hasdeo Canal, Division No.1, Water Resources Department, Rampur, Korba, District Korba, Chhattisgarh
3. Sub-Divisional Officer, Hasdeo L.B.C., Sub Division No.2 (153), Rampur, Korba, District Korba, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Lav Sharma, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/08/2018**

1. The challenge in the present writ petition is to the award under the Industrial Disputes Act passed by the Labour Court, Korba, Chhattisgarh in Case No. 16/I.D.Act/2008/Reference.
2. Vide the said impugned order (Annexure P/1), the Labour Court has answered the reference in the negative holding that the petitioner/worker is not entitled for any relief and had dismissed his claim.
3. The facts leading to the instant case is that according to the petitioner he was initially engaged as a daily wage employee on 30.06.1976. He continued to discharge his duties on the said post till 1989. The petitioner has not been able to give specific date on which the services were discontinued, either in his pleading or in his evidence.

4. Subsequently, after about 19 years from the date of discontinuing, the petitioner raised an industrial dispute before the Deputy Labour Commissioner, Raipur, who in turn made a reference to the Labour Court Korba, where the case was registered as 16/I.D. Act/2008/Reference. After the pleadings were complete and evidences were recorded, the Labour Court reached to the conclusion that the petitioner has not been able to conclusively establish before the Labour Court that he has worked for continuous 240 days in a calendar year and accordingly dismissed the claim petition filed by the petitioner leading to the filing of the present writ petition.
5. Perusal of the impugned order and the record produced before the Labour Court, it would reveal that the respondent's witness namely S.K. Dhamija has in fact produced a few muster rolls, which were marked as Ex.D/1 to D/16 and in some of these muster rolls it did bear the name of the petitioner and it reflected that he was engaged occasionally as and when there was availability of work and if these entire record is taken into consideration, it does not establish that he had worked continuously for more than 240 days in a calendar year.
6. The contention of the counsel for the petitioner is that the respondents had submitted an application before the Labour Court seeking for a direction that the respondents may produce the entire muster role for the intervening period when the petitioner claimed to have worked with the respondents, which the respondents had not produced and therefore an adverse inference had to be drawn.
7. This contention of the petitioner cannot be accepted for the simple reason that though the petitioner had made a statement of having

worked for 240 days, the respondents in their return as well as by way of evidence produced a few of the muster roles Ex.D/1 to D/16 to show that he has not worked for 240 days in a calendar year.

8. Under the circumstances, the burden of proof falls back upon the employee to prove his case. Though he has moved an application, but that by itself would not shift the burden upon the other side unless the part, which the petitioner/worker has to prove is not discharged.
9. There is another great lacuna on the part of the petitioner i.e. though it is his claim that he had been discontinued in the year 1989, though there is no record in this regard, but no proper explanation or justification has been provided by the petitioner as to why he did not immediately raise a dispute, so far as his discontinuation is concerned for a period of 19 years. 19 years is a pretty long time for anybody to challenge an order of discontinuance from service. The petitioner if he has been indolent of his right, he cannot be granted a benefit subsequently after almost about two decades for challenging an action that occurred two decades ago.
10. Lastly, it is worthwhile to mention that the present petition is a petition under Article 227 of the Constitution, where the power which this Court would exercise is in the nature of supervisory and all that this Court would look into is the manner in which the Labour Court has conducted itself. Unless there is a case of a perverse finding or the finding being contrary to evidence or the action being highly disproportionate, the High Court would not substitute itself as a routine Appellate authority over the finding of the Labour Court.

11. It is settled position that the High Court in exercise of its power under Article 226 or for that matter under Article 227 would not threadbare go into the evidence brought on record or would conduct a roving inquiry into the claim which has been raised by the petitioner.
12. For all the aforesaid reasons, this Court does not find any illegality or perversity in the finding of the Labour Court while passing the impugned order (Annexure P/1) dated 26.10.2010.
13. The writ petition accordingly deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved