

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(L) No. 102 of 2013**

1. State of Chhattisgarh through Secretary, Water Resources Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, P.S. Mandir Hasaud, Raipur, C.G.

(Petitioner no.1 was not a party before the learned Labour Court, but has been impleaded as petitioner no.1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department)

2. The Executive Engineer, Hasdeo Barrage Water Management Division, Rampur, PS Rampur, District - Korba, C.G.

---- Petitioners**Versus**

1. Komal Prasad Jaiswal S/o Nidan Prasad Jaiswal, aged about 48 years, R/o Irrigation Colony, Darri, P.S. Darri, Tahsil Katghora, Distt. Korba, C.G.
2. The Presiding Officer, Labour Court, Korba, P.S. Korba, District Korba, C.G.

---- Respondents

For Petitioner/State	:	Shri B. Gopa Kumar, Dy. Advocate General
For Respondent No.1	:	Shri B. D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23.04.2018**

The State through the present writ petition has challenged the award dated 08.01.2013 passed by the Labour Court, Korba in Case No. 05/ID Act/2008/Reference whereby the services of respondent no.1 have been directed to be reinstated without back wages.

2. Brief facts, relevant for disposal of the petition are that a reference was made to the Labour Court, Korba by the office of Assistant Labour Commissioner for adjudication of the validity and legality of the termination

of services of the respondent/employee. On receiving the terms of reference, the Labour Court, Korba registered a case and called upon the parties to submit their respective claims.

3. Respondent no.1 who was first party before the Court below submitted his statement of claim stating that he was engaged as a Carpenter on Daily Wages on 01.03.1990 with the petitioner department and continued his services without any interruption on the said post till 28.02.1995. However, all of a sudden, without following the mandatory provisions of Section 25F of Industrial Dispute Act, his services were terminated w.e.f. 01.03.1995 and therefore he raised an industrial dispute challenging the illegal termination.

4. The petitioner no.2 herein who was second party before the Court below submitted its written submission categorically denying the submissions made by the workman/respondent in his statement of claim. The employment and continuous service of about five years of the first party has also been denied by the second party in their written statement.

5. The first party i.e. Respondent no.1 herein while giving evidence before the Court below categorically submitted that he was initially engaged as Carpenter on daily wage in the year 1990 and continuously worked on the said post till 28.02.1995 when his services were terminated. The workman in his evidence had stated that at the time of termination of his services, the mandatory provisions of Section 25F of ID Act and the other provisions under chapter V were not complied with. He had further deposed before the Court below that subsequent to his termination, he was not gainfully employed in any other institution and therefore he is entitled for full consequential benefits.

6. The witness examined on behalf of the State Govt. in his deposition

could not produce any documentary proof so far as the denial part of the employment of respondent no.1 for a continuous period of about 5 years is concerned. The petitioners have also not been able to substantiate their contention regarding the respondent workman having continuously not worked between 1990 to 1995. On the contrary, the witness of the State Govt. admitted the fact that respondent no.1 was engaged as a contingency worker on daily wages. He further admitted that he has not brought the muster roll and therefore is not able to state the actual number of days worked. In the absence of any evidence on behalf of the State Govt. before the Court below, the only inference which could be drawn on the basis of the statement of the respondent workman and the witness of the Govt. is that he has continuously worked for 1990 to 1995 and the finding in this regard is correct. The employment part stood admitted by the State Govt. before the Court below in its evidence. Thus, the State Govt. failing to produce any evidence before the Court below to disprove the contention put forth by the respondent worker, it can be held that the finding of the Labour Court is a finding of fact based on the evidences which have come on record and it is a settled position law that finding of fact of the Labour Court should not be interfered as a matter of routine.

7. The petitioners even during the course of hearing of this petition also are not in a position to disprove the finding of the Labour Court by leading any documentary evidence to contradict the finding arrived at by the Labour Court. It is also settled position of law that under the writ jurisdiction, this court would not interfere with the order passed by the Labour Court as if sitting as an Appellate Authority particularly in a case under ID Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can

interfere with factual aspect only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.

8. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court does not find any infirmity in the decision making process warranting interference.

9. The Supreme Court in the case of Harjinder Singh v. Punjab State Warehousing Corpn. reported in (2010) 3 SCC 192 in paragraph 21 held as under:-

“Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and /or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and others similar legislative instruments are social welfare legislative instruments and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

'10. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.'

(State of Mysore v. Workers of Gold Mines¹, AIR p.928, para 10.)”

This view has further been reiterated in the case of Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited reported in (2014) 11 SCC 85.

10. The State Govt. through the present writ petition has failed to show either there being any perversity in the finding or the Court below having

1 AIR 1958 SC 923

exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified.

11. Another fact which is pertinent to mention that subsequent to the award passed on 08.01.2013, the State Govt. has also reinstated the services of respondent no.1 w.e.f. 11.04.2013 itself and since then he is working. This all the more brings the equity in favour of the respondent workman and thus the order under challenge does not require any interference at this juncture.

12. Consequently, the instant writ petition being devoid of merit, deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**