

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (L) NO. 206 OF 2008

1. District Manager, C.G. Civil Supplies Corporation Limited, (correct name) C.G. State Civil Supplies Corporation Limited, Sitamari, District Korba.
2. C.G. Civil Supplies Corporation Limited, (correct name) C.G. State Civil Supplies Corporation Limited, through its Managing Director, Bal Ashram, Kutchhari Chowk, Raipur (C.G.)

... Petitioners

versus

1. Appellate Authority under Chhattisgarh Shops & Establishment Act cum Asstt. Labour Commissioner, Korba, District Korba.
2. Vinod Kumar Kalluri, S/o Ghuliram Kalluri, near FCI Godown, Kathghora, District Korba.

... Respondents

For Petitioners	:	Mr. N.K. Vyas, Advocate.
For Respondent No.2	:	Mr. K.P.S. Gandhi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/01/2018

1. Challenge through the present writ petition is to the order dated 25.4.2007 (Annexure P-1) passed by the Assistant Labour Commissioner (State), Korba, who also is the Appellate Authority under the Chhattisgarh Shops & Establishment Act.
2. Facts of the case are that respondent no.2-worker in the instant case was appointed as a daily wage worker by the petitioner-corporation somewhere in the year 2002. He continued to work continuously on the said post till August, 2005 and thereafter it is said that his services were discontinued by the petitioner-corporation. Respondent no.2 subsequently raised a conciliation proceeding before the Assistant Labour Commissioner under the provisions of the Industrial Disputes Act as is evident from Annexure P-3. However, the authority concerned, *i.e.*, the Appellate Authority *suo motu* converted the said conciliation application into an appeal under Section 58 of the Chhattisgarh Shops & Establishment Act

and assuming the powers of the Appellate Authority entertained the appeal and after hearing the parties passed the impugned order on 25.4.2007 and vide the said order, the order of discontinuance of service was held to be bad in law and ordered for reinstatement in service with full back-wages.

3. The present writ petition has been filed assailing the said impugned order on the ground that the entire procedure adopted by the authority concerned in deciding the case as an appeal under the Chhattisgarh Shop & Establishment Act is contrary to the procedure and rules prescribed under the Act.

4. Learned counsel for the petitioner-corporation submits that first of all there was no appropriate appeal under Section 58 filed by respondent no.2 under the Chhattisgarh Shops & Establishment Act which could have been entertained as an appeal. Rather, it is a case where it was only a conciliation application which was filed by the respondent no.2 which was converted as an appeal by the Appellate Authority which *per se* is technically not permissible and thus is bad in law.

5. The respondent no.2 in the instant case in compliance to the provisions of Section 17-B of the Industrial Disputes Act has been reinstated in employment since the time of the filing of the petition, *i.e.*, for almost 10 years now, the respondent no.2 has been working as a daily wage worker with the petitioner-corporation.

6. Be that as it may, leaving open the issue so far as the veracity of the order passed by the Appellate Authority, only on the ground that the respondent no.2 having put in 10 years of service continuously as a daily wage worker, this Court is of the opinion that no fruitful purpose would be served to remit the matter back for a fresh adjudication by the Appellate Authority, or for that matter, by the Assistant Labour Commissioner under the Industrial Disputes Act afresh. Rather, ends of justice would meet if the

respondent no.2 is permitted to continue as a daily wage worker with a liberty to the petitioner-corporation to take appropriate recourse available to them afresh in accordance with law and rules applicable so far as the daily wage workers are concerned.

7. However, it is made clear that the order under challenge should not be used as a precedent in any other case by any other authority or any other worker seeking relief as as has been granted by the Appellate Authority.

8. At this juncture, it is also relevant to mention that considering the fact that the substantive status of respondent no.2 was a daily wage employee, the granting of back-wages was totally inappropriate and therefore the impugned order so far as its granting of full back-wages with reinstatement stands modified to the extent that the respondent no.2 shall not be entitled for any back-wage applying the principles of "no work no pay".

9. The impugned order stands modified to that extent and the petition is partly allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge