

AFR

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (L) No. 6492 of 2008**

Hiralal Burad S/o Lalchand, C/o Sai Residency, Qtr. No.24, Behind
MMI Hospital, Lalpur, Raipur (CG).

---- **Petitioner****Versus**

President MMI (Modern Medical Institute), Lalpur, Raipur (CG).

---- **Respondent**

For Petitioner	:	Shri SP Kale and Shri KPS Gandhi, Advocates.
For respondent	:	Shri NK Vyas, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.01.2018**

1. Challenge in this petition is to the award dated 18.08.2008 passed by the Labour Court, Raipur, in Case No.17/2003/ID Act/Reference. Vide the impugned award, the Labour Court has in a case of termination from service, has ordered for reinstatement of the petitioner without back wages.
2. The present writ petition has been filed assailing the part of the award to the extent of denial of back wages.
3. On query being put to to the counsel for the petitioner whether the petitioner has been reinstated with any employment or not, a fair submission is made on his behalf that the petitioner has not joined the employment of the respondent on account of fact that the post which was being offered to the petitioner was not the post which he was holding prior to his discontinuance of employment and that his salary which was proposed to be paid was also less than what he

was drawing at the time of his discontinuance.

4. It is by now about 10 years from the date the petition has been filed.

The petitioner does not seem to have been out of employment or was facing financial constraints while refusing to accept the post/employment offered by the respondent. One could have understood if the petitioner would have accepted the offer whatever was made by the respondent and thereafter should have agitated before this court that he has not reinstated on the post in which he was working prior to his discontinuance and that there is reduction in the wages also. The fact that the petitioner had outrightly refused the offer of the respondent shows that he was either not interested in employment or was gainfully employed elsewhere with better service conditions and salary package.

5. As far as the question of back wages is concerned, it is not a matter of right which has to be given. While passing an order of reinstatement, the entire facts and circumstances of the case has also to be taken into consideration.
6. A bare perusal of record would reveal that infact there was no specific order of appointment in favour of the petitioner. As per his own statement, he was engaged on an oral instructions of the respondent and as such there was no specific post to which he was appointed or engaged with any specific fixed salary drawn at the time of order of appointment.
7. Further, if we look into the facts and circumstances of the case, it also reveals that the petitioner has not stated anything so far as his

being out of employment during the period of litigation before the Labour Court. The petitioner ought to have pleaded and proved before the Labour Court that after his being discontinued from employment, he has been out of employment during period of litigation before the Labour Court on the basis of which he could have claimed back wages. From the evidence of the petitioner, it does not reflect so.

8. Given the facts and circumstances of the case, this court is of the opinion that the Labour Court does not seem to have committed any error of law in not granting back wages while allowing the prayer of the petitioner for reinstatement in employment. Even otherwise, under the prevailing circumstances the doctrine of 'No Work No Pay' would squarely apply and the petitioner shall not be entitled for any wages during the intervening period.
9. Needless to mention that since the respondent has not challenged the order of reinstatement, in all fairness, the respondent is expected of compliance of the award passed and reinstate the petitioner on the post on which he was working at the time of his discontinuance of employment.
10. The writ petition fails and is rejected.

Sd/-
(P.Sam Koshy)
Judge