

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (L) No. 2156 of 2008**

Chhattisgarh Infrastructure Development Corporation Limited, Shastri Chowk, G.E. Road, Raipur (CG) through its Divisional Manager, Divisional office, (Parivahan Prabhag) Bilaspur (CG)

---- Petitioner**Versus**

- 1.(i). Smt. Hemlata Chauhan Wd/o late Shyam Rao Chauhan, aged about 53 years
- (ii). Ashwini Chauhan S/o late Shyam Rao Chauhan, aged about 20 years
R/o Main Road, Sarkanda in front of State Bank of India, near Vinod Panthela, Radha Krishna Mandir Campus, Sarkanda, Bilaspur (CG)
2. M. P. Road Transport Corporation through Managing Director, Headquarter Habibganj, Bhopal (MP)
3. The Presiding Officer, Labour Court, Bilaspur (CG)
4. The Chhattisgarh State Industrial Court, Raipur, through its Registrar
5. Tahsildar, Bilaspur Tahsil Bilaspur (CG)

---- Respondents

For Petitioner	:	Shri R. N. Pusty, Advocate
For Respondents 1.(i) & (ii)	:	Shri Pawan Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/03/2018**

Present writ petition has been filed challenging the order passed by the Labour Court on 31.01.2002 in Case No. 36/MPIR/98 and the subsequent order dated 20.02.2003 passed by the Industrial Court in Civil Appeal No. 75/MPIRA/A-II/2002.

2. It is pertinent to mention that while granting relief of reinstatement with full back wages, the Labour Court had held that the witnesses who were

examined before it could not establish the allegations and charges which were leveled against the delinquent employee. Moreover, the documents which were produced during the course of evidence also were not sufficient with which the charges could have been established. It was under this factual background, the order of reinstatement with full back wages was passed by the Labour Court.

3. This order of the Labour Court dated 31.01.2002 was subjected to challenge by M.P.R.T.C. under Section 65 of the MPIR Act before the Industrial Court at Raipur where the case was registered as Civil Appeal No. 75/MPIRA/A-II/2002. Though the appeal was filed in the year 2002, there was a continuous non representation by the appellant and ultimately the Industrial Court vide impugned order dated 20.02.2003 dismissed the appeal for want of prosecution.

4. Thereafter, the concerned employee is said to have filed an application under Section 108 of MPIR Act before the Labour Court, Bilaspur for quantification of the relief that was receivable by him on there being an order of reinstatement with consequential benefits. On notice being issued in the said proceeding, the present writ petition was filed on 02.04.2008. Thus, there is an apparent delay of more than 5 years in filing of the present writ petition challenging the order of the Industrial Court. The only ground of delay which has been explained in the writ petition is that the petitioner establishment came in existence only on 31.01.2002 and they were not aware of any such proceeding pending before the Industrial Court and that It is only when the proceeding under Section 108 of the MPIR Act was initiated, they came to know about such a proceeding.

5. Pending the present writ petition before this Court, the delinquent employee i.e. Shyam Rao Chouhan died on 20.06.2010 and it is the family members who are contesting the case on behalf of the delinquent employee.

Since the delinquent employee has expired, the question of reinstatement in service does not exist.

6. Another fact which cannot be lost sight is that the delinquent employee, after the order of the Labour Court, was reinstated in service and he was working at Bilaspur. Subsequent to 31.02.2002, the employee's services came under the control of CIDC i.e. the petitioner establishment till he died on 20.06.2010.

7. Thus, now the only benefit which the legal heirs of the delinquent employee could get is the differences of wages for the intervening period, if any from the date of reinstatement till he attained the age of superannuation and also the back wages for the period from 05.02.1998 i.e. the date of termination till the date he was reinstated in service after the order of the Labour Court.

8. Counsel for the petitioner submits that the reinstatement was made in pursuance to the requirement under Section 65 (3) of the MPIR Act and that the said reinstatement was subject to the outcome of the appeal pending before the Industrial Court and later the present writ petition before this Court.

9. A perusal of the entire records more particularly the records which were produced before the Labour Court it clearly reflects that the allegations and charges which were leveled by the Corporation against the delinquent employee was not proved at all. The witnesses who were examined on behalf of the Corporation also had not been able to substantiate the contentions which they had deposed before the Tribunal by leading any documentary evidence in this regard. Moreover, the finding of the Labour Court also is that the necessary documents which were seized during the course of the alleged inspection conducted on the vehicle in which the delinquent employee was a conductor were not produced before the Labour Court with which the charges could have been proved or established. In addition, no independent witness, particularly the passengers who were caught travelling without ticket have

been examined to further establish the Charges. Under the circumstances, quashing of the order of termination cannot be found fault with. Further, granting of back wages also in the given peculiar facts and circumstances of the case, cannot be said to be bad in law in any manner or perverse or contrary to the evidences which have come on record.

10. Counsel for the petitioner contended that so far as the liability of the petitioner is concerned, it would be only to the extent of sharing of the assets of the erstwhile M.P.S.R.T between the two States which is at the ratio of 18 : 82 and 26.49 : 73.31. This contention of the counsel for the petitioner is hard to accept for the reason that subsequent to the dissolving of MPSRTC in the State of Chhattisgarh, assets and liabilities have been inherited by the petitioner Corporation and further the delinquent employee by virtue of the reinstatement under the provisions of 65(3) of MPIR Act was discharging his duties under the petitioner Corporation. At this juncture it would be relevant to refer to the notification dated 16.02.2016 which was a clarification notification issued by the CIDC wherein they had categorically clarified the intention of receiving the assets, liabilities, rights and employees mentioned in the notification to be deemed the employees of CIDC w.e.f. 31.02.2002 onwards. If the intention of the Corporation is taken into account by virtue of the said notification, it clearly reflects that it has taken the responsibility of the entire liabilities which would fall in respect of the employees after 31.12.2002.

11. So far as the judgment of the Division Bench of this Court decided on 16.07.2012 in Writ Appeal No. 419 of 2011 and other Bench of writ petitions is concerned, this Court is of the opinion that the principle of law laid down by the Hon'ble Division Bench of this Court was in respect of the benefit which an employee was to accrue under the EDF (Employees Deposit Fund) Scheme. So far as the consequential order after the termination order being set aside is concerned, it is the Corporation under whom the employee had last worked will be responsible. If at all if there has to be any sharing, the liability which

has to be incurred by the petitioner Corporation is concerned, the petitioner would be at liberty for claiming the same against the erstwhile MPSRTC by initiating appropriate proceedings available to them under law.

12. As a consequence, this Court does not find any strong case made out by the petitioner Corporation for interfering with the two orders passed by the Labour Court and then by the Industrial Court firstly on merit and secondly on the ground of delay in filing the present writ petition. Subject to the petitioner's clearing the entire dues that are payable to the delinquent employee now receivable by the legal heirs of the deceased employee, they would be at liberty to recover any amount receivable from MPSRTC by initiating appropriate proceeding for settlement of dues to the extent of the share which falls upon MPSRTC.

13. The writ petition thus stands disposed of.

Sd/-
(P. Sam Koshy)
JUDGE