

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 419 of 2016

(Arising out of the order dated 11.07.2016 passed by the learned Single Judge in WPS No. 2021 of 2005)

1. Ram Kumar Kashyap S/o Shri Nilambar Halba, Aged About 48 Years R/o Village Miravahi, Post Sidhesar- 494334, Tah And Distt. Kanker, Chhattisgarh
2. Mukund Ram, S/o Shri Siyaram Gawade, Aged About 49 Years R/o Village Danitala, Tah And Distt. Balod, Chhattisgarh
3. Amrika Prasad Sahu, Aged About 57 Years O/o Shri Chunnilal Sahu, R/o Village Mullay, Tah And Distt. Balod, Chhattisgarh
4. Birjoram Yadav, S/o Shri Mannulal Yadav, Aged About 69 Years R/o Sikrapara- Balod- 491227, Tah And Distt- Balod, Chhattisgarh
5. Ram Prasad, S/o Shri Mangal Singh, Aged About 57 Years R/o Village Gondpal, Tah And Distt Balod, Chhattisgarh
6. Balaram Sahu, Aged About 51 Years R/o Village Nipani, Post Office- Gurur, Tah And Distt. Balod, Chhattisgarh

---- Appellants

Versus

1. State of Chhattisgarh Through Principal Secretary, Forest- Department Government Of Chhattisgarh, Secretariat, Mahanadi Bhawan, Naya Raipur, Raipur, 492001, Tah And Distt. Raipur, Chhattisgarh
2. Divisional Forest Officer, Durg Forest Division, Durg- 491001, Tah And Distt Durg, Chhattisgarh

---- Respondents

For Appellants	:	Shri V.G. Tamaskar, Advocate
For Respondents/State	:	Shri U.N.S. Deo, Government Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, Ajay Kumar Tripathi, Chief Justice

22.10.2018

1. Heard counsel for the Appellants and counsel for the Respondent-State authorities.
2. The appeal is directed against the order of the learned Single Judge dated 11.07.2016 who refused to pass an order giving any direction for regularization primarily on the ground that it was a case of retrenchment and

due compensation under Section 25-F of the Industrial Disputes Act, 1947 was paid. In addition to that, the learned Single Judge also refused to give any direction relegating some of the Appellants to the Industrial Tribunal keeping in mind that most of them had reached the stage or age of superannuation.

3. Based on a policy decision taken by the State Government to remove all daily wagers who have been appointed after 31.12.1988, due scrutiny was done. The appointment of these appellants having been found to have been made after the cut off date, the persons so engaged were retrenched, after paying due compensation. Such decision was assailed before the Madhya Pradesh State Administrative Tribunal, however subsequently, since the State of Chhattisgarh abolished the State Tribunal, the matter travelled to the learned Single Judge.
4. Plea was taken before the learned Single Judge that similarly situated persons, atleast two of them had been regularized and there is no reason to discriminate so far as the rest are concerned.
5. The question for regularization of these appellants was not gone into because there was no clear evidence that they had worked for more than 240 days in the preceding calender year and even otherwise since they were workmen, therefore, such issue could only be decided by an Industrial Tribunal.
6. The findings of the learned Single Judge are in following terms :-

“7. It is not the case of the petitioners that the scrutiny was made in an illegal manner and the findings are perverse. Although some certificates have been annexed to demonstrate that they were working prior of 31-12-1988, the respondents have categorically stated

that the official records do not contain proof of their working in the department prior to 31-12-1988. In such circumstances, this Court sitting under Article 226 would not embark on an enquiry like the trial Court or the Labour Court because doing so would require leading of oral evidence also.

8. Petitioners have stated that some other candidates had gone to Labour Court where the industrial dispute raised by them has been answered in their favour, therefore, the petitioners are entitled for the same relief. Finding recorded by the Labour Court after recording evidence in some other matter would not bind this Court. It was for the petitioners to have raised the industrial dispute.

9. Ordinarily this Court would have relegated the petitioners to raise the industrial dispute, however, considering the fact the petition has remained pending for the last 16 years and most of the petitioners are aged about 49-50 years; as a matter of fact at present, the petitioner No.5 Shyam Kumar (Karan), petitioner No.7 Birjhum Yadav and the petitioner No.9 Basant Ram are more than 60 years of age and some more like the petitioner No.6 Amrika Prasad Sahu and petitioner No.8 Ram Prasad are presently aged about 57 years of age, it may not be appropriate at this stage to relegate them to approach the Labour Court. While concluding so, this Court is also impressed by the statement made in the termination order wherein the retrenchment compensation has been paid to each of the petitioner. Once retrenchment compensation is paid, even if the petitioners have worked continuously for more than 240 days in the preceding calendar year immediately prior to the removal, it may not be termed as illegal retrenchment."

7. Though there is a bald denial that these appellants were appointed after 31.12.1988 or that retrenchment compensation was not given to them. Such bald denial in the face of clear findings having been recorded by the learned Single Judge, cannot be accepted to reflect the true position.
8. Even otherwise, since these appellants had rightly been paid retrenchment compensation and since most of them are in the evening

of their life, no purpose would be served by giving a direction for their regularization, when many of them have already reached the age of superannuation and had not been in the employment of the State in any manner for the last 18 years.

9. The appeal has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge