

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 4640 of 2009**

1. State of Chhattisgarh, through: Executive Engineer, Public Works Department, Durg, District Durg Chhattisgarh
2. Sub-Divisional Officer, Public Works Department, Patan, District Durg Chhattisgarh

---- Petitioners**Versus**

1. Horilal S/o. Indru Ram, Aged about 45 years, Caste Kurmi, R/o. Navagaon, Thana Patan, Post Deveda, Tahsil Patan, District Durg Chhattisgarh
2. The Labour Court, Durg, Chhattisgarh

----Respondents

For Petitioners/State : Mr. R.N. Pusty, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/12/2018**

1. The challenge in the present writ petition is to the award of the Labour Court, Durg in case No. 8/I.D.Act (Ref)/2006, dated 17.03.2009.
2. The brief facts of the case relevant for the adjudication of the present dispute is that the respondent No.1 was initially engaged by the petitioner (State Government) in the year 1974-75 and the respondent No.1 continued to work as a daily wage employee during the said period. Meanwhile, in the year 1990, the service book of the petitioner was also prepared by the department and it was maintained. However, by virtue of a circular of the State Government dated 14.03.2000, the services of the petitioner was abruptly discontinued.

3. It is alleged that before discontinuance of the services of the petitioner, the authorities concerned had not complied with any of the provisions as is envisaged under chapter-V of the Industrial Disputes Act, more particularly the provisions provided under Sections 25 & 25F and thus, the discontinuance is bad in law.
4. The petitioner raised an industrial dispute in respect of his alleged discontinuance, which the State Government vide order dated 12.06.2006 made a reference to the Labour Court, Durg, where the case was registered as case No. 8/I.D. Act (Ref.)/2006. The State Government had made the following reference for being adjudicated upon by the Labour Court :

“Whether the retrenchment of the worker-Horilal son of Indru Ram was legal and justified? If not, what relief the worker is entitled for, and what directions, in this regard, can be issued to the petitioner (i.e. the State Government)?”

5. After the pleadings were complete and the evidences were recorded, the respondent No.1-worker himself got examined and in his deposition, he made a specific averment that he has been working with the department continuously since 1974-75 expecting regularization in the department, but was not regularized. The erstwhile State of Madhya Pradesh issued a circular on 14.03.2000 to immediately discontinue all daily wage employees engaged under the State Government and in the process the respondent No.1 also stood discontinued from service.
6. It was also the contention of the respondent No.1 that in the year 1990, the department had also prepared the service book, wherein

all necessary entries, so far as his employment part is concerned, has been recorded.

7. On behalf of the employer i.e. the petitioner-State Government, one Mr. D.C. Kumar was examined, and from whose deposition, the factual matrix stands established, so far as the engagement of the respondent No.1 as a daily wage employee and the fact that the respondent No.1 stood removed from service by virtue of the circular of the State Government dated 14.03.2000. There is also an admission of the witness of the department that before discontinuing the services of the respondent No.1, no retrenchment compensation or for that matter any notice or salary in lieu of notice was paid to the worker.
8. Based on the aforesaid factual matrix of the case, the Labour Court vide its award dated 17.03.2009 allowed the reference in favour of the employee granting reinstatement without back wages. It is this award, which is under challenge in the present writ petition.
9. The primary contention of the State counsel is that the Labour Court failed to appreciate the fact that the respondent No.1's substantial engagement was as a daily wage employee, therefore on the culmination of the work on each day, the engagement stood automatically discontinued. It was also the contention of the State counsel that the fact that he was a daily wage employee, itself would show that there was no indefeasible right, in any manner, created in his favour.
10. However, on a query being put to the State counsel, he fairly refers to the deposition of witness on behalf of the department, so far as

the engagement of the respondent No.1 is concerned and the fact that the discontinuance was pursuant to the circular of the State Government, which by itself establishes the fact that before the services of the respondent No.1 was discontinued, no compensation what soever or even a notice was given to the respondent No.1, thus it is a clear violation of the statutory provisions of the Industrial Disputes Act.

11. The plain reading of the deposition brought before the Labour Court and the contents of the award, it would clearly reflect that the findings arrived at by the Labour Court was based on the evidences and the depositions, which have been produced before the Court. The petitioner had not been able to produce any substantial material to show that the findings of the Labour Court, in any manner, is either perverse or contrary to the evidence, which have come on record.
12. It is settled position of law by now that the writ Court while testing the veracity of an award of the Labour Court would not sit as a first Appellate authority over the finding of the Labour Court, neither would this Court in exercise of its writ jurisdiction conduct a threadbare inquiry or a roving inquiry to determine the issues framed before the Labour Court.
13. The scope of interference challenging an award of the Labour Court is only to the extent of the decision making process and not the decision itself. Perusal of the decision making process would clearly reflect that the finding was based on the evidences, which have

come on record, more particularly is based on the evidence, which has been given by the departmental witness himself.

14. Another aspect, which further compels this Court not to interfere with the findings of the Labour Court is the fact that the award dated 17.03.2009 was immediately complied with by the petitioner and the worker-respondent No.1 has been reinstated in service and since 2009, the respondent No.1 has put in almost about 10 years of service again. In addition to the previous 25 years of service, which he had rendered before being removed from service.
15. In para 17 of **(2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another vs. Employer I/R to Management of Food Corporation of India & Another)**, it has been held as under:-

“17.....At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of retrenchment I paying the aforesaid dues in accordance with Section 25-F of the ID Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well.....”

Applying the same analogy and again reiterating the same in the case of **(2014) 7 Supreme Court Cases 177 (Bharat Sanchar Nigam Limited vs. Bhurumal)**, it has been held in paragraph- 27 as under:-

“27.....In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months' period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.”

16. 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:-

“21. 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 are social welfare legislations 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.'

(A.I.R 1958 SC 923 [State of Mysore v. Workers of Gold Mines, AIR p.928, para 10.]”

17. This view has further been reiterated in the case of **“Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited”** reported in **(2014) 11 SCC 85.**
18. Given the aforesaid legal positions laid down by the Hon'ble Supreme Court, as also the finding of fact recorded by the Labour Court, this Court does not find any strong case made out by the petitioner calling for an interference with the award of the Labour Court. The writ petition thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved